



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

CENAE-RD

17 September 2025

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-2025-01143

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.

2. 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).

(1) Wetland I, and Wetland C are 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 an approximately 6.84-acre review area within an overall 67.4-acre site. The site is located north of Cedar Hill Street, west of Simarano Drive, and southwest of Silver Leaf Way in Marlborough, Middlesex County, Massachusetts with the project centered at Latitude: 42.317810 Longitude: -71.578538. Review areas are identified on the attached figures "Existing Conditions Plan"

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED:

The Merrimack River, located approximately 25 miles northwest of the subject review area, is the nearest TNW.

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER:

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N/A. The subject waters, do not have a flowpath to a TNW, interstate water, or the territorial seas.

7. 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

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

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.

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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).⁷ 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 I and Wetland C are isolated wetlands and have no relatively permanent water adjacent or abutting that provide a continuous surface connection to a Waters of the United States. Wetland I is an approximately .35-acre wetland on the east side of the project area. WI was reviewed under a field investigation by the consultant and was delineated by a series of flags I1 through I20. This wetland was delineated using the USACE 1987 manual and was observed to be a forested wetland dominated by overstory of white pine (*Pinus strobus*, FACU) and a sparse understory of wetland indicator shrubs and groundcover species such as highbush blueberry (*Vaccinium corymbosum*, FACW), smooth arrowwood (*Viburnum dentatum*, FAC), jack-in-the-pulpit (*Arisaema triphyllum*, FAC), cinnamon fern (*Osmundastrum cinnamomeum*, FACW) and sensitive fern (*Osmunda sensibilis*, FACW). The feature is surrounded by modern development including new roadways. According to a Desktop review conducted by the USACE utilizing the National Regulatory Viewer (NRV) and appropriate layers and data identified within Section 10 of this document, there are no observed channels entering or exiting this feature and it is apparent the feature is surrounded solely by uplands. Wetland C is an approximately .93-acre wetland

⁷ 88 FR 3004 (January 18, 2023)

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located on the west side of the review area. was review under a field investigation by the consultant and was delineated by a series of flags C57 through C145. This wetland was delineated using the USACE 1987 manual and was observed to be a forested wetland with a dominant overstory of red maple (*Acer Rubrum*, FAC) and green ash (*Fraxinus pennsylvanica*, FAC). As the wetland slopes down gradient toward Cedar Hill Road, the wetland transitions into a Palustrine Scrub/Shrub community dominated with such species as silky dogwood (*Swida amomum*, FACW), northern arrowwood (*Viburnum dentatum*, FAC), and highbush blueberry (*Vaccinium corymbosum*, FACW). According to a Desktop review conducted by the USACE utilizing the National Regulatory Viewer (NRV) and appropriate layers and data identified within Section 10 of this document, there are two (2) stormwater inlets discharging stormwater into this wetland system. There is a 12-inch reinforced concrete pipe stormwater inlet entering the wetland from the north between wetland flags C63 and C64. This stormwater inlet was recently constructed as permitted to provide stormwater drainage to the off property residential development to the north. A stormwater facility constructed in uplands would not constitute as a relatively permanent water there for the culverts do not convey a continuous surface connection with a relatively permanent water or Water of the United States. There are no observable discharges of this wetland feature making the feature isolated.

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.

- ☒ Aquatic Resources delineation submitted by the consultant on behalf of the applicant: Existing Conditions Plan, dated March 28th 2018
- ☒ Wetland field data sheets prepared by the consultant on behalf of the applicant: August 30 2024
- ☒ Photographs: Provided by consultant, August 30 2024
- ☒ Aerial Imagery: Wetland Exhibit (EX-W), dated November 29th 2024
- ☒ LIDAR: USACE, NAE-2025-01143_LIDAR, August 29 2025
- ☒ USDA NRCS Soil Survey: Provided by consultant Figure 4, June 2025
- ☒ USFWS NWI maps: USACE, NAE-2025-01143_NWI, August 29 2025
- ☒ USGS topographic maps: USACE, NAE-2025-01143_USGS, August 29 2025

