



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

CENAN-OP-RU

August 12, 2024

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-2023-00944-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.

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00944-UCA

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 Area 'A', 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 9.56 acres, 43.076114, -73.813094, 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 area 'A' does 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 area 'A' does 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.

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00944-UCA

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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

- 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).

This is a non-tidal wetland that does not have a continuous surface connection to a jurisdictional water. The wetland is located within an excavated depression (a former borrow pit) and it is not hydrologically connected with any other wetland or WOTUS. The prior mining activities resulted in the establishment of a 3.0± acre depression within the central portion of the property. This borrow pit was excavated to an elevation that is near the ground water table and it has since naturally succeeded into a Palustrine wetland that is dominated by common reed (*Phragmites australis*). The former borrow pit is surrounded by forested upland and/or developed land. The Site is bordered by residential development (found along Pinehurst Drive and Mokasha Square) to the west, a railroad line to the east, Grand Avenue to the south and Rte. 29 to the north. An existing access road also extends along the southern boundary of the Site which provides direct access from the current terminus of Mokasha Square to the adjacent railroad. The developed lands are all between 8 and 15 feet higher in elevation than that of the former borrow pit. Additionally, Rte. 29 and Grand Avenue Extension are over 15 feet higher in elevation.

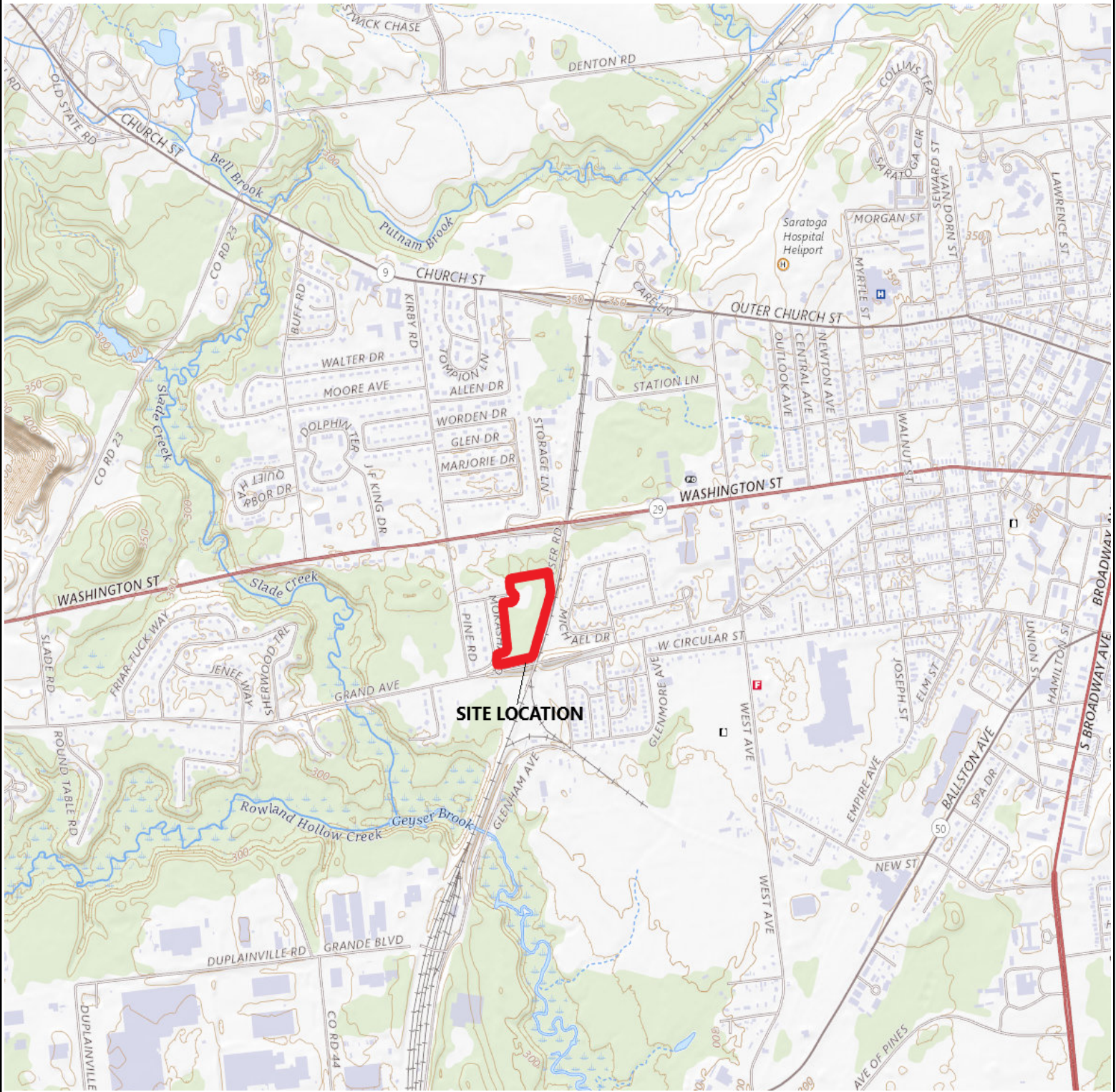
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. A desktop evaluation was conducted on 12 January 2024.
 - b. Wetland Determination Data Form – Northcentral and Northeast Region, dated 11 May 2023.
 - c. Map of Survey, dated 11 July 2019, Sheet 1 of 1 by Ingalls & Associates, LLP.
 - d. Site Location Map, Figure 1, dated 11 April 2023 by EDP.
 - e. Soil Survey Map, Figure 2, dated 11 April 2023 by EDP.

