



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ATTN: CENAN-OP-RU  
UPSTATE REGULATORY FIELD OFFICE  
1 BUFFINGTON ST., BUILDING 10, 3<sup>RD</sup> FL. NORTH  
WATERVLIET, NEW YORK 12189-4000

September 12, 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) ,<sup>1</sup> NAN-2024-00717-UDO<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 1, 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. 3.68 Acres, 44.722528, -73.563333, Plattsburgh, Clinton, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The wetland located within the review area is not connected to any TNW, the territorial seas, or interstate waters.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject aquatic resources do not flow directly into a TNW, territorial seas, or interstate waters.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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

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<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup> 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

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<sup>8</sup> 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).<sup>9</sup> 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 1 is a palustrine scrub-shrub wetland of approximately 0.51 acres. The wetland occupies low lying areas surrounded by upland fields. The wetland lacks any apparent surface water hydrologic connection to any other aquatic resource. No surficial connection is made between this waterbody and any TNW or tributary.

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. Field visit, November 1, 2023.
- b. Wetland Delineation Drawing entitled "Map of Survey prepared for Joyce Rafferty showing the Country Village Subdivision Phase V, Lots 30-33," dated June 8, 2023, and last revised 08/09/24, prepared by RMS.
- c. Site Location Map 1, Figure 1, ESRI.
- d. NYSDEC Freshwater Wetland Map, Figure 2, dated June 2023.
- e. National Wetland Inventory Map, Figure 3, dated June 2023.
- f. Aerial and ground level photographs provided in the JD request submittal, dated June 2024.
- g. NRCS Soils Map, Figure 4, dated June 2023.
- h. Wetland Determination Forms completed by applicant's agent.
- i. OTHER SUPPORTING INFORMATION. N/A

