



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

CENAE-RD

18 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),¹ NAE-2025-02249

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.

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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2. 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).

(1) Wetlands H, I, and K 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 located in the median of Interstate 495, where North Street passes over I-495, in Tewksbury, Massachusetts (see Figures 1 and 2), and includes only the H-, I-, and K-series wetlands, which are circled in red on the attached site plan entitled "MASSACHUSETTS DEPARTMENT OF TRANSPORTATION PLAN OF TOPOGRAPHIC SURVEY OF NORTH STREET & INTERSTATE 495 (BRIDGE NO. T-03-13) IN THE TOWN OF TEWKSBURY AS ORDER BY THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION." Wetland H is an approximately 3,960-square foot wetland located at 42.638438°, -71.240308°. Wetland I is an approximately 4,040-square foot wetland located at 42.638773°, -71.240094°. Wetland K is an approximately 268-square foot wetland located at 42.638581°, -71.240009°.

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5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED⁵: N/A, the Merrimack River is located approximately 1.5 miles northwest of the review area, but none of the three wetlands in question connect to it.

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER: N/A, Wetlands H, I, and K lack connectivity to any TNW, territorial sea, or interstate water and are non-jurisdictional.

7. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁵ 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.

⁶ 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.

⁷ 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): 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).⁸ 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).

Wetlands H, I, and K appear to be shallow, vegetated swales excavated when the highway was constructed to provide stormwater drainage. Wetland K and the portions of Wetlands H and I on the highway side of the guardrail are actively mowed and dominated by herbaceous vegetation. Those portions of Wetlands H and I that are located behind the guardrail are not mowed and are dominated by small shrubs and Asian bittersweet (*Celastrus orbiculatus*) vines. There are no streams or culverts present in the highway median in the vicinity of the three wetlands. The nearest known stream is approximately 660 feet northeast of the review area, conveyed under the highway via a culvert. No surface connections exist between the three wetlands and this stream. The eastern end of Wetland I abuts a catch basin that is part of the highway stormwater management system.

⁸ 88 FR 3004 (January 18, 2023)

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Numerous other catch basins are also located within the median as part of this system. The median was thoroughly examined, along with the original highway construction plans, to determine where the stormwater system eventually discharges to, but it could not be determined. Regardless, field evidence indicates the stormwater system pipes do not carry relatively permanent flow, flowing only in response to rainfall events. No ordinary high water (OHW) mark or other indicators of relatively permanent flow were observed within Wetland I or between Wetland I and the catch basin, and no flow within the stormwater system pipe was observed. As such, the stormwater system pipe connected to Wetland I via the catch basin is not a relatively permanent water and not a jurisdictional water. Therefore, Wetlands H, I, and K are all considered isolated, non-tidal wetlands surrounded by uplands that do not have a continuous surface connection to jurisdictional waters and are therefore 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.

a. Field visit conducted 12/11/2025

b. Plans entitled "MASSACHUSETTS DEPARTMENT OF TRANSPORTATION PLAN OF TOPOGRAPHIC SURVEY OF NORTH STREET & INTERSTATE 495 (BRIDGE NO. T-03-13) IN THE TOWN OF TEWKSBURY AS ORDER BY THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION," provided by consultant (TEC, Inc.) and plotted on 1/20/2026

c. MassGIS MassMapper (USGS topographic maps, aerial imagery, National Wetland Inventory, DEP Wetlands, and DEP Wetland Hydrologic Connections layers), accessed 12/10/2025

