



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT
NEW ENGLAND DISTRICT OFFICE
696 VIRGINIA ROAD
CONCORD MA 01742-2751

CENAE-RD

June 26, 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ NAE-2026-00730 (MFR 1 of 1)

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States 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 January 18, 2023, 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 (January 18, 2023) ("2023 Rule"). On September 8, 2023, 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 Corps 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. SUMMARY OF CONCLUSIONS.

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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- 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Delineated Banks	Non-Jurisdictional	N/A
Delineated Wetland Edge	Non-Jurisdictional	N/A

2. 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. 651, 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)

3. REVIEW AREA. The review area is an approximately 0.12-acre area that is identified on Attachment 1 as the “LIMITS OF DISTURBANCE”. The review area is located at the MBTA Commuter Rail Stop in Lincoln, Middlesex County, MA, which is generally bound by commercial and residential development. The project is centered at latitude 42.415381°, longitude -71.326865°.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.
N/A. The subject aquatic resources under review in this MFR are considered non-jurisdictional and have no flow path through a relatively permanent water to a TNW.

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6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ N/A
7. 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
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁵ 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.

⁶ 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.

- 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).⁷ N/A

Delineated Banks

The review area contains one ditch (±54 square feet) identified as “delineated banks” on Attachment 1. The ditch does not appear on the USGS Topographic Map for Concord, MA, 1:24,000 quad (2024) or the NWI and NHD mappers. The bottom substrate of the ditch consists of course gravel. During the aquatic resource delineation, the side slopes were sparsely vegetated with herbaceous forbs unidentified due to the season. A culvert connects the ditch to a wetland on the west side of the MBTA rail tracks. Based on a review of aerial imagery, the ditch was excavated in and drains only dry land and does not carry a relatively permanent flow of water to an a(1) water. Therefore, the ditch is excluded under b(3) ditches. The ditch is not a water of the United States.

- 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).

Delineated Wetland Edge

The review area contains one palustrine scrub shrub, emergent wetland (±150 square feet) identified as “delineated wetland edge” on Attachment 1. The wetland is shown on the USGS Topographic Map for Concord, MA, 1:24,000 quad (2024) and the NWI mapper. The wetland extends outside of the review area to the west and is dominated by red maple (*Acer rubrum*) and swamp white oak (*Quercus bicolor*) in the tree and sapling stratas. The shrub canopy consists of gray stem dogwood (*Cornus foemina*), tatarian honeysuckle (*Lonicera tatarica*), silky dogwood (*Cornus amomum*), glossy buckthorn (*Rhamnus frangula*), arrow-wood (*Viburnum recognitum*), crab apple (*Malus sp.*), and gray birch (*Betula populifolia*). The herbaceous canopy contains tussock sedge (*Carex stricta*), sensitive fern (*Onoclea sensibilis*), and several unidentified grasses and

⁷ 88 FR 3004 (January 18, 2023)

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sedges. The liana stratum contains grape (*Vitis sp.*), poison ivy (*Toxicodendron radicans*), and asiatic bittersweet (*Celastrus orbiculatus*).

Based on a review of aerial imagery, the wetland does not have a continuous surface connection to an a(1), a(2), or a(3) water and is therefore not adjacent to those waters. The wetland was determined to be non-jurisdictional because it does not meet one or more categories of waters of the United States under the 2023 Rule as amended, as it is a non-tidal wetland that does not have a continuous surface connection to a TNW.

9. 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. Corps Office (Desk) Determination: 6/10/2026
- b. Data sources used to support this determination (included in the administrative record).
 - i. Wetland Delineation Report for MBTA Commuter Rail Stop, Lincoln, Massachusetts, prepared by Seekamp Environmental Consulting, Inc. for Keolis Commuter Services, submitted by the consultant on behalf of the applicant, dated 19 AUG 2024
 - ii. Wetland Determination Data Form, prepared by Seekamp Environmental Consulting, Inc, submitted by the consultant on behalf of the applicant, dated 4 MAY 2026
 - iii. Photographic Log, prepared by TRC Companies Inc, submitted by the consultant on behalf of the applicant, dated 4 AUG 2025 and 18 MAR 2026
 - iv. Google Earth Images, March 1995- March 2026
 - v. USFWS National Wetland Inventory (NWI), Wetlands Mapper, Accessed June 10, 2026
 - vi. USGS Hydrologic Atlas, National Hydrologic Data, Accessed June 10, 2026
 - vii. USGS Topographic Map, Concord, MA 1:24000, 2024