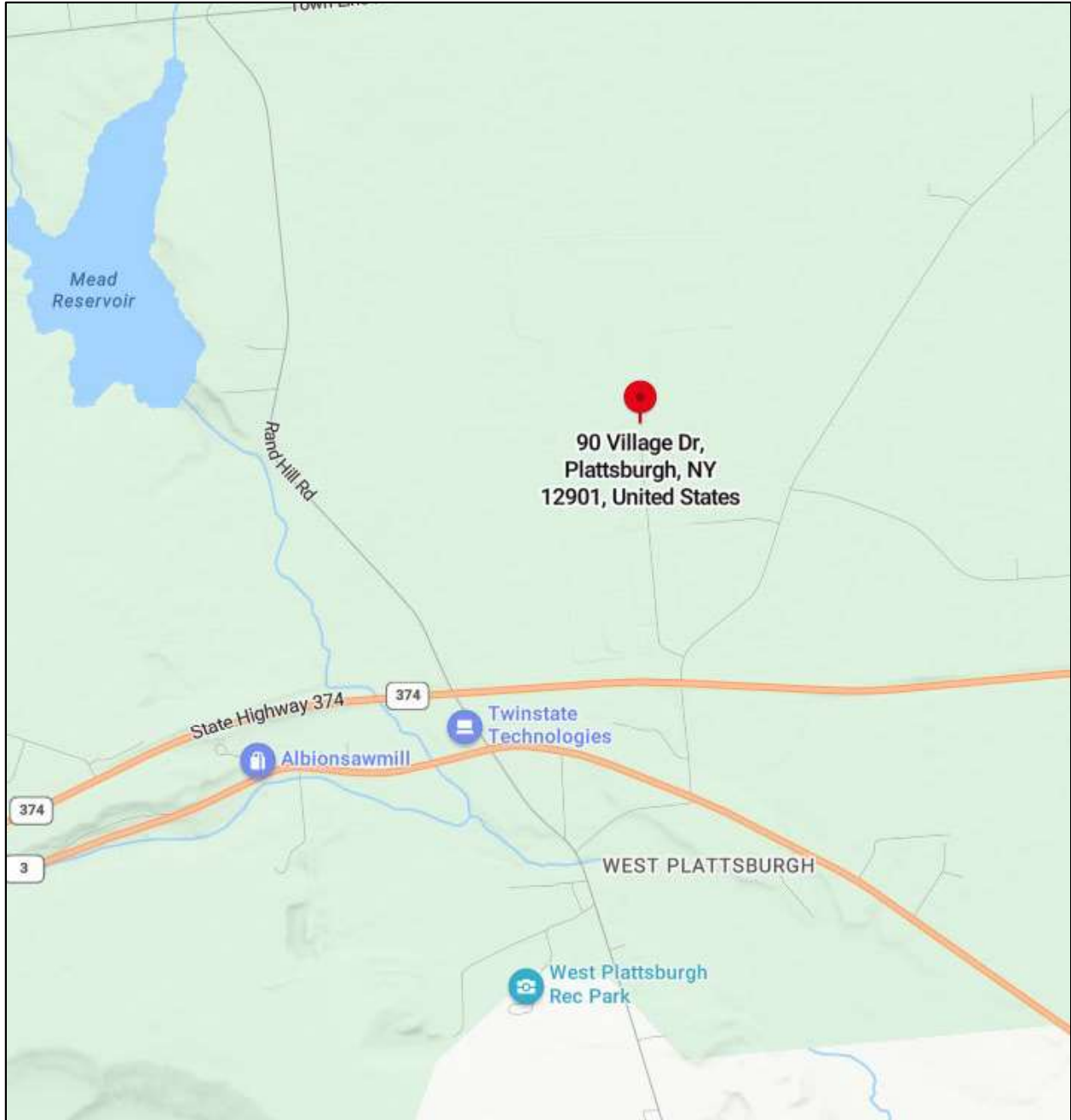
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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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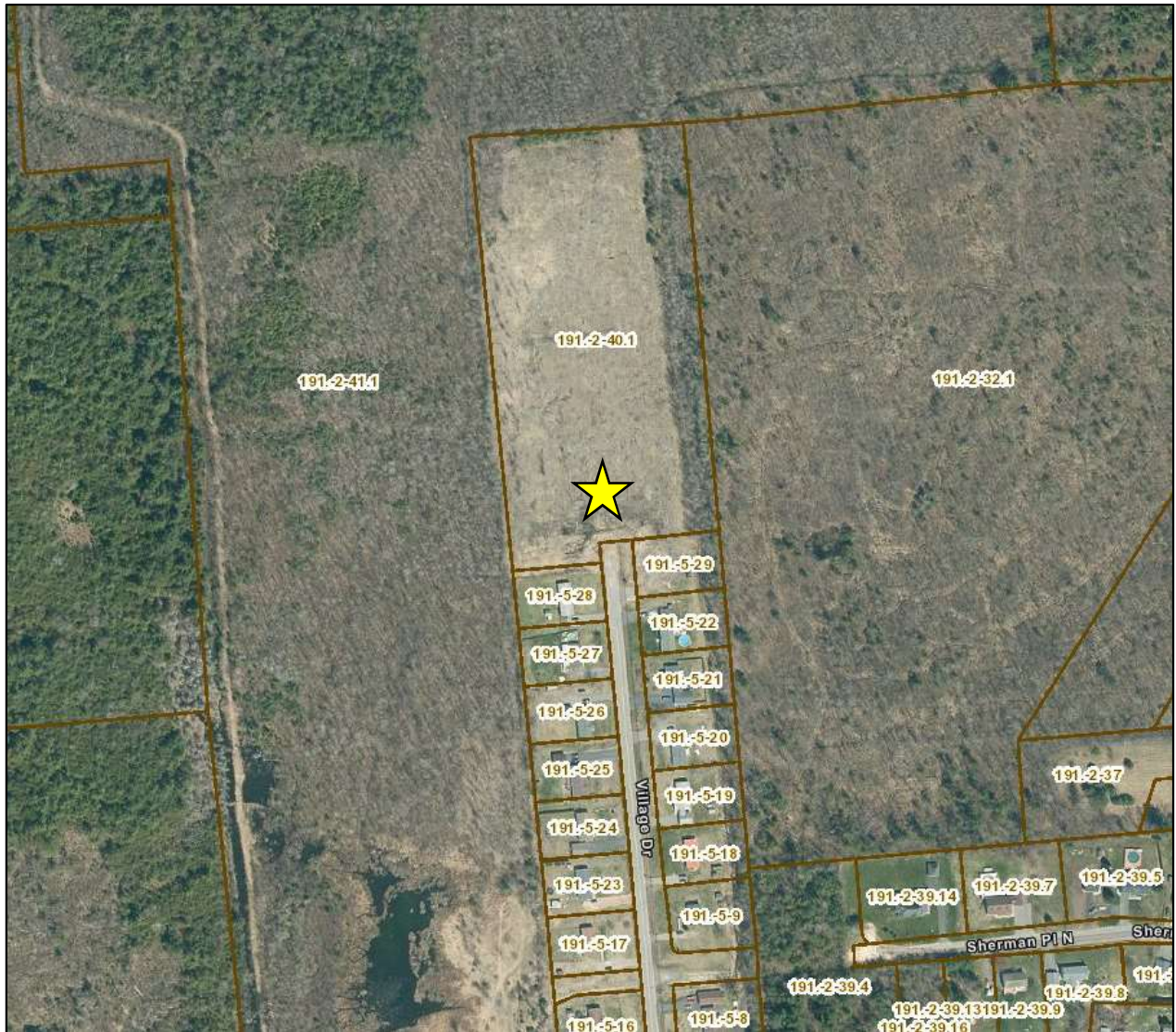
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



