



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
1 BUFFINGTON ST. BLDG 10, 3RD FL N
WATERVLIET NY 12189-4050

August 29, 2024

CENAN-OP-RU

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 NAN-2013-00413-UCA.²

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, 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 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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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 No. 1, non-jurisdictional
 - ii. Wetland No. 2, 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)

3. REVIEW AREA. Review area size 8.9 acres, 43.0814176, -73.803031 City of Saratoga Springs, Saratoga County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Wetland No. 1 and Wetland No. 2 do not have a continuous surface connection to any TNWs, the territorial seas or interstate waters.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland No. 1 and Wetland No. 2 do not have a flowpath to any TNWs, the territorial seas or interstate waters.

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

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.

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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

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

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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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).
Wetland No. 1 is completely isolated and surrounded by forested uplands to the north, west and south. To the east, it is bordered by mowed upland lawns owned by Country Club Estates. Wetland No. 2 is adjacent to forested uplands to the south and an upland road to the west, placing it east of West Avenue. On the west side of West Avenue is a large New York State Department of Environmental Conservation (NYSDEC) wetland complex which is hydrologically connected to Putnam Brook. Putnam Brook flows into Geysers Brook which flows into the TNW, the Kayaderosseras Creek. There used to be a culvert between the NYSDEC wetland and Wetland No. 2 under West Avenue, however, The New York State Department of Transportation plugged and filled this culvert prior to 2014 because it was not conveying any water between the two wetlands, and they wanted to protect the road by eliminating any unnecessary maintenance. To the north, Wetland No. 2 is adjacent to uplands and a parking lot owned by the American Legion. To the east, Wetland No. 2 continues offsite leading to a culvert inlet located underneath Outlook Avenue which outlets into an underground municipal stormwater sewer system.

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. A site visit was conducted on 23 April 2024 by a representative of USACE, Christina Campo.
- b. Wetland Determination Data Forms – Northcentral and Northeast Region, dated Nov/Dec 2012, provided by the applicant’s agent with the JD request submittal, dated February 1, 2024.
- c. “Existing Conditions Plan,” drawing number C100, dated 4/25/2024 and revised on 24 JULY 2024.

⁹ 88 FR 3004 (January 18, 2023)

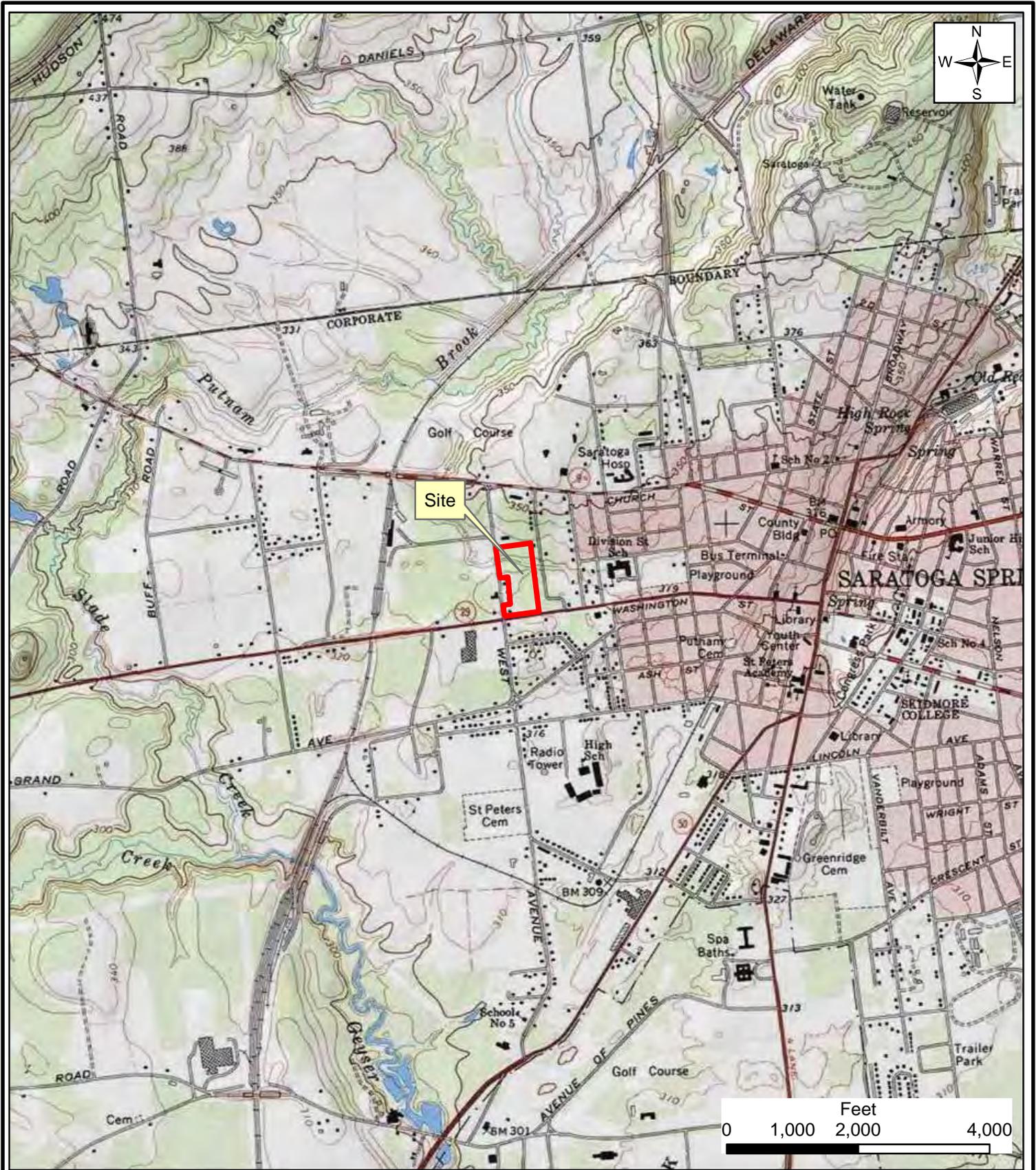
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- d. Mohr Property Site Location map, by the Chazen Companies, dated January 2013.
- e. Mohr Property Orthophoto, by the Chazen Companies, dated January 2013.
- f. Mohr Property Soils map, by the Chazen Companies, dated January 2013.
- g. Mohr Property Wetland and Streams map, by the Chazen Companies, dated January 2013.
- h. Ground level Site photographs provided with JD request submittal, dated February 1, 2024.
- i. A previous Approved Jurisdictional Determination (AJD) dated May 8, 2014.

