



**APPENDIX B**  
**US ARMY CORPS OF ENGINEERS**  
**REGULATORY PROGRAM**  
**APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)**  
**2023 RULE**

**ORM Project Name:** [City of Newburyport](#)  
**ORM Identification Number:** [NAE-2023-0977](#)

**Appendix B 1 of 1: Significant Nexus Analysis for potential paragraph (a)(5)(ii) waters:**  
Completion of this appendix is **required** for all potential paragraph (a)(5)(ii) waters.

1. Identify and describe the catchment (region): (location of downstream limit of catchment, and approximate size and extent of the catchment) (include map of catchment showing all waters within the review area<sup>2</sup> that are being analyzed under paragraph (a)(5)(ii), and the location of the review area):  
[The resource being reviewed for jurisdiction, Bartlet Mall Frog Pond \(Pond\), is a 2.31-acre pond that does not receive water from upstream and does not discharge to the tributary system and as such it does not flow to any paragraph \(a\)\(1\) waters, either directly or indirectly. The catchment area is small, including a narrow band from the Pond to the Merrimack River, an \(a\)\(1\) water. See catchment map below.](#)
2. Identify the paragraph (a)(1) water to which the tributary that is most closely associated with the potential (a)(5)(ii) water(s) directly or indirectly flows:  
[Merrimack River](#)
3. Describe the flowpath from the downstream limit of the tributary most closely associated with the potential (a)(5)(ii) water(s) to the paragraph (a)(1) water:  
[The downstream limit of the tributary most closely associated with the potential \(a\)\(5\)\(ii\) water is the tidal Merrimack River, an \(a\)\(1\) water.](#)
4. Use the table below to list each intrastate lake or pond, stream, and/or wetland within the review area that is being analyzed under paragraph (a)(5)(ii) and to provide information supporting the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.

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<sup>1</sup> The final rule “Revised Definition of ‘Waters of the United States’” (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

<sup>2</sup> In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water. This approach reflects the agencies’ consideration of public comments, as well as implementation considerations for waters assessed under paragraph (a)(5). (See 88 FR 3102). When assessing waters individually under paragraph (a)(5)(ii) of the 2023 Rule, it is not necessary to identify or consider any similarly situated waters in the region that are located outside of the review area. Supplemental information to identify and describe in the region, which are located outside of the review area, may be referenced in Section IV.C or provided in Section IV.D of the AJD form.



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Lake or pond, stream, or wetland name	Resource type	Explain why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Support the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.
Bartlet Mall Frog Pond	Pond	The subject water is not tidal, traditionally navigable, impounded, a tributary, or a wetland. The subject water is relatively permanent, but it does not flow either directly or indirectly to a paragraph (a)(1) water.

5. Use the tables below to consider the factors and assess the functions provided by each potential paragraph (a)(5)(ii) water(s) listed above. Each potential paragraph (a)(5)(ii) water should generally be evaluated individually. Complete the factors table by describing the site-specific conditions that relate to the potential paragraph (a)(5)(ii) water.<sup>3</sup>

FACTORS
Distance from a water identified in paragraph (a)(1) (river miles and straight-line miles):
Not connected to any paragraph (a)(1) waters; nearest (a)(1) waters are 1869 feet away and hydrologically separated
Hydrologic factors, such as the frequency, duration, magnitude, timing, and rate of hydrologic connections, including shallow subsurface flow:
There are no hydrologic connections.
Size, density, or number of waters that have been determined to be similarly situated <sup>4</sup> :
2.31 acres – one water
Landscape position and geomorphology:
kettlehole
Climatological variables such as temperature, rainfall, and snowpack:
Standard New England coastal weather.

For each function, consider each factor to evaluate the likely strength of any effect of that function on a paragraph (a)(1) water. Consider whether the factors are likely to increase or decrease the strength of the influence of the function on the paragraph (a)(1) water.

FUNCTIONS
Contribution of flow:
No effect as hydrologically separated and does not flow to other waters
Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants):

<sup>3</sup> Supplemental information to consider the factors and assess the functions of waters in the region, which are located outside of the review area, may be referenced in Section IV.B. or IV.C. or provided in Section IV.D. of the AJD form.

<sup>4</sup> Note that, because waters assessed under paragraph (a)(5)(ii) are generally assessed individually, generally only the total size of the potential paragraph (a)(5)(ii) water will be described.



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Likely performs this function and may affect the (a)(1) water via trapping of sheet flow and accompanying pollutants, but level of functioning limited due to hydrologic separation (1869 feet from (a)(1) water)
Retention and attenuation of floodwaters and runoff:
Likely performs this function, particularly with surface runoff; limited by distance from (a)(1) water
Modulation of temperature in waters identified in paragraph (a)(1):
Unlikely to perform this function
Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1):
Does not perform this function due to hydrologic separation

6. For each potential paragraph (a)(5)(ii) water within the review area, enter the name(s) of the water(s) in the table below and select a conclusion statement from the drop-down menu that applies to that water. Consider the factors and assess the functions of the potential paragraph (a)(5)(ii) water and whether the subject water significantly affects the chemical, physical, or biological integrity of the paragraph (a)(1) water to support the conclusion in the summary table.

Conclusion Summary	
Water name: Bartlet Mall Frog Pond	Conclusion: This water does not significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.
Rationale Summary: potential (a)(5)(ii) water does not flow to any (a)(1) waters (either directly or indirectly) or occur within near proximity to any (a)(1) waters and thus does not have a significant effect on them	

Catchment:

The area is urbanized and there is no most closely associated tributary since drainage is managed through a municipal drainage system. StreamStats was used to produce a catchment map that provides a reasonable estimate of the catchment of the most closely associated drainage path in this urbanized area, and the resulting catchment map is attached.



# APPENDIX B

## US ARMY CORPS OF ENGINEERS REGULATORY PROGRAM

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The screenshot displays the USGS StreamStats web application. The main map area shows a satellite view of a residential area with a yellow delineated watershed. The interface includes a left sidebar with navigation and tool options, and a right sidebar with a 'Layers' panel. The 'Layers' panel is open, showing 'National Layers' with a list of watershed levels from 2-digit to 14-digit. The map includes labels for 'Newburyport' and 'Watershed'. The bottom of the map shows coordinates: Zoom Level: 16, Map Scale: 1:9,027, Lat: 42.8012, Lon: -70.8695.