



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

May 25, 2023

Regulatory Division
File Number: **NAE-2023-0977**

City of Newburyport, Massachusetts
Attn: Mayor Sean Reardon
60 Pleasant Street, P.O. Box 550
Newburyport, Massachusetts 01950
(via email: mayor@cityofnewburyport.com)

Dear Mayor Reardon:

This letter responds to your request submitted to the U.S. Army Corps of Engineers (USACE) for a jurisdictional determination (JD) on the presence or absence of waters of the United States, including wetlands, located at the Bartlet Mall Frog Pond parcel located at 149 High Street in Newburyport, Massachusetts.

The USACE reviewed the City of Newburyport's March 16, 2023 JD materials. We have determined that the Bartlet Mall Frog Pond is not a water of the United States and therefore not within the jurisdiction of USACE under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

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.

Mr. Andrew Dangler, Regulatory Appeals Review Officer
Operations and Regulatory Division
U.S. Army Corps of Engineers, North Atlantic Division - Fort Hamilton
301 John Warren Avenue - First Floor
Brooklyn, NY 11252-6700

Direct questions regarding the USACE appeals process to Mr. Robert DeSista at robert.j.desista@usace.army.mil or at (978) 318-8879.

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 **July 25, 2023**. 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 an "Approved JD Form" 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 Mr. Paul Sneeringer, of my staff, at (978) 318-8491 or paul.j.sneeringer@usace.army.mil.

Sincerely,



for Tammy R. Turley
Chief, Regulatory Division

Enclosures

Copies Furnished:

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

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

Joe Teixeira, Newburyport Conservation Commission, 60 Pleasant Street,
P.O. Box 550, Newburyport, Massachusetts, jgodtfredsen@cityofnewburyport.com

Jill Provencal, Massachusetts DEP Northeast Regional Office, Wetland and
Waterways, Wilmington, MA, jill.provencal@mass.gov

David Wong, Massachusetts DEP Boston Office – Water Quality Certification,
Boston, Massachusetts, david.w.wong@mass.gov

Krista Wolfe, GEI Consultants, 400 Unicorn Park Drive, Woburn, Massachusetts,
KWolfe@geiconsultants.com