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.



THE Chazen COMPANIES
 ENGINEERS/SURVEYORS
 PLANNERS
 ENVIRONMENTAL SCIENTISTS
 LANDSCAPE ARCHITECTS

Dutchess County Office:
 21 Fox Street, Poughkeepsie, NY 12601
 Phone: (845) 454-3980

Capital District Office:
 547 River Street, Troy, NY 12180
 Phone: (518) 273-0055

Glens Falls Office:
 100 Glen Street, Glens Falls, NY 12801
 Phone: (518) 812-0513

Mohr Property

Site Location Map

NW Corner of West Ave and Washington Street
 Town of Saratoga Springs, Saratoga County, New York

Source: USGS Topographic Map of the Saratoga Springs, New York Quadrangle, Dated 1967, 7.5-Minute Series.	Drawn: JLK Date: January 2013 Scale: As Noted Project: 91246.00 Figure: X
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NOT FOR CONSTRUCTION

EXP: ###/##/20## EXP: ###/##/20##

CERTIFICATE OF AUTHORIZATION NUMBER:
PROFESSIONAL ENGINEERING: 018281
LAND SURVEYING: 017976
GEOLOGICAL: 018750

It is a violation of New York Education Law Art. 145 Sec. 7209 & Art. 147 Sec. 7307, for any person, unless acting under the direction of a licensed architect, professional engineer, or land surveyor, to alter an item in any way. If an item bearing the seal of an architect, engineer, or land surveyor is altered; the altering architect, engineer, or land surveyor shall affix to the item their seal and notation "altered by" followed by their signature and date of such alteration, and a specific description of the alteration.

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RHOM ENTERPRISES, INC
239 WASHINGTON STREET
SARATOGA SPRINGS, NY 12866

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SARATOGA SPRINGS, NY 12866

2	07/24/2024	REVISION
1	06/04/2024	REVISION
NO.	DATE:	DESCRIPTION:

PROJECT NUMBER: 2230308

DRAWN BY: CAR

REVIEWED BY: SF

ISSUED FOR: CITY REVIEW

DATE: 04/25/2024

DRAWING NAME:

