



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

CENAE-RD

18 November 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-2025-01491

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 1, Wetland 2, Wetland 3, Wetland 4, Wetland 7, Wetland 8, Wetland 9, and Wetland 10 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 38-acre AJD review area within a 56-acre parcel that is identified in the attached figure. The review area is located at the Lexington High School located to the east of Worthen Road, south of Park Drive, and west of Waltham Street, in Lexington, Middlesex County, Massachusetts with the project being centered at Latitude: 42.444099, Longitude: -72.233421.

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED: Mystic River at the point where it is subject to the ebb and flow of the tide. (Atlantic Ocean)

6. 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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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
- f. Adjacent wetlands (a)(4): N/A
- g. Additional Waters (a)(5): 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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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 1, Is adjacent to Park Drive, and bounded by paved road surfaces on the north, east and south sides, and separated by an upland berm to the west. The Wetland is approximately 1.172 acres and has a stormwater RCP buried within the confines of the wetland but is not directly connected. The wetland is demarcated in the field with pink surveyor’s tape, labeled W1-100 through W1-121. The wetland is dominated by vegetation including red maple (*Acer rubrum*), silver maple (*Acer saccharinum*), willow (*Salix sp.*), winterberry (*Ilex verticillafa*), silky dogwood (*Cornus amomum*), elderberry (*Sambucus nigra*), sensitive fern (*Onoclea sensibilis*), jewelweed (*Impatiens capensis*), soft rush (*Juncus effusus*), and tussock sedge (*Carex stricta*). Wetland 1 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland is surrounded with road and stormwater infrastructure including stormwater inlets. There is no direct continuous surface connection through a relatively permanent water to a downstream TNW. The feature appears to be completely isolated.

Wetland 2, Is adjacent to Park Drive, and bounded by paved road surfaces on the north, east and west sides, and separated by an upland berm on the south. The wetland was demarcated in the field with pink surveyor’s tape, labeled W2-100 through W2-112. The approximately 0.446 acre wetland is dominated by vegetation including red maple (*Acer rubrum*), American elm (*Ulmus americana*), highbush blueberry (*Vaccinium corymbosum*), silky dogwood (*Cornus amomum*), elderberry

⁷ 88 FR 3004 (January 18, 2023)

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(*Sambucus nigra*), bishop's goutweed (*Aegopodium podagraria*), and soft rush. Wetland 2 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland is surrounded with road and stormwater infrastructure including stormwater inlets. There is no direct continuous surface connection through a relatively permanent water to a downstream TNW. The feature appears to be completely isolated.

Wetland 3 is located directly to the southwest of Wetland 2 and bounded by paved road surfaces on the south, east and west sides, and separated by an upland berm on the north side. The wetland boundary was demarcated in the field with pink surveyor's tape, labeled W3-100 through W3-111. The approximately .17-acre wetland is dominated by broadleaf cattail (*Typha latifolia*). Other vegetation observed within the wetland included purple loosestrife (*Lythrum salicaria*), silky dogwood, elderberry, winterberry and red maple (*Acer rubrum*). Wetland 3 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland is surrounded with road and stormwater infrastructure including stormwater inlets. There is no direct continuous surface connection through a relatively permanent water to a downstream TNW. The feature appears to be completely isolated.

Wetland 4 is located directly east of Wetland 2, and 3 and is surrounded by paved road to the north, west, and south and residential development to the east. The wetland boundary was demarcated in the field with pink surveyor's tape, labeled W4-100 through W4-141. The approximately 1.2 acre wetland is dominated by red maple, American elm, yellow birch (*Betula alleghaniensis*), silky dogwood, elderberry, winterberry, Japanese knotweed (*Polygonum cuspidatum*), soft rush, tussock sedge, bishop's goutweed, sensitive fern, jewelweed, and tearthumb (*Polygonum sagittatum*). Wetland 4 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland is surrounded with road and stormwater infrastructure including stormwater inlets. There is no direct continuous surface connection through a relatively permanent water to a downstream TNW. The feature appears to be completely isolated.

