



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

CENAE-RD

18 June 2026

MEMORANDUM FOR RECORD

SUBJECT: U.S. Army Corps of Engineers (USACE) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (18 Jan 23) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 Sep 23),¹ NAE-2024-01389

1. BACKGROUND: An Approved Jurisdictional Determination (AJD) is a USACE document stating the presence or absence of waters of the United States (U.S.) on a parcel or a written statement and map identifying the limits of waters of the U.S. on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a district engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³

On 18 Jan 23, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (18 Jan 23) ("2023 Rule"). On 8 Sep 23, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a USACE AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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2. SUMMARY OF CONCLUSIONS

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

(1) Wetland 4 is non-jurisdictional.

3. REFERENCES

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023)

c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

d. Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (March 12, 2025)

4. REVIEW AREA: The review area is located in the median of Route 3, to the west of the bridge conveying Route 3 over the North River, in Norwell, Massachusetts (see Figures 1 and 2), and includes only Wetland 4, which is an approximately 8,065-square foot forested wetland located at 42.1164°, -70.7788°, and circled in red on the attached site plan entitled "NORWELL/PEMBROKE/MARSHFIELD ROUTE 3 OVER THE NORTH RIVER."

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED⁵: N/A, the North River is located approximately 57 feet east of Wetland 4, but there are no connections between Wetland 4 and the river.

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER: N/A, Wetland 4 lacks connectivity to any TNW, territorial sea, or interstate water and is non-jurisdictional.

7. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A

8. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): N/A

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): N/A

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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f. Adjacent Wetlands (a)(4): N/A

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

9. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸ N/A

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetland 4 is a long, linear wetland located in the forested median between the northbound and southbound lanes of Route 3 in Norwell, Massachusetts. The wetland is dominated by red maple (*Acer rubrum*), highbush blueberry (*Vaccinium corymbosum*), cinnamon fern (*Osmunda cinnamomea*), and royal fern (*Osmunda regalis*). During a site visit conducted by the Corps on 4/10/2026, Wetland 4 contained several shallow (<1 inch deep) pockets of standing water. The western end of Wetland 4 abuts a catch basin. Water from Wetland 4 was observed flowing down into the catch basin. The Antecedent Precipitation Tool (APT) indicates rainfall conditions were normal at the time of the site visit. There are no streams or culverts present in the highway median in the vicinity of Wetland 4. Highway plans from the time of highway construction show that this portion of Route 3 was constructed on top of tidal wetlands associated with the North River. No tidal wetlands or waters are present in the highway median where Wetland 4 is located today due to the fill used to construct the highway. The historic plans also show drainage ditches constructed within the median. The historic highway plans indicate the catch basin connects to a below-ground stormwater pipe that discharges to an outfall on the south side of Route 3. However, the south side of the highway was searched thoroughly and no outfall could be located. It is unknown whether the outfall is buried or located in a different location. Additional field surveys conducted separately by the

⁸ 88 FR 3004 (January 18, 2023)

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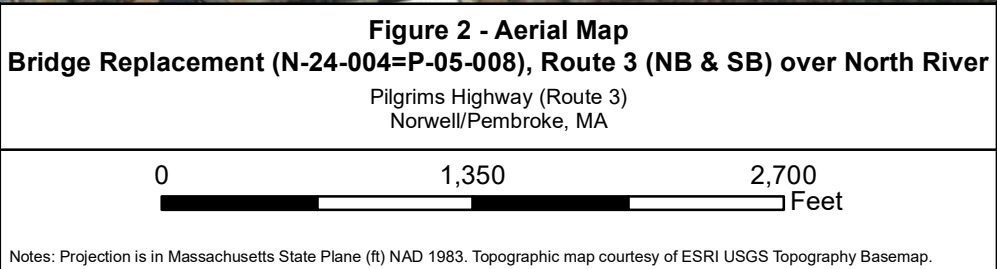
applicant's consultant have not located the outfall. Based on the historic plans and field observations, Wetland 4, the catch basin, and the subsurface pipe appear to have been constructed as part of the highway's stormwater system. No surface connection between Wetland 4 and other jurisdictional waters has been observed. Therefore, Wetland 4 is considered an isolated, non-tidal wetland surrounded by uplands that does not have a continuous surface connection to jurisdictional waters and is therefore non-jurisdictional.

10. DATA SOURCES: List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Field visit conducted 4/10/2026
- b. Plans entitled "NORWELL/PREMBROKE/ MARSHFIELD ROUTE 3 OVER THE NORTH RIVER.," provided by consultant (AECOM) and plotted on 1/22/2026
- c. MassGIS MassMapper (USGS topographic maps, aerial imagery, National Wetland Inventory, DEP Wetlands, and DEP Wetland Hydrologic Connections layers), accessed 5/6/2026
- d. Google Maps and Bing Maps, accessed 5/6/2026
- e. Aerial photographs and site photographs provided by consultant, 2/13/2026
- f. Antecedent Precipitation Tool (APT), accessed 4/15/2026

11. OTHER SUPPORTING INFORMATION: In accordance with the updated December 2023 USACE Tribal consultation policy, USACE coordinated with the Narragansett Indian Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), and the Mashpee Wampanoag Tribe regarding this AJD on 5/6/2026. USACE asked if the tribes had any indigenous knowledge of hydrology in the vicinity that would be useful for this AJD process. No response was received from any of the tribes within the 15-day comment period.

12. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Prepared for:



Prepared by:



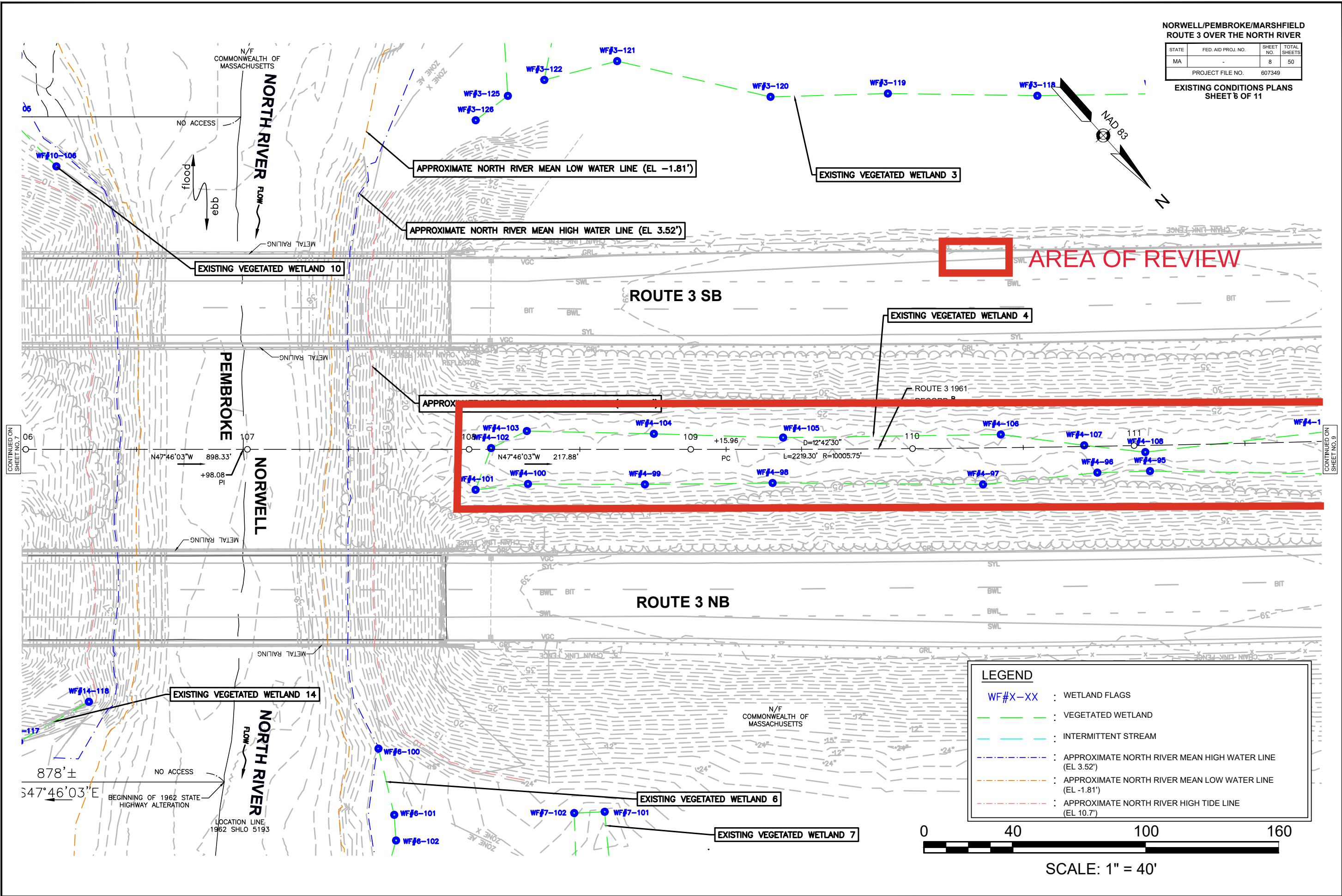
April 2024

NORWELL/PEMBROKE/MARSHFIELD

ROUTE 3 OVER THE NORTH RIVER

STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	-	8	50
PROJECT FILE NO.		607349	

EXISTING CONDITIONS PLANS
SHEET 8 OF 11



LEGEND

- WF#X-XX : WETLAND FLAGS
- : VEGETATED WETLAND
- - - : INTERMITTENT STREAM
- - - : APPROXIMATE NORTH RIVER MEAN HIGH WATER LINE (EL 3.52')
- - - : APPROXIMATE NORTH RIVER MEAN LOW WATER LINE (EL -1.81')
- - - : APPROXIMATE NORTH RIVER HIGH TIDE LINE (EL 10.7')

SCALE: 1" = 40'

NORWELL/PEMBROKE/MARSHFIELD
ROUTE 3 OVER THE NORTH RIVER

STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	-	9	50
PROJECT FILE NO.		607349	

EXISTING CONDITIONS PLANS
SHEET 7 OF 11

LEGEND

- WF#X-XX : WETLAND FLAGS
- : VEGETATED WETLAND
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EXISTING VEGETATED WETLAND 3

EXISTING VEGETATED WETLAND 4

AREA OF REVIEW

ROUTE 3 SB

ROUTE 3 NB

SCALE: 1" = 40'