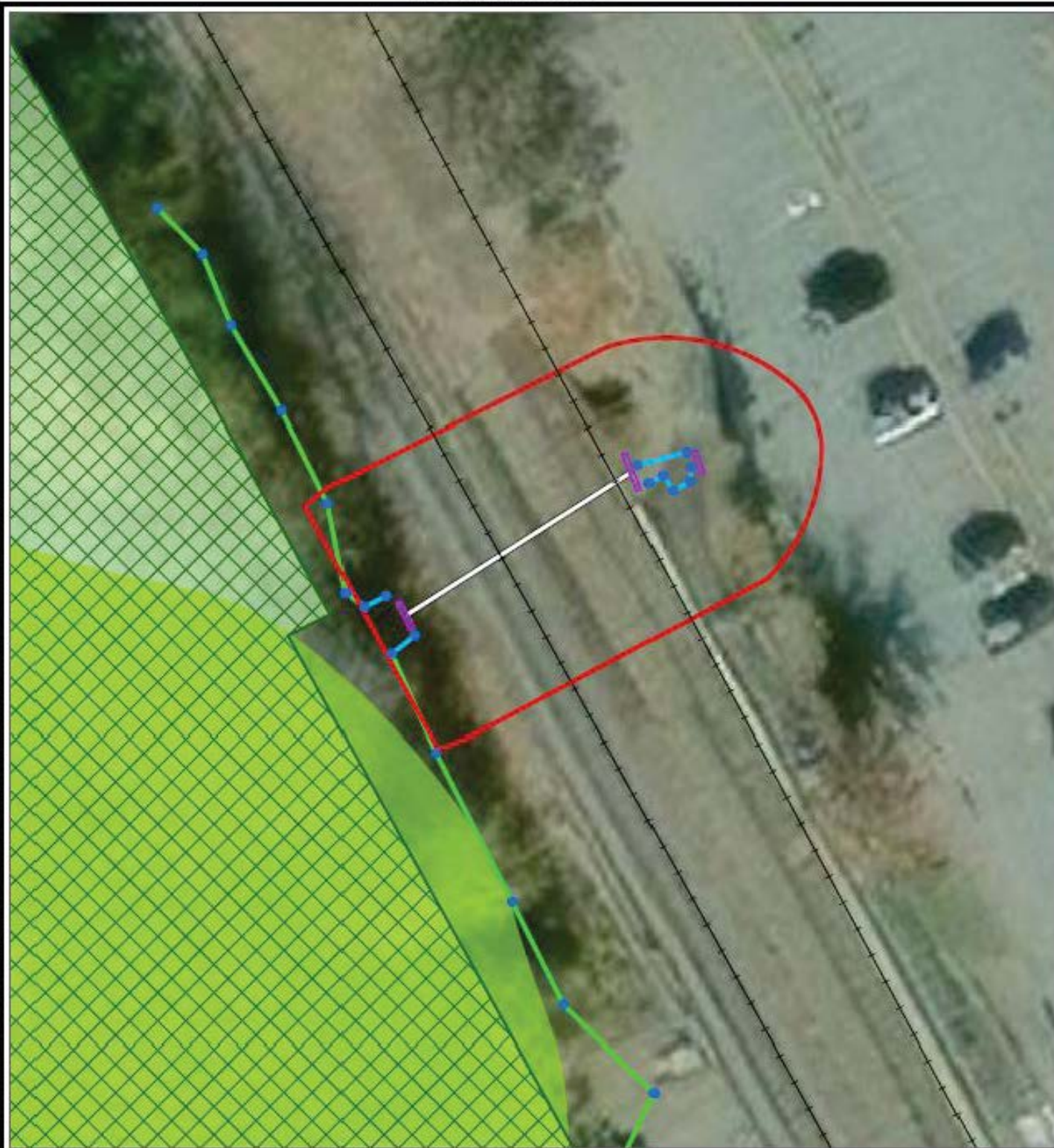
10. OTHER SUPPORTING INFORMATION. N/A

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11. 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.

Attachment 1

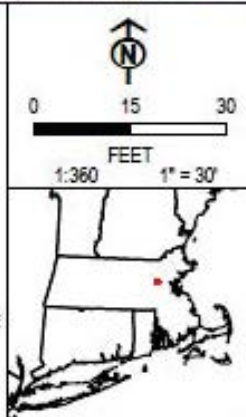


	LIMIT OF DISTURBANCE		MADEP WETLAND (2005)
	EXISTING CULVERT		ARTICLE 97 LAND
	HEADWALL		OPEN SPACE AND RECREATIONAL LAND
	RAILROAD		
	DELINEATION FLAG LOCATION		
	DELINEATED BANKS		
	DELINEATED WETLAND EDGE		

NOTES:

- 1) OUTSTANDING RESOURCE WATERS COVERS THE ENTIRE AREA.
- 2) SURFACE WATER PROTECTION ZONE C COVERS THE ENTIRE AREA.
- 3) DEEP WELLHEAD PROTECTION APPROVED ZONE II COVERS THE ENTIRE AREA.

BASIS MAP: ESRI "WORLD IMAGERY" (2023)
DATA SOURCES: TRC



MBTA LINCOLN STATION LINCOLN, MASSACHUSETTS	
NATURAL RESOURCES	
DRAWN BY: B. MEDEIROS	PROJ. NO.: 707424
CHECKED BY: G. STUDWELL	FIGURE 2
APPROVED BY: I. MOHAMMADI-HALL	
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