

April 15, 2025

Town of Franklin Conservation Commission
355 East Central St
Franklin, MA 02038

Re: Response to BETA Comments from letter dated April 11, 2025

Dear Conservation Commission:

Goddard Consulting, LLC, (Goddard) is pleased to submit this response letter on behalf of the Applicant to provide the information requested in the BETA peer review letter dated April 11, 2025. BETA's comments are summarized in the first column and responses are in second column.

Attached documents:

1. Army Corps Jurisdictional Determination of 12 Isolated Wetlands; West Street, West Bridgewater, MA letter dated Feb 28, 2025.

BETA Comment		Goddard's Response
#A1	WPA Form has been updated	BETA states that Comment is Addressed
#A2	Variance on not to perform tree survey	Please refer to G&H response letter
#A3	Comments added to WPA Form	BETA states that Comment is Addressed
#A4	It should be determined if the IVWs are state or federal wetlands in regards to the need for a 401 water quality certification permit. BETA states that if the IVWs are not considered federally jurisdictional wetlands it is unlikely that a 401 Water Quality Cert would be needed.	The IVWs on site were created and permitted through the NOI process as stormwater basins and as a result, the Act would not consider these areas as jurisdictional. Furthermore, recent law changes on how the federal government takes jurisdiction (or not) over isolated wetlands has changed. In a recent (Feb 2025) jurisdictional determination for a large site located in West Bridgewater; the Army Corps of Engineers decided that 12 large natural Isolated Vegetated Wetlands were NOT considered federally jurisdictional due to their lack of no continuous surface or flow path connection to a traditional navigable water (see attached documents). If the

		Army Corps did not take jurisdiction over these natural, large, Isolated Vegetated Wetlands it is unlikely that the Corps would take jurisdiction over an area of hydric soils with wetland vegetation that developed over time within a man-made, permitted, stormwater basin that does not have a continuous surface and/or flow path to a traditional navigable water. And since the Army Corps would not take jurisdiction over such areas, a 401 QWC would not be needed.
#W1	NPDES and MEPA Thresholds	Please refer to G&H response letter on this comment
#W2	Dewatering plan for Basin #3	Please refer to G&H response letter on this comment
#W3	Temporary and permanent impacts should be shown on the plans	BETA states that Comment is Addressed
#W4	Water control plan	Please refer to G&H response letter on this comment
#W5	Buffer zone maintenance path	Please refer to G&H response letter on this comment
#W6	Placards	BETA states comment is resolved with the Commission to indicate placard wordage
#W7	Formal invasive species plan	Please refer to G&H response letter on this comment
#W8	Erosion control barriers	BETA states comment is resolved
#W9	Stockpile and snow storage	BETA states comment is resolved
#W10	Grading and fingerlike projections of the replication areas	Please refer to G&H response letter on this comment
#W11	Cross sections of altered and proposed replication areas and groundwater elevation data should be shown on plans	BETA states this comment is resolved
#W12	New England Erosion Control Mix	BETA states this comment is resolved
#W13	Stormwater discharge point has been revised	BETA states this comment is resolved

#W14	Temporary impacts are included on the plans	BETA states this comment is resolved
#W15	Variance request for work within 0-25 and 25-50 ft buffer zones.	Please refer to G&H response letter on this comment
#W16	Resource area impact summary was updated	BETA states this comment is resolved
#W17	FEMA flood Map	BETA states this comment is resolved
#W18	Contractor information	BETA states this comment is resolved
#W19	Construction Sequence Information	BETA states this comment is resolved
#W20	Buffer zone plantings	Please refer to G&H response letter on this comment

Sincerely,

Goddard Consulting, LLC.



Nicole Hayes, PWS
Senior Wetland Scientist



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

February 28, 2025

Regulatory Division
File Number: NAE-2023-01729

Stephen Gallagher
V.M.D. Companies, LLC.
733 Turnpike St, Route 114
North Andover, MA 01845
(via email: sgallagher@vmdcompanies.com)

Dear Mr. Gallagher:

This letter responds to a request submitted on your behalf to the U.S. Army Corps of Engineers (USACE) by your agent Goddard Consulting for a jurisdictional determination (JD) on the presence or absence of waters of the United States (U.S.), including wetlands, on a 153 acre property located off West Street in West Bridgewater, Massachusetts (parcels 19, 20, 21, and 33 on town assessor's map 36).