**Site Location Map 1**

Village Drive Plattsburgh, NY  
as shown on a road map of the local area

**Source:** Bing Maps



**Site Location Map 2**

Village Drive Plattsburgh, NY  
as shown on an aerial and Clinton County tax map with yellow star denoting area of interest

**Source:** ArcGIS/ESRI



**Town of Plattsburgh Planning Board Notes:**

**Water & Sewer**  
 1. All water and sewer relocation or new construction requires town of Plattsburgh Water and Sewer Department permits. After obtaining the necessary permits the project construction schedule shall be coordinated with the Water and Sewer departments within 72 hours advance notice for inspection of all work.  
 2. A water service permit is required to be obtained from the Town Water and Sewer Department at their prevailing fee and the developer shall be responsible for any town water and sewer departments permit conditions.

**Signs**  
 1. No sign other than for the purpose of traffic control as shown on the approved detailed preliminary plan shall be installed with first obtaining a permit or approval from the Zoning Enforcement Officer or Zoning Board of Appeals. This detailed preliminary plan approval does not constitute a waiver for Zoning Ordinance, Article VI requirements.

**On Site Septic System**  
 1. The project site is currently not served by a public sewer. As a result an on-site septic system must be used. The applicant must obtain a permit from the Clinton County Department of Health for the construction prior to the construction of any on-site septic system. The septic system must be installed according to Clinton County Department of Health guidelines and permit conditions.

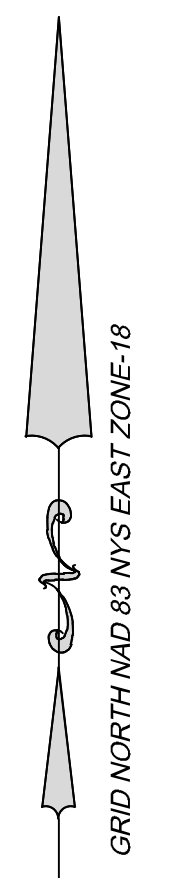
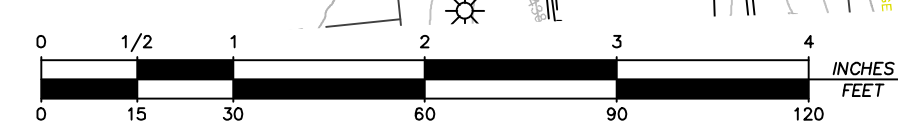