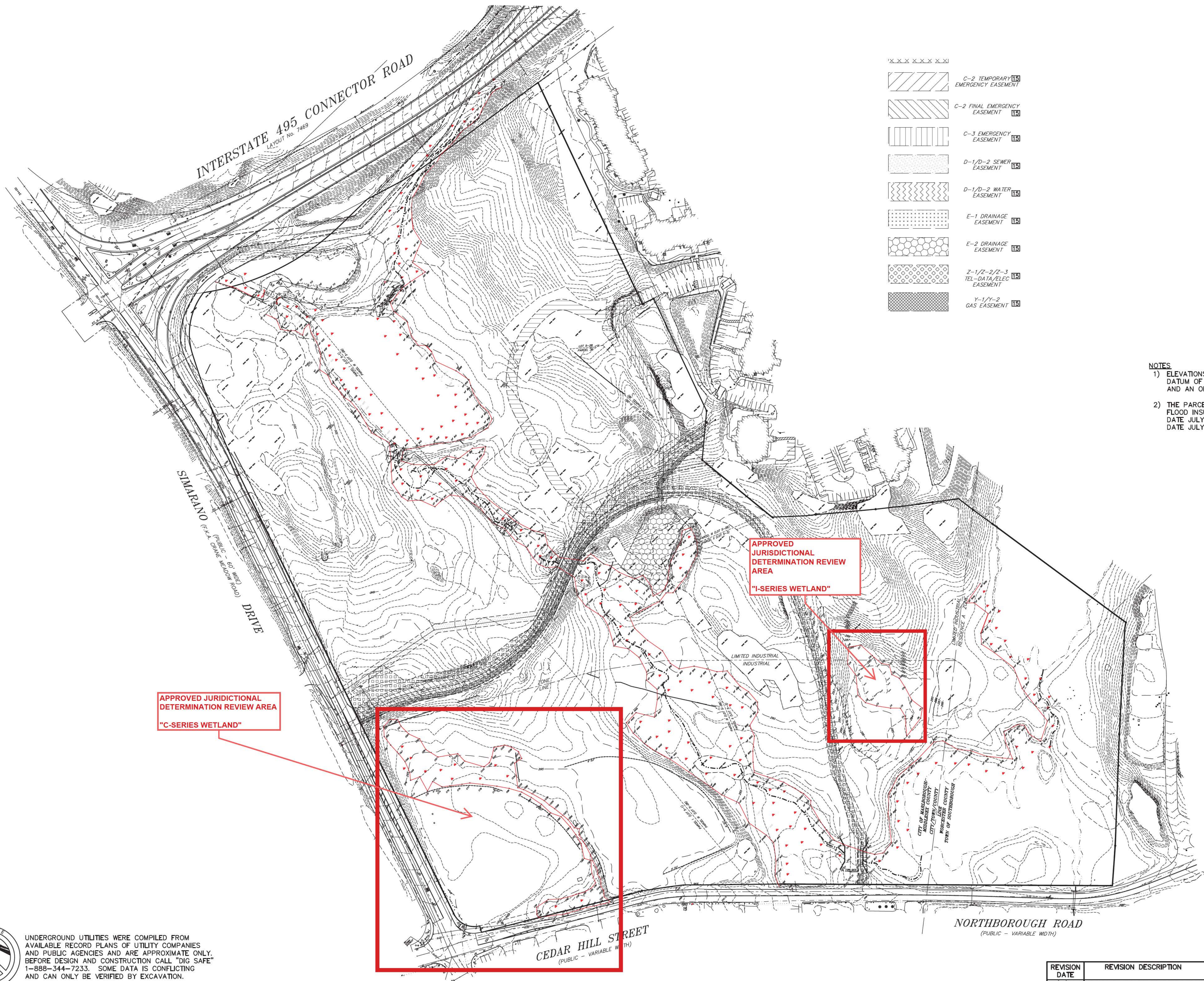
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- ☒ USGS NHD data/maps: USACE, NAE-2025-01143_NHD, August 29, 2025
- ☒ Antecedent Precipitation Tool Analysis: August 30, 2024

11. OTHER SUPPORTING INFORMATION:

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.



- C-2 TEMPORARY EMERGENCY EASEMENT
- C-2 FINAL EMERGENCY EASEMENT
- C-3 EMERGENCY EASEMENT
- D-1/D-2 SEWER EASEMENT
- D-1/D-2 WATER EASEMENT
- E-1 DRAINAGE EASEMENT
- E-2 DRAINAGE EASEMENT
- Z-1/Z-2/Z-3 TEL-DATA/ELEC EASEMENT
- Y-1/Y-2 GAS EASEMENT



- NOTES**
- ELEVATIONS REFER TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 AS DETERMINED BY GPS OBSERVATIONS AND AN OPUS REDUCTION PERFORMED FEBRUARY 2018.
 - THE PARCEL SHOWN HEREON IS IN ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP No. 25017C0479F EFFECTIVE DATE JULY 7, 2014 AND MAP No. 25027C0654F EFFECTIVE DATE JULY 16, 2014.

APPROVED JURIDICTIONAL DETERMINATION REVIEW AREA
"C-SERIES WETLAND"

APPROVED JURIDICTIONAL DETERMINATION REVIEW AREA
"I-SERIES WETLAND"

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EXISTING CONDITIONS PLAN
IN
MARLBOROUGH/SOUTHBOROUGH, MA
(MIDDLESEX/WORCESTER COUNTY)
SCALE: 1"= 100' DATE: MARCH 28, 2018



REVISION DATE	REVISION DESCRIPTION
8/6/2019	UPDATED SELECT WETLAND FLAGS "R"
10/1/2021	ADDED "U" & "T" SERIES WETLAND FLAGS
9/12/2024	C SERIES WETLAND FLAGS