Ruthann Brien of this office conducted a field inspection of the site on 11/18/24 with Erica Sachs of the Environmental Protection Agency (EPA) after reviewing the information submitted by your consultant and other online resources. During this inspection USACE reviewed twelve wetland features for potential Federal jurisdiction which are shown on the enclosed site plan titled "Isolated Wetland Locations- Jurisdictional Determination Rear West Street- West Bridgewater, MA" and dated 6/19/2024. The twelve wetlands include the following:

Wetland B	47,242 square feet (1.08 acres)	42.02686, -71.04667
Wetland C	63,335 square feet (1.45 acres)	42.02591, -71.04671
Wetland I	943 square feet (0.02 acres)	42.02735, -71.04566
Wetland J	3827 square feet (0.09 acres)	42.02752, -71.04592
Wetland K	281 square feet (0.006 acres)	42.02445, -71.04494
Wetland L	5,874 square feet (0.13 acres)	42.02468, -71.04549
Wetland P	853 square feet (0.02 acres)	42.02292, -71.04582
Wetland Q	1852 square feet (0.04 acres)	42.02433, -71.04553
Wetland R	16675 square feet (0.38 acres)	42.02507, -71.04643
Wetland T	6081 square feet (0.14 acres)	42.02444, -71.04695
Wetland U	1590 square feet (0.04 acres)	42.02254, -71.04543
Wetland V	385 square feet (0.009 acres)	42.02280, -71.04562

We have determined that these twelve wetlands are not waters of the United States and are therefore not within the jurisdiction of USACE under Section 404 of the Clean

Water Act and Section 10 of the Rivers and Harbors Act. None of the other wetland features identified on the site plan were reviewed for Federal jurisdiction and therefore are not addressed in this letter.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the North Atlantic Division Office at andrew.c.dangler@usace.army.mil or the following address. Mr. Dangler's phone number is (518) 487-0215.

Andrew Dangler
Regulatory Appeals Review Officer
North Atlantic Division – Fort Hamilton
301 John Warren Avenue – First Floor
Brooklyn, NY 11252-6700

Direct questions regarding the USACE appeals process to Ryan Malterud at ryan.m.malterud@usace.army.mil or by phone at (651) 290-5286.

In order for an RFA to be accepted by USACE, USACE must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **April 27, 2025**. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This approved jurisdictional determination is valid for a period of five years from the date of the letter, unless new information warrants revision of the determination before the expiration date or the 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.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

Enclosed is a Memorandum for Record and supporting documentation explaining the basis for our jurisdictional determination.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <https://regulatory.ops.usace.army.mil/customer-service-survey>.

If you have any questions, please contact Ruthann Brien of my staff at (978) 318-8054 or by email at ruthann.a.brien@usace.army.mil

Sincerely,

Kevin R Kotelly

For Tammy Turley
Chief, Regulatory Division

Enclosures

cc:

Erica Sachs, U.S. EPA, sachs.eric@epa.gov

Erin Flannery Keith, U.S. EPA, flannery-keith.erin@epa.gov

Andrew Thibault, consultant, andrew@goddardconsultingllc.com

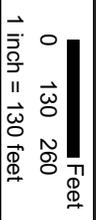
Scott Goddard, consultant, scott@goddardconsultingllc.com



Date: 6/19/2024

Isolated Wetland Locations - Jurisdictional Determination

Rear West Street - West Bridgewater, MA



GIS Data Source: "Office of Geographic Information (MassGIS), Commonwealth of Massachusetts, MassIT"



NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Requester: Stephen Gallagher, V.M.D. Companies, LLC	File #: NAE-2023-01759	Date: 02/28/25
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL WITHOUT PREJUDICE	C
	PERMIT DENIAL WITH PREJUDICE	D
x	APPROVED JURISDICTIONAL DETERMINATION	E
	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Mr. Ryan Malterud
Acting Deputy Chief, Regulatory Division
U.S. Army Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751
Phone: (651) 290-5286
Email: ryan.m.malterud@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Mr. Andrew Dangler, Regulatory Appeals Review Officer
U.S. Army Corps of Engineers
North Atlantic Division – Fort Hamilton
301 John Warren Avenue – First Floor
Brooklyn, NY 11252-6700
Mobile: (518) 487-0215
Email: andrew.c.dangler@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

