



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

CENAE-RD

19 February 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),<sup>1</sup> NAE-2025-01761

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

2. SUMMARY OF CONCLUSIONS

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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) Streams 8, and 2 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 limited to two AJD review areas along an approximately 2.5-mile project area along George Hill Road and Faye Mountain Road in Grafton Massachusetts. The site is located north and east of Upton Street, and west and North Street, with the project are centered at Lat: 42.208806, Long: -71.646793. Review areas are identified on the attached Maps titled "Aquatic Resource Delineation Map" on 29 Sheets.

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED: The nearest Navigable water is the Seekonk River at the head of the tide, which is approximately 25 miles to the southeast. The subject water does not have a relatively permanent flow path to the Seekonk River.

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER: N/A. The subject water does not have a flow path to a TNW, interstate water, or the territorial seas.

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7. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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).<sup>7</sup> 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).

Stream 8:

Stream 8 is an ephemeral feature and is not considered a relatively permanent water. Stream 8 is located within an agricultural pasture on the east side of George Hill Road that flows into a swale located on the east side of the road, and flows under the road through a man-made culvert and continues west into a mixture of forested and light residential development environment off the project location. The site was inspected on 08 December 2025 and frozen water was observed within the channel from recent rain and snowfall that has occurred and frozen over. Aerial Imagery identifies that the upper reach of the stream appears to be created from an agricultural inundation that does not have a distinct connection to the identified stream 8. According to photos provided by the applicant as well as historical imagery it appears throughout most of the season this upper reach remains completely dry and supports growth within the stream bed of rooted vegetation including grass. It appears that there is no distinct baseflow or presence of influence from the water table that would support base flows throughout a portion of the year. It appears that the main source of water for this stream would be from surface runoff from rainwater as well as any overflow from the agricultural pasture or storm water off the road that collects within the upland swales. Additional data collected from the USACE/EPA SDAM form that was conducted by the consultant on 9 October 2025 shows that onsite conditions do not reflect patterns of at least seasonal flow. Stream 8 does not meet one of the categories under the 2023 WOTUS rule

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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because it does not convey relatively permanent flow and would be considered a non-relatively permanent water.

Stream 2:

Stream 2 is an ephemeral feature and is not considered relatively permanent water. Stream 2 is located within mixed forested and residential environment on the east, and west side of George Hill Road. The feature flows from the east side of the road into a roadside ditch which then flows into a drop inlet culvert that flows under the road and out through a drainage swale on the west side of the road off site. The site was inspected on 08 December 2025 and only slight flow was observed due to a recent snow event that was contained only within the roadside swale. No flow was observed within the upper reach and there are no signs of any baseflow within the stream bed. While some flow was observed within the lower reach, there were not any characteristics of flow including deposition of bars or benches, natural cobble, and a strong presence of leaf litter and debris within the stream bed that would be consistent with at least seasonal flow conditions. USGS maps identify that the stream does appear to be identified within the USGS map, however upon a site inspection there are additional changes including new residential development. According to photos provided by the applicant as well as historical imagery it appears throughout most of the season this upper reach remains completely dry and the lower reach appears to be fed off of directed storm water that accumulates off of the road and feeds into the drop inlet. Additional data collected from the USACE/EPA SDAM form that was conducted by the consultant on 9 October 2025 shows that onsite conditions do not reflect patterns of at least seasonal flow. Stream 2 does not meet one of the categories under the 2023 WOTUS rule because it does not convey relatively permanent flow and would be considered a non-relatively permanent water.

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: "Aquatic Resources Delineation Map" November 20 2025
- SDAMS data sheets prepared by the consultant: 9 October 2026
- Photographs: provided by consultant, dated 29 September 2025 – 21 October 2025

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- Aerial Imagery: Provided by the consultant, Figure 2 Aerial Overview, 1 July 2025
- Historic Imagery : Google Earth Pro, NAE-2025-01761\_HIST Image Dated August 2022
- USGS Topographic Map: USACE, NAE-2025-01761\_USGS, 19 February 2026
- LIDAR: USACE, NAE-2025-01761\_LIDAR, 19 February 2026
- National Wetlands Inventory: USACE, NAE-2025-01761\_NWI, 19 February 2026
- Antecedent Precipitation Tool Analysis: 08 December 2025

11. OTHER SUPPORTING INFORMATION: N/A

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.