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00944-UCA

- f. NYSDEC Mapped Aquatic Resources, Figure 3, dated 11 April 2023 by EDP.
 - g. NWI Mapped Aquatic Resources, Figure 4, dated 11 April 2023 by EDP.
 - h. FEMA Flood Hazard Areas, Figure 5, dated 11 April 2023 by EDP.
10. OTHER SUPPORTING INFORMATION. Site Assessment Photographs 1-10, Site Assessment Photographs 11-20, Site Assessment Photographs 21-24, all dated 10 April 2023 by EDP.
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.



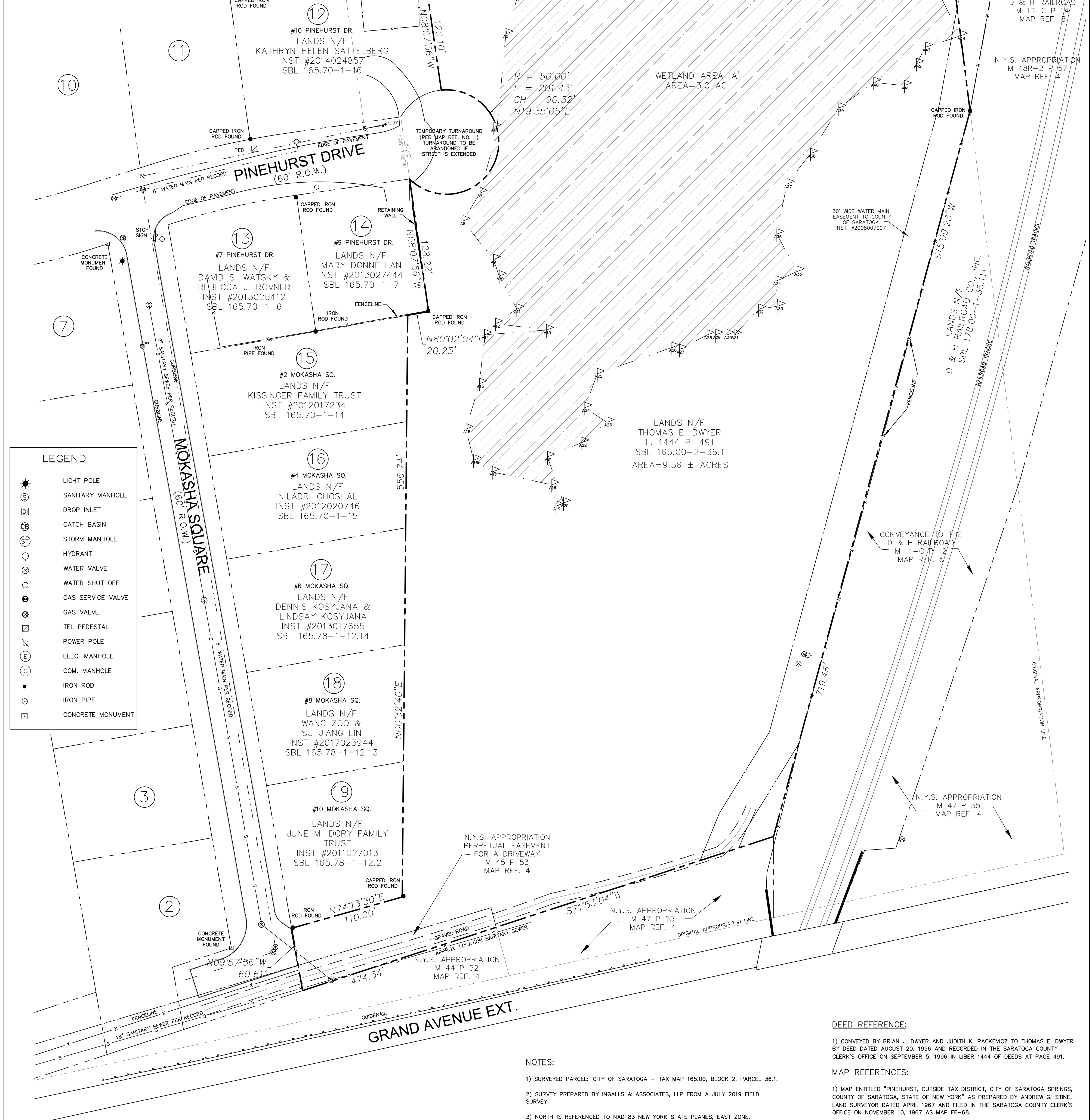
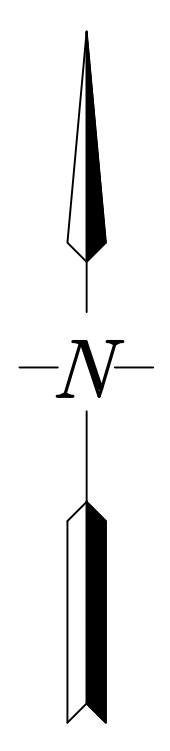
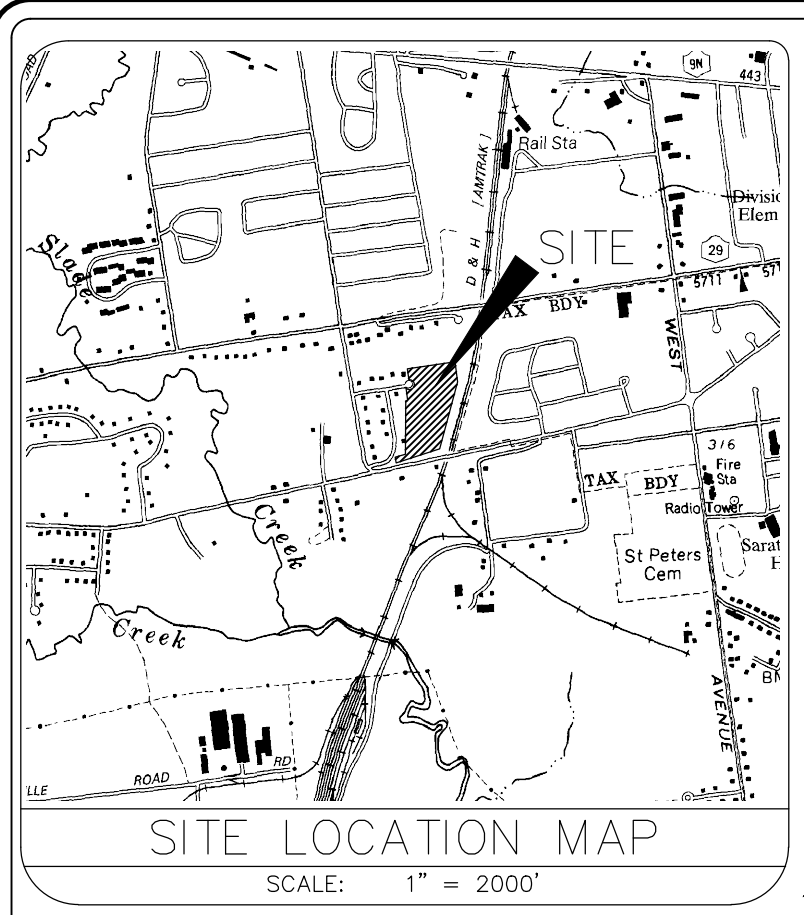
Site Location Map
Dwyer Property – Pinehurst Drive