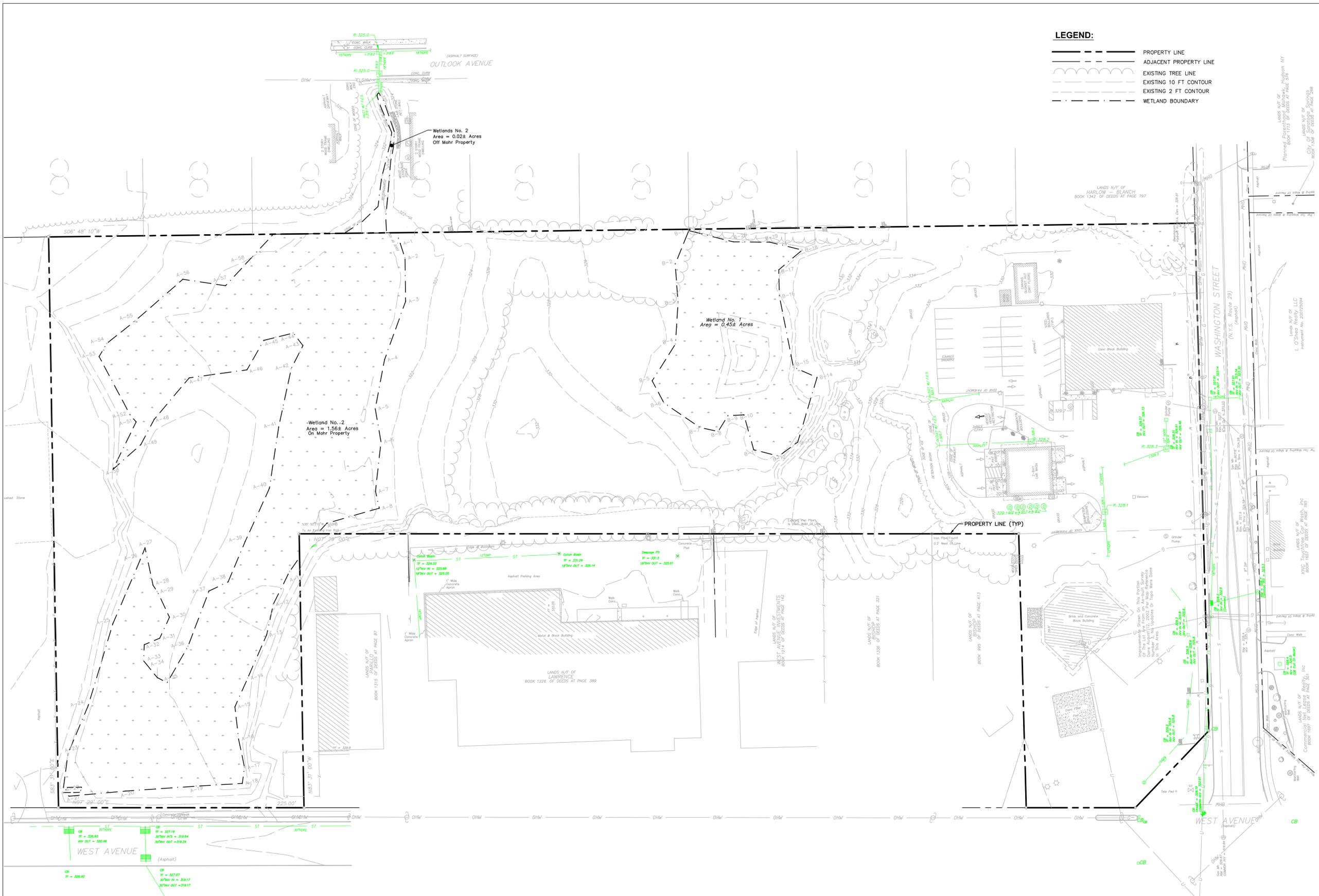
EXISTING CONDITIONS PLAN

DRAWING NUMBER:

C100

LEGEND:

- PROPERTY LINE
- - - ADJACENT PROPERTY LINE
- ~ ~ ~ EXISTING TREE LINE
- EXISTING 10 FT CONTOUR
- EXISTING 2 FT CONTOUR
- - - WETLAND BOUNDARY



MAP REFERENCES:

- SURVEY DATA FROM MAP ENTITLED "TOPOGRAPHIC SURVEY OF A PORTION OF LANDS OF WILLIAM & AGNES E. MOHR", PREPARED BY GILBERT VANQUILDER, LAND SURVEYOR, PLLC., DATED DECEMBER 3, 2010, REVISED JANUARY 3, 2011.
- ADDITIONAL TOPOGRAPHIC AND UTILITY INFO SURVEYED BY LABELLA ASSOCIATES ON APRIL 21, 2023.
- WETLANDS SHOWN WERE MAPPED ON A DRAWING ENTITLED "WETLAND MAP - LANDS OF MOHR", PREPARED BY GILBERT VANQUILDER, LAND SURVEYOR, PLLC., DATED APRIL 21, 1997, REVISED DECEMBER 7, 2012, BASED ON A DELINEATION BY CHAZEN IN NOVEMBER 2012.

1 EXISTING CONDITIONS PLAN
C100 SCALE: 1" = 40'

PARAMETER	TOTAL ACREAGE OF PROPERTY	
TOTAL ACREAGE OF PROPERTY	8.90 ACRES	
JURISDICTIONAL REVIEW AREA	8.90 ACRES	
ID OF EACH AQUATIC RESOURCE	WETLAND 1 (DELINEATED WITH "B" FLAGS)	WETLAND 2 (DELINEATED WITH "A" FLAGS)
COVER TYPE OF EACH RESOURCE	PALUSTRINE EMERGENT MARSH	PALUSTRINE FORESTED WETLAND
SIZE OF EACH RESOURCE	1.56 ACRES	0.45 ACRES

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