d. Google Maps and Bing Maps, accessed 12/10/2025

e. Aerial photographs and site photographs provided by consultant, 9/26/2025

f. Antecedent Precipitation Tool (APT), accessed 1/21/2026

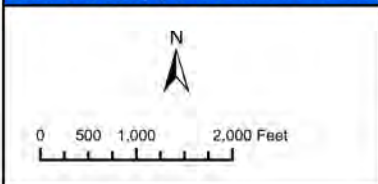
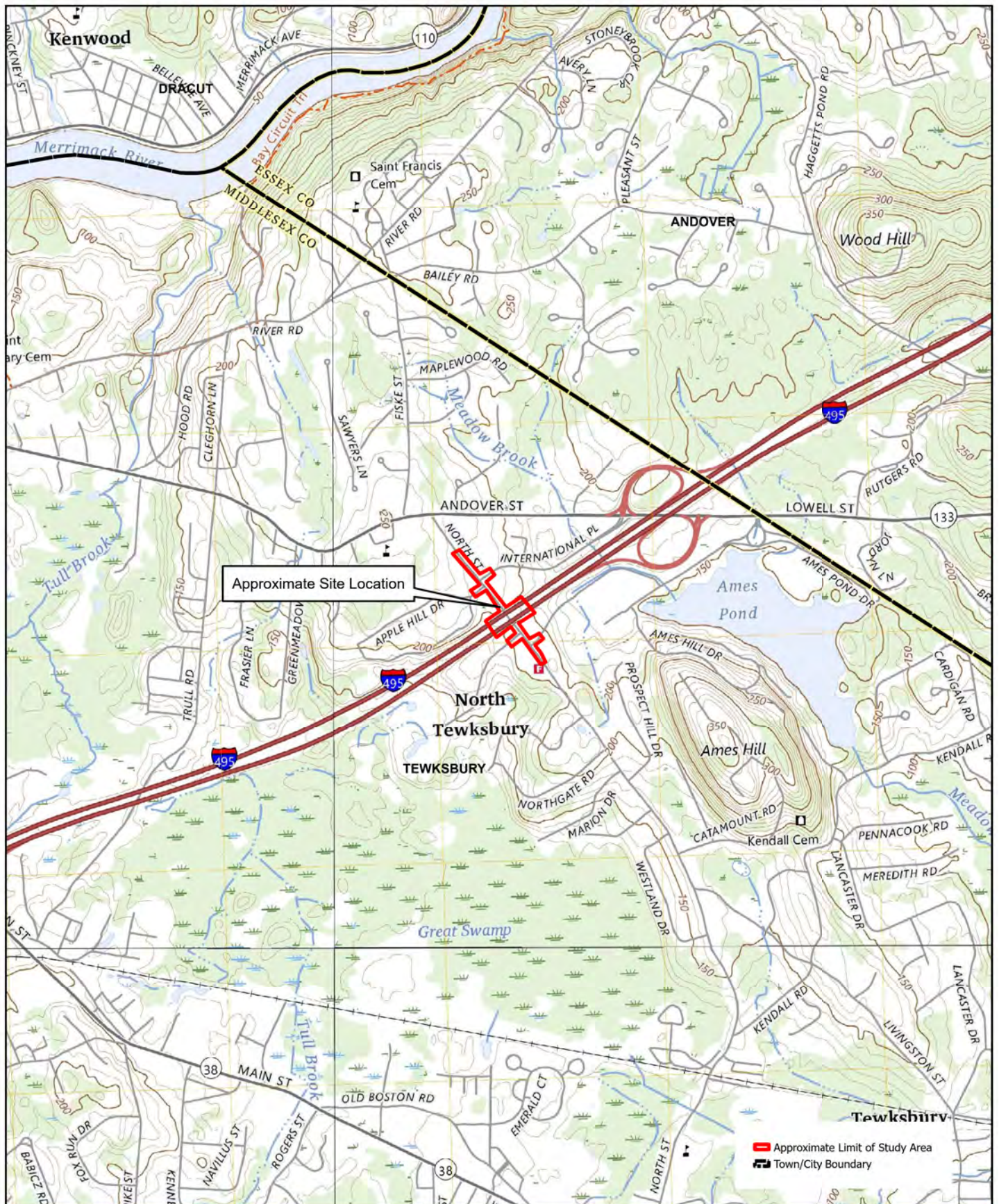
11. OTHER SUPPORTING INFORMATION: In accordance with the updated December 2023 USACE Tribal consultation policy, USACE coordinated with the Narragansett Indian Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), and the Mashpee Wampanoag Tribe regarding this AJD on 10/16/2025. USACE asked if the

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tribes had any indigenous knowledge of hydrology in the vicinity that would be useful for this AJD process. No response was received from any of the tribes within the 15-day comment period.

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.



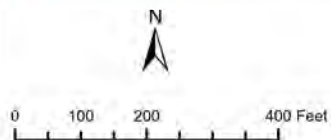
USGS Map
Wetland Summary Letter
North Street Bridge over Interstate Route 495
Tewksbury, Massachusetts



FIGURE 1



Source: Office of Geographic and Environmental Information (MassGIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs; USGS Color Ortho Imagery - 15cm (2021)