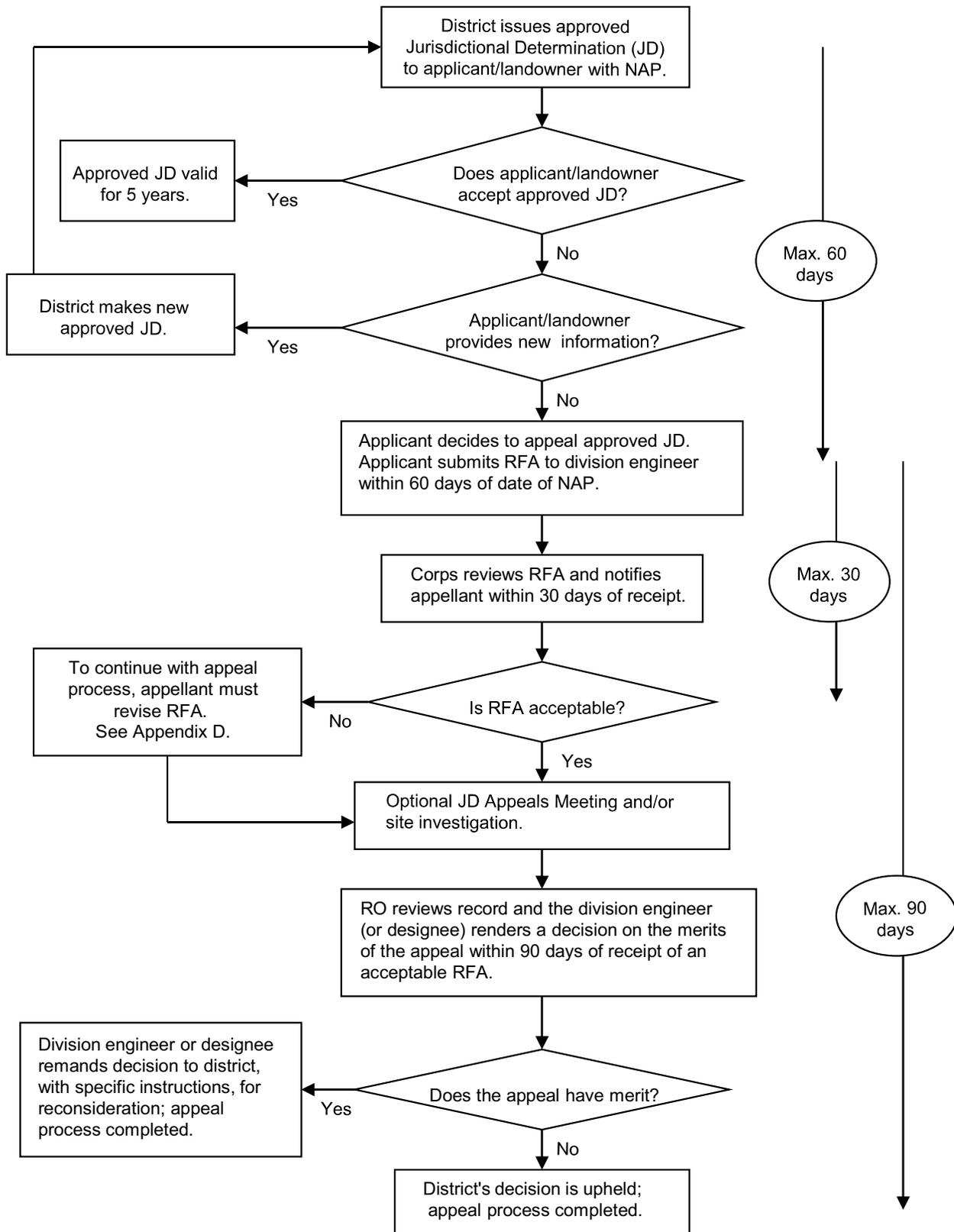
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