City of Saratoga Springs
 Source: USGS TopoView

The Environmental
 Design Partnership, LLP
 © 2023

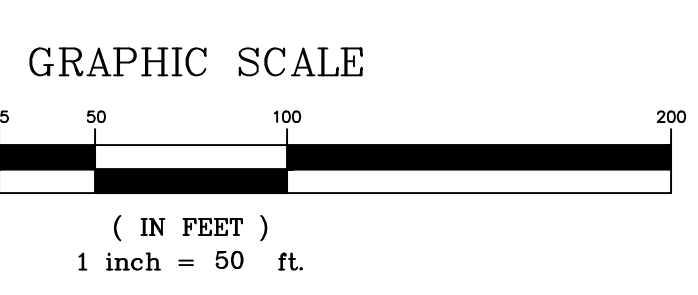
Saratoga County
 April 11, 2023

Figure 1



LEGEND

☉	LIGHT POLE
⊕	SANITARY MANHOLE
⊖	DROP INLET
⊗	CATCH BASIN
⊙	STORM MANHOLE
⊚	HYDRANT
⊛	WATER VALVE
⊜	WATER SHUT OFF
⊝	GAS SERVICE VALVE
⊞	GAS VALVE
⊟	TEL PEDESTAL
⊠	POWER POLE
⊡	ELEC. MANHOLE
⊢	COM. MANHOLE
⊣	IRON ROD
⊤	IRON PIPE
⊥	CONCRETE MONUMENT



- NOTES:**
- 1) SURVEYED PARCEL: CITY OF SARATOGA - TAX MAP 165.00, BLOCK 2, PARCEL 36.1.
 - 2) SURVEY PREPARED BY INGALLS & ASSOCIATES, LLP FROM A JULY 2019 FIELD SURVEY.
 - 3) NORTH IS REFERENCED TO NAD 83 NEW YORK STATE PLANES, EAST ZONE.
 - 4) SUBJECT TO ALL RIGHTS, EASEMENTS, COVENANTS OR RESTRICTIONS; RECORDED OR UNRECORDED.
 - 5) SUBJECT TO ANY STATEMENT OF FACT AN UP-TO-DATE ABSTRACT OF TITLE WOULD DISCLOSE.
 - 6) UNDERGROUND UTILITIES IF SHOWN HEREON ARE BASED ON VISIBLE PHYSICAL EVIDENCE. THEY SHOULD BE CONSIDERED SCHEMATIC ONLY AND ARE SHOWN TO DEPICT GENERAL UTILITY LOCATIONS AND CONNECTIONS RATHER THAN EXACT UNDERGROUND LOCATIONS. INGALLS & ASSOCIATES, LLP MAKES NO CERTIFICATION AS TO THE ACCURACY OF THE UNDERGROUND UTILITY LOCATIONS AND OTHER UTILITIES MAY EXIST THAT ARE NOT SHOWN ON THIS MAP.
 - 7) SURVEY IS PREPARED IN ACCORDANCE WITH THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS CODE OF PRACTICE FOR LAND SURVEYS AS ADOPTED IN OCTOBER OF 1966 AND LAST REVISED ON JULY 18, 1997.
 - 8) NO WETLAND SURVEY SHALL BE DEEMED FINAL WITHOUT A JURISDICTIONAL DETERMINATION FROM THE UNITED STATES ARMY CORPS OF ENGINEERS (USACE) AND/OR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC).