Aerial Map

Wetland Summary Letter

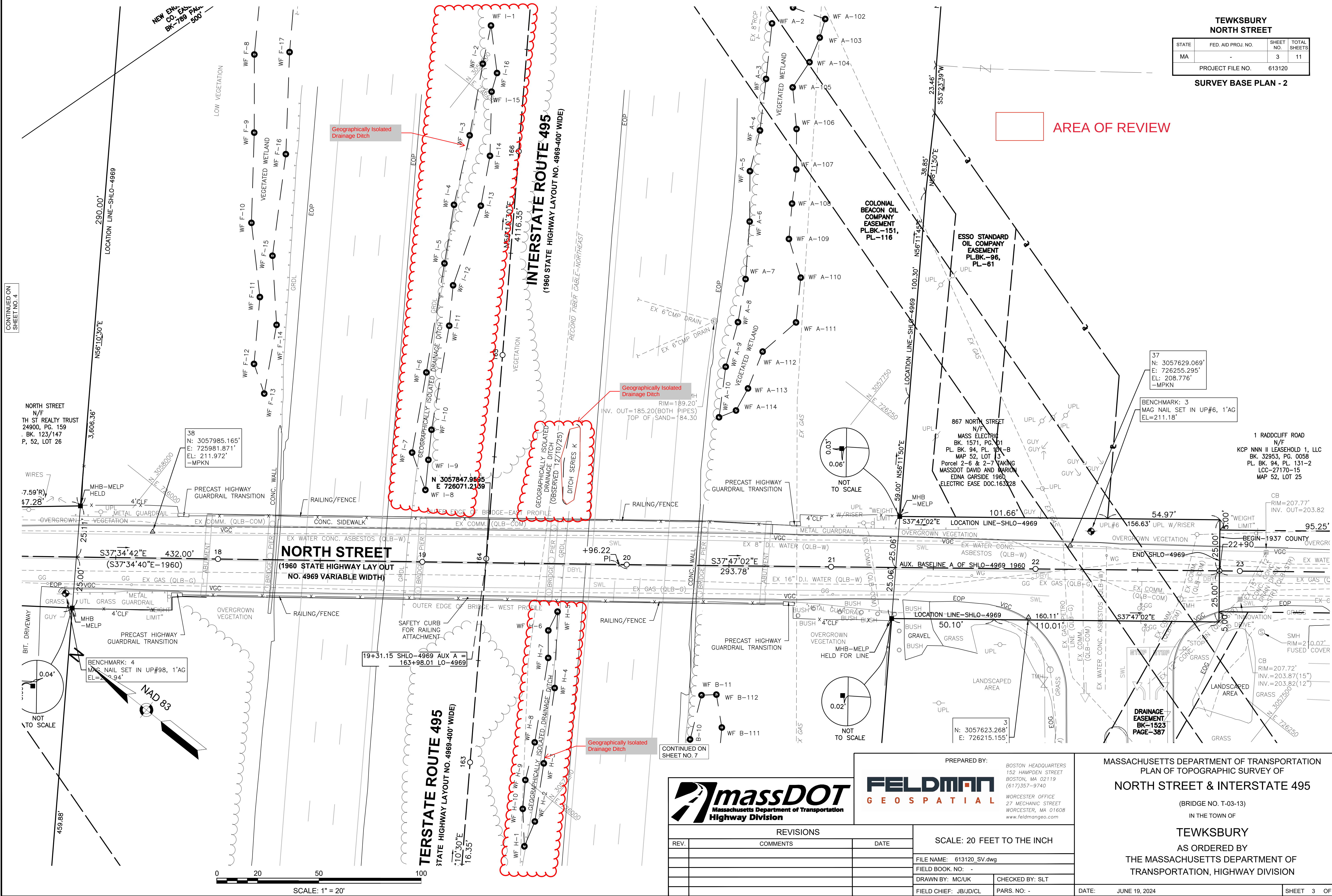
North Street Bridge over Interstate Route 495

Tewksbury, Massachusetts



FIGURE 2

CONTINUED ON
SHEET NO. 4



TEWKSBURY NORTH STREET			
STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	-	3	11
PROJECT FILE NO.		613120	

SURVEY BASE PLAN - 2

AREA OF REVIEW

CONTINUED ON
SHEET NO. 2



REVISIONS		
REV.	COMMENTS	DATE

SCALE: 20 FEET TO THE INCH	
FILE NAME:	613120_SV.dwg
FIELD BOOK NO.:	-
DRAWN BY:	MC/UK
CHECKED BY:	SLT
FIELD CHIEF:	JB/JD/CL
PARS. NO.:	-

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
PLAN OF TOPOGRAPHIC SURVEY OF
NORTH STREET & INTERSTATE 495
(BRIDGE NO. T-03-13)
IN THE TOWN OF
TEWKSBURY
AS ORDERED BY
THE MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION, HIGHWAY DIVISION

DATE: JUNE 19, 2024

SHEET 3 OF 11