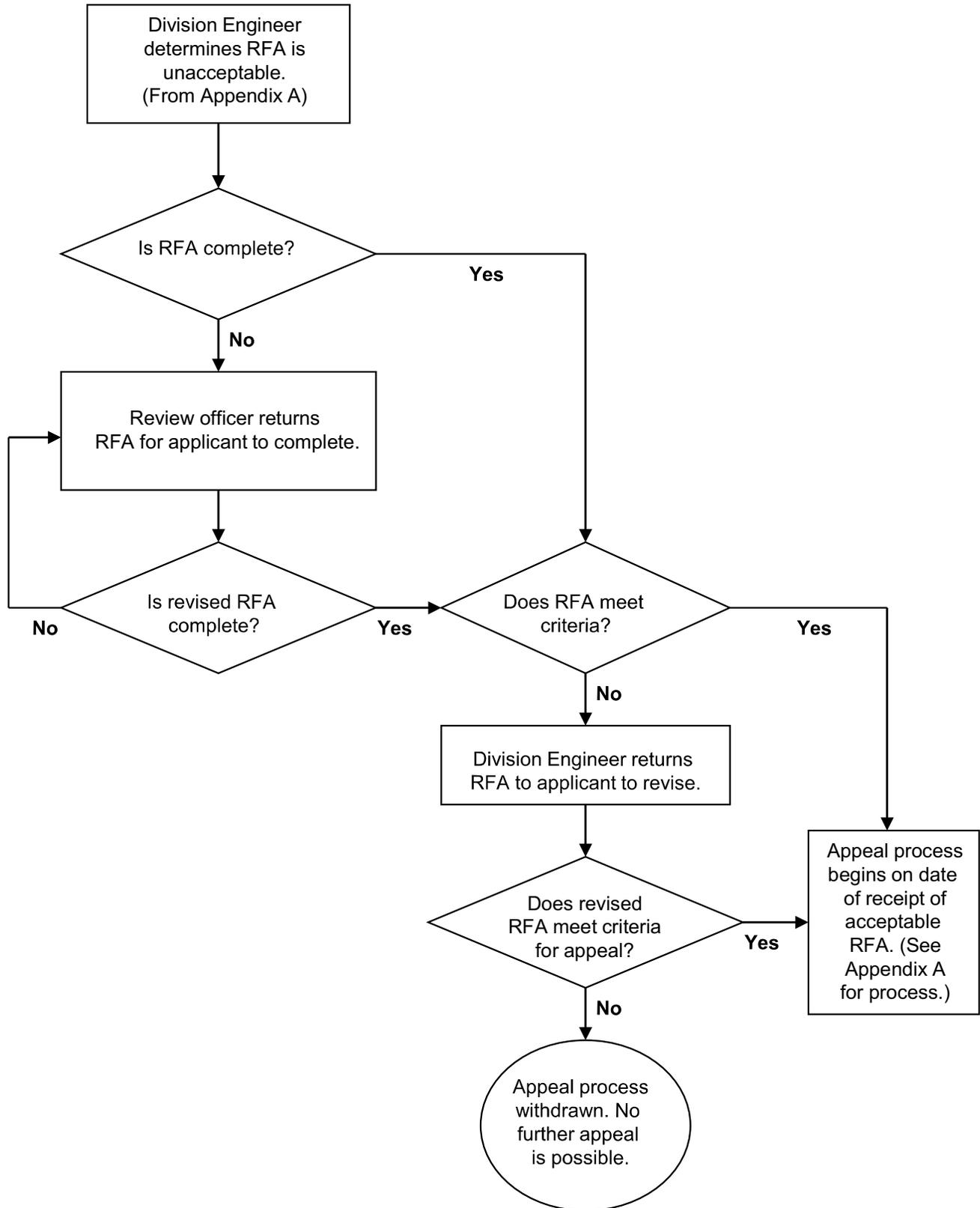
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:
Email address of appellant and/or agent:	Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



Process for Unacceptable Request for Appeal





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

CENAE-R
NAE-2023-01729

28 Feb 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-2023-01729

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.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 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),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.

CENAE-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2023-01759

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. Wetland B is not a water of the United States nor is it a navigable water of the United States.
 - ii. Wetland C is not a water of the United States nor is it a navigable water of the United States.
 - iii. Wetland I is not a water of the United States nor is it a navigable water of the United States.
 - iv. Wetland J is not a water of the United States nor is it a navigable water of the United States.
 - v. Wetland K is not a water of the United States nor is it a navigable water of the United States.
 - vi. Wetland L is not a water of the United States nor is it a navigable water of the United States.
 - vii. Wetland P is not a water of the United States nor is it a navigable water of the United States.
 - viii. Wetland Q is not a water of the United States nor is it a navigable water of the United States.
 - ix. Wetland R is not a water of the United States nor is it a navigable water of the United States.
 - x. Wetland T is not a water of the United States nor is it a navigable water of the United States.
 - xi. Wetland U is not a water of the United States nor is it a navigable water of the United States.
 - xii. Wetland V is not a water of the United States nor is it a navigable water of the United States.

