



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT
696 VIRGINIA RD
CONCORD, MA 01742

CENAE-RD

21 November 2025

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-2025-02213²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. 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).
 - i. "Pond" identified by flags A1-A18, is non jurisdictional.

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. ___, 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 located east of Varnum Avenue, north of Elene Street, and west of Trotting Park Road. The property is addressed at 1413 Varnum Avenue, Lowell, Middlesex County, Massachusetts. The review area is centered at Latitude: 42.650392, Longitude: -71.3768351.

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

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Project is located .67 miles northeast of the Merrimack River a TNW. The aquatic resources do not have a direct connection with a TNW.⁶

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 is considered non-jurisdictional.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ 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.

⁷ 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.

⁸ 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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- 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): NA
- g. Additional Waters (a)(5): N/A

8. 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).⁹ 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).

The feature labeled Pond is an approximately .35-acre open water feature that appears to be a previous agricultural pond identified by flags A1-A18. Historical aerial shows the pond has existed since 1938 and was constructed in association to prior agricultural land use on the property. The area was delineated using the USACE 1987 Manual and contains vegetation that including Sedges (*Carex sp.*), Canada Mayflower (*Maianthemum canadense*), Swamp Dewberry (*Rubus hispidus*), and European Buckthorn (*Rhamnus frangula*). The pond has one inlet pipe to the northwest that drains nearby agricultural crop land. There are no discharges from this feature into any pipe or tributary, and the pond appears to be dug from uplands. While the pond appears to be relatively permeant there is

⁹ 88 FR 3004 (January 18, 2023)

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no continuous surface connection that discharges from this pond into a tributary or TNW and the pond would be considered isolated and is non-jurisdictional.

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.

- Aquatic Resources delineation submitted by the consultant on behalf of the applicant: Dated April 26, 2022
- Wetland field data sheets prepared by the consultant on behalf of the applicant: Dated April 26, 2022
- Photographs: Provided by the consultant, April 26 2022
- Aerial Imagery: NAE-2025-02213_AERIAL, October 22 2025
- LIDAR: USACE, NAE-2025-02213_LIDAR, October 22 2025
- USDA NRCS Soil Survey: Figure 3, October 2022
- USFWS NWI maps: NAE-2025-02213_NWI, November 17 2025
- USGS topographic maps:, NAE-2025-02213_USGS, October 22 2025
- USGS NHD data/maps: NAE-2025-02213_NHD, October 22 2025
- Antecedent Precipitation Tool Analysis: USACE, 26 April 2022

10. OTHER SUPPORTING INFORMATION. N/A

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.



- LEGEND:**
- N/A OVERHEAD WIRES
 - TREE
 - TREE LINE
 - UP UTILITY POLE
 - GO GAS DATE
 - GAS SERVICE (BURIED)
 - WG WATER GATE
 - WATER SERVICE (BURIED)
 - DM DRAIN MANHOLE
 - SUB-SURFACE DRAIN LINE
 - EXISTING CONTOUR
 - EXISTING CONTOUR
 - LIGHTPOLE
 - △ WETLAND FLAG
 - XXX SPOT ELEVATION
 - STONE WALL
 - EDGE OF PAVEMENT

UTILITY NOTE:

ALL UNDERGROUND UTILITIES SHOWN HERE WERE COMPILED ACCORDING TO AVAILABLE RECORD PLANS FROM VARIOUS UTILITY COMPANIES AND PUBLIC AGENCIES AND ARE APPROXIMATE ONLY. ACTUAL LOCATIONS MUST BE DETERMINED IN THE FIELD BEFORE DESIGNING, EXCAVATING, BLASTING, INSTALLING, BACKFILLING, GRADING, PAVEMENT RESTORATION OR REPAIRING. ALL UTILITY COMPANIES, PUBLIC AND PRIVATE, MUST BE CONTACTED INCLUDING THOSE IN CONTROL OF UTILITIES NOT SHOWN ON THIS PLAN. SEE CHAPTER 370, ACTS OF 1963 MASS. WE ASSUME NO RESPONSIBILITY FOR DAMAGES INCURRED AS A RESULT OF UTILITIES OMITTED OR INACCURATELY SHOWN. BEFORE PLANNING FUTURE CONNECTIONS THE APPROPRIATE PUBLIC UTILITY ENGINEERING DEPARTMENT MUST BE CONSULTED. DIG SAFE TELEPHONE No. 1-888-344-7233.

TOPOGRAPHIC
PLAN OF LAND
IN
LOWELL, MASSACHUSETTS
(MIDDLESEX COUNTY)



0 10 20 40 60 80 FT

(7017work.dwg) 1413-1415 Varnum Avenue SM-7C17
(SHEET 1 OF 5)