- DEED REFERENCE:**
- 1) CONVEYED BY BRIAN J. DWYER AND JUDITH K. PACEVICZ TO THOMAS E. DWYER BY DEED DATED AUGUST 20, 1996 AND RECORDED IN THE SARATOGA COUNTY CLERK'S OFFICE ON SEPTEMBER 5, 1996 IN LIBER 1444 OF DEEDS AT PAGE 491.
- MAP REFERENCES:**
- 1) MAP ENTITLED "PINEHURST, OUTSIDE TAX DISTRICT, CITY OF SARATOGA SPRINGS, COUNTY OF SARATOGA, STATE OF NEW YORK" AS PREPARED BY ANDREW G. STINE, LAND SURVEYOR DATED APRIL 1967 AND FILED IN THE SARATOGA COUNTY CLERK'S OFFICE ON NOVEMBER 10, 1967 AS MAP FF-68.
 - 2) MAP ENTITLED "SUBDIVISION PLAN, MOKASHA SQUARE, CITY OF SARATOGA SPRINGS, COUNTY OF SARATOGA, STATE OF NEW YORK" AS PREPARED BY MICHAEL P. WHEELER, LAND SURVEYOR DATED JULY 6, 2006 AND FILED IN THE SARATOGA COUNTY CLERK'S OFFICE ON NOVEMBER 21, 2008 AS MAP M780B.
 - 3) MAP ENTITLED "LOT LINE ADJUSTMENT MAP, LANDS OF THOMAS E. DWYER AND JULIE ANN NATALE-DWYER, CITY OF SARATOGA SPRINGS, SARATOGA COUNTY, NEW YORK" AS PREPARED BY DANIEL C. WHEELER, LAND SURVEYOR ON OCTOBER 30, 2012 AND FILED IN THE SARATOGA COUNTY CLERK'S OFFICE ON JANUARY 3, 2013 AS MAP M2013002.
 - 4) PUBLIC SERVICE CASE NO. 6627 AND 7027, GRADE CROSSING ELIMINATIONS OF THE RAILROAD OPERATED BY THE DELAWARE AND HUDSON RAILROAD CORPORATION THROUGH THE CITY OF SARATOGA SPRINGS AND THE TOWNS OF GREENFIELD AND WILTON, MAP 44 PARCEL 52, MAP 45 PARCEL 53 AND MAP 47 PARCEL 55 AS PREPARED BY THE DELAWARE AND HUDSON RAILROAD CORPORATION AND APPROVED BY ORDER OF THE PUBLIC SERVICE COMMISSION ON JUNE 4, 1967.
 - 5) MAP AND DESCRIPTION FOR THE CONVEYANCE OF PROPERTY, P.S.C. 6527 AND 7027, SARATOGA SPRINGS E.G.C., SARATOGA COUNTY MAP 11-C PARCEL 12, MAP 12-C PARCEL 13 AND MAP 13-C PARCEL 14 AS PREPARED BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION AND APPROVED APRIL 7, 1970.

MAP OF SURVEY
LANDS N/F OF THOMAS E. DWYER
GRAND AVENUE & PINEHURST DRIVE
CITY OF SARATOGA
STATE OF NEW YORK

DRAWN BY: [] CHECKED BY: JJP
CADD FILE: 19-039 EX JOB NO. 19-039
DATE: JULY 11, 2019

SCALE: 1" = 50'
SHEET 1 OF 1

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