Wetland 7 is located west of Central Basin (Wetland 10) and north of wetland 8 between two recreational fields. boundary was demarcated in the field with pink surveyor's tape, labeled W7-100 through W7-115. Wetland 7 is surrounded by school related development to include recreational fields to the northeast and

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southwest and an established roadway to the northwest. The approximately .17-acre wetland is dominated by broadleaf cattail (*Typha latifolia*) and appears to have groundwater discharge. Wetland 7 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland does appear to be within proximity to a stormwater inlet that does eventually connect to a piped relatively permanent water. However, the normal groundwater discharge from the wetland is not enough to consistently support a relatively permanent flow within the storm water system that while the system could provide a connection, that connection is not deemed a relatively permanent water and therefor the feature is considered isolated and non-jurisdictional.

Wetland 8 is located to the southwest of wetland 7 and located north east to Worthen road and south of the schools recreational fields. The boundary of the wetland was demarcated in the field with pink surveyor's tape, labeled W8-100 through W8-107. The approximately .2-acre forested wetland is dominated by grey birch (*Betula populifolia*), red oak (*Quercus rubra*), green ash, common buckthorn (*Frangula alnus*), jewelweed, tearthumb, soft rush, sedges (*Carex sp.*), and goldenrods (*Solidago sp.*). Wetland 8 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland does appear to be within proximity to a stormwater inlet that does eventually connect to a piped relatively permanent water. However, the normal groundwater discharge from the wetland is not enough to consistently support a relatively permanent flow within the storm water system that while the system could provide a connection, that connection is not deemed a relatively permanent water and therefor the feature is considered isolated and non-jurisdictional.

Wetland 9 is located on the south portion of the school property with Worthen Road to the south west, Waltham Street to the east, and the school building to the north of the wetland. The boundary of the wetland was demarcated in the field with pink surveyor's tape, labeled W9-100 through W9-107. The approximately .01-acre forested wetland is dominated by silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), red maple (*Acer rubrum*), and english ivy (*Hedera helix*). Wetland 9 was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The wetland is surrounded with road and stormwater infrastructure including stormwater inlets. There is no direct continuous surface

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connection through a relatively permanent water to a downstream TNW. The feature appears to be completely isolated.

Central Basin (Wetland 10), is located in the center of the property with the Highschool to the east and south of the feature, recreational fields to the west of the facility, and Wetland 1,2 and 3 to the north. The approximately 1-acre feature is partially flooded and has appeared to be modified in the early 2000s to support deeper inundation and support standing water surrounded by aquatic vegetation to include broadleaf cattail (*Typha latifolia*). The feature is surrounded by paved road to the north, east, and south of the feature with an upland berm separating the west from recreational fields. Historic aerials show that the feature has existed on the property since the early 1960s and may have not existed prior to the early 1950's when the school was constructed. 1930s aerial show the area as mixed agricultural development prior to the construction of the school. The feature was delineated with the USACE 1987 Manual and observed that hydric soils, wetland hydrology indicators, as well as hydrophytic vegetation were present in the delineation. The feature does have a 12" RCP in the north-northwest corner of the Central Basin is "capped" roughly 40 feet north of the basin. While a previous connection may have existed for this feature to be incorporated into the stormwater system, camera scoping conducted by the consultants show that the feature is no longer connected to the storm water system severing all connection to a relatively permanent water. This feature appears to be a residual retention pond like structure that does not have a continuous surface connection that is relatively permeant that would connect to a downstream tributary and would be considered isolated and 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.

- Aquatic Resources delineation submitted by the consultant on behalf of the applicant: 17 June 2025
- Wetland field data sheets: Consultant, Dated: 14 December 2023, and 08 July 2024
- Photographs: Photographic Log, Consultant, 08 July 2024
- Aerial Imagery: NAE-2025-01491_AERIAL, 13 November 2025
- LIDAR: NAE-2025-01491_LIDAR, USACE 13 November 2025
- USDA NRCS Soil Survey: Custom Soil Resource Report for Middlesex County MA, Consultant, 11 December 2023.