NONE

NONE

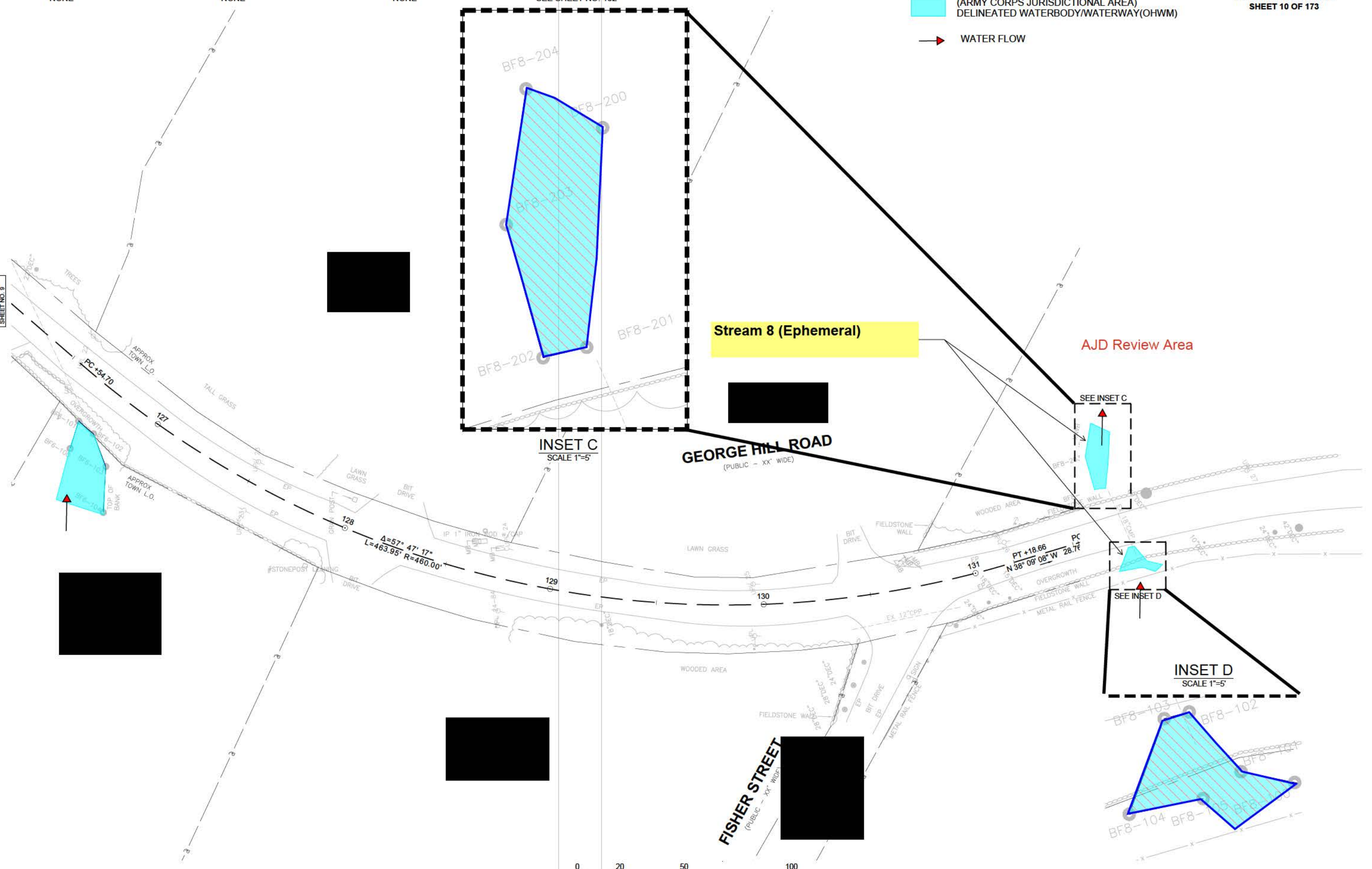
NONE

SEE SHEET NO. 102

(ARMY CORPS JURISDICTIONAL AREA)  
DELINEATED WATERBODY/WATERWAY(OHWM)

WATER FLOW

CONTINUED ON  
SHEET NO. 9



Stream 8 (Ephemeral)

AJD Review Area

INSET C  
SCALE 1"=5'

INSET D  
SCALE 1"=5'

SCALE: 1" = 20'

HIGHWAY GUARD DETAILS

NONE

TRAFFIC SIGNAL CONDUIT

NONE

WATER SUPPLY ALTERATIONS

NONE

DRAINAGE DETAILS

SEE SHEET NO. 112

LEGEND

- (ARMY CORPS JURISDICTIONAL AREA)  
DELINEATED WATERBODY/WATERWAY(OHWM)
- WATER FLOW

Stream 2 (Ephemeral)

CONTINUED ON  
SHEET NO. 19

AJD Review Area

INSET G  
SCALE 1"=5'

INSET F  
SCALE 1"=5'

GEORGE HILL ROAD  
(PUBLIC - XX' WIDE)