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. 651, 143 S. Ct. 1322 (2023)

CENAE-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2023-01759

3. REVIEW AREA.

The 153-acre property is located off West Street in Bridgewater, Massachusetts and encompasses parcels 19, 20, 21, and 33 on town assessor's map 36. The majority of the property was delineated as federal wetlands by the consultant but only twelve discrete wetland features totaling 3.4 acres in size are within the review area. These twelve wetland features are labeled as Wetlands B, C, I, J, K, L, P, Q, R, T, U, and V on the site plan titled "Isolated Wetland Locations- Jurisdictional Determination Rear West Street- West Bridgewater, MA" and dated 6/19/2024. There is an extension of Old West Street running north-south in the middle of the property and ending in a cul-de-sac. The road appears to have been installed in association with a planned subdivision that was never built. There are currently solar panels in the cleared area to the west of this road, while the majority of the wetlands in the review area are to the east of this road.

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

The nearest TNW to the twelve wetland features is the Taunton River although there is no continuous surface connection from any of the twelve wetlands in question to this river.

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

There is no continuous surface connection and therefore no flow path from any of the twelve wetland features to a TNW, the territorial seas, or an interstate water.

6. 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

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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2023-01759

Wetlands B, C, I, J, K, L, P, Q, R, T, U, and V are not jurisdictional under Section 10 of the Rivers and Harbors Act of 1899.

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
 - 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
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).⁷ N/A

⁷ 88 FR 3004 (January 18, 2023)

CENAE-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2023-01759

- 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 B is a 1.08-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02686 N, 71.04667 W.

Wetland C is a 1.45-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02591 N, 71.04671 W. It is located just east of the Old West Road extension and south of Wetland B. There is a large ditch feature within Wetland C that extends east and south towards other wetland features.

Wetland I is a 0.02-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02735 N, 71.04566 W.

Wetland J is a 0.09-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02752 N, 71.04592 W.

Wetland K is a 0.006-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02445 N, 71.04494 W.

Wetland L is a 0.13-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02468 N, 71.04549 W.

Wetland P is a 0.02-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02292 N, 71.04582 W.

Wetland Q is a 0.04-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02433, -71.04553 W.

Wetland R is a 0.38-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02507 N, 71.04643 W.

Wetland T is a 0.14-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02444 N, 71.04695 W.

Wetland U is a 0.04 acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02254 N, 71.04543 W.

CENAE-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2023-01759

Wetland V is a 0.009-acre freshwater forested and/or scrub-shrub wetland and the center coordinates are 42.02280 N, 71.04562 W.

USACE reviewed the submitted AJD materials and the following GIS layers in the Mass Mapper, an interactive website for Massachusetts, to help determine if there was a continuous surface connection from any of the twelve wetlands to an (a)(1)-(3) water:

- Topography
- NWI Wetlands
- DEP Wetlands Hydrologic Connections
- Elevation and Shaded Relief from Lidar

A review of the submitted information and online tools suggested that the majority of the wetlands did not have any continuous surface connections to an a(1)-(3) water. However, there was a ditch feature originating in Wetland C, a cart path feature related to Wetlands L and Q and a culvert related to Wetland T that merited further investigation. USACE attended a joint site visit with EPA, the requester, and the consultant on 11/18/24. Afterwards, USACE requested additional information including photos of the ditch and cart path features after rain events and a plan showing the drainage system that had been installed for the subdivision that was never built.

A review of the requested information submitted on 12/18/24 indicated that the ditch, cart path, and culvert did not provide a continuous surface connection from any of the wetlands to an (a)(1)-(3) water.

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.
 - a. Jurisdictional determination request document submitted to USACE by Goddard Consulting, LLC on 08/02/23
 - b. Updated AJD materials submitted by Goddard Consulting on 06/24/24 in response to an additional information request from USACE on 02/09/24. These materials included paired USACE wetland determination forms for each of the twelve wetlands in the review area (one data point in the wetland and the other data point in the corresponding upland).
 - c. Site visit on 11/18/24 attended by USACE, EPA, AJD requester, and consultant.

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- d. Photos of the ditch and cart path after rain events and old subdivision drainage plan submitted by consultant on 12/18/24.
- e. Mass Mapper GIS website:
<https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>

10. 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 Gayhead (Aquinnah) and the Mashpee Wampanoag Tribe regarding this AJD on 08/10/24. USACE asked if the 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 30 day comment period.

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.