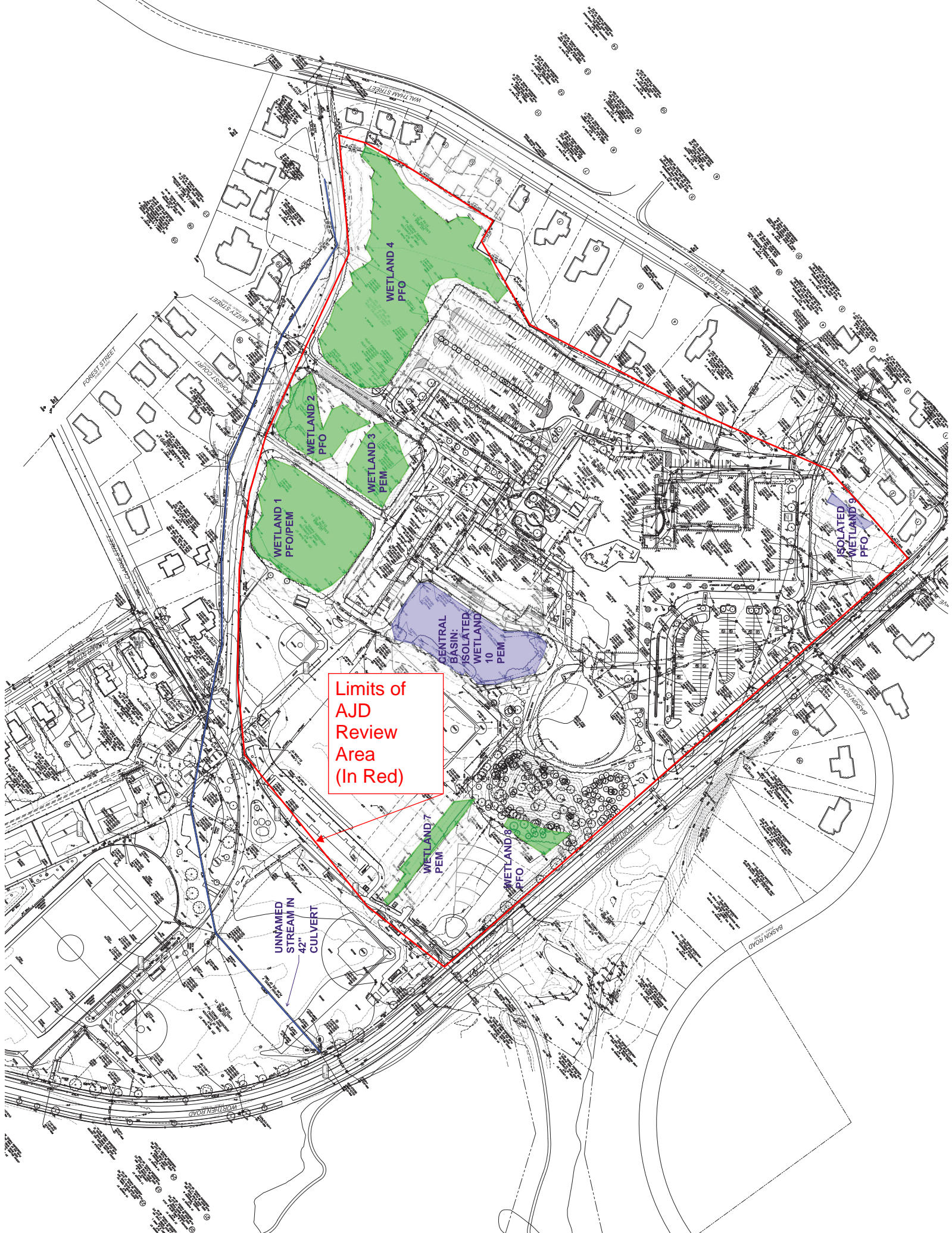
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- ☒ USFWS NWI maps: NAE-2025-01491_NWI, USACE, 13 November 2025
- ☒ USGS topographic maps:, Figure 1, Consultant, December 2023
- ☒ USGS NHD data/maps: NAE-2025-01491_NHD, USACE, 13 November 2025
- ☒ Antecedent Precipitation Tool: USACE, 14 December 2023, and 08 July 2024

11. OTHER SUPPORTING INFORMATION: Lexington Highschool Stormwater Plan, July 2025

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.



Limits of
AJD
Review
Area
(In Red)

UNNAMED
STREAM IN
42"
CULVERT

WETLAND 1
PFO/PEM

WETLAND 2
PFO

WETLAND 3
PEM

WETLAND 4
PFO

WETLAND 7
PEM

WETLAND 8
PFO

CENTRAL
BASIN
ISOLATED
WETLAND
10
PEM

ISOLATED
WETLAND 9
PFO

FOREST STREET

JUNIPER STREET

LEEB'S WAY

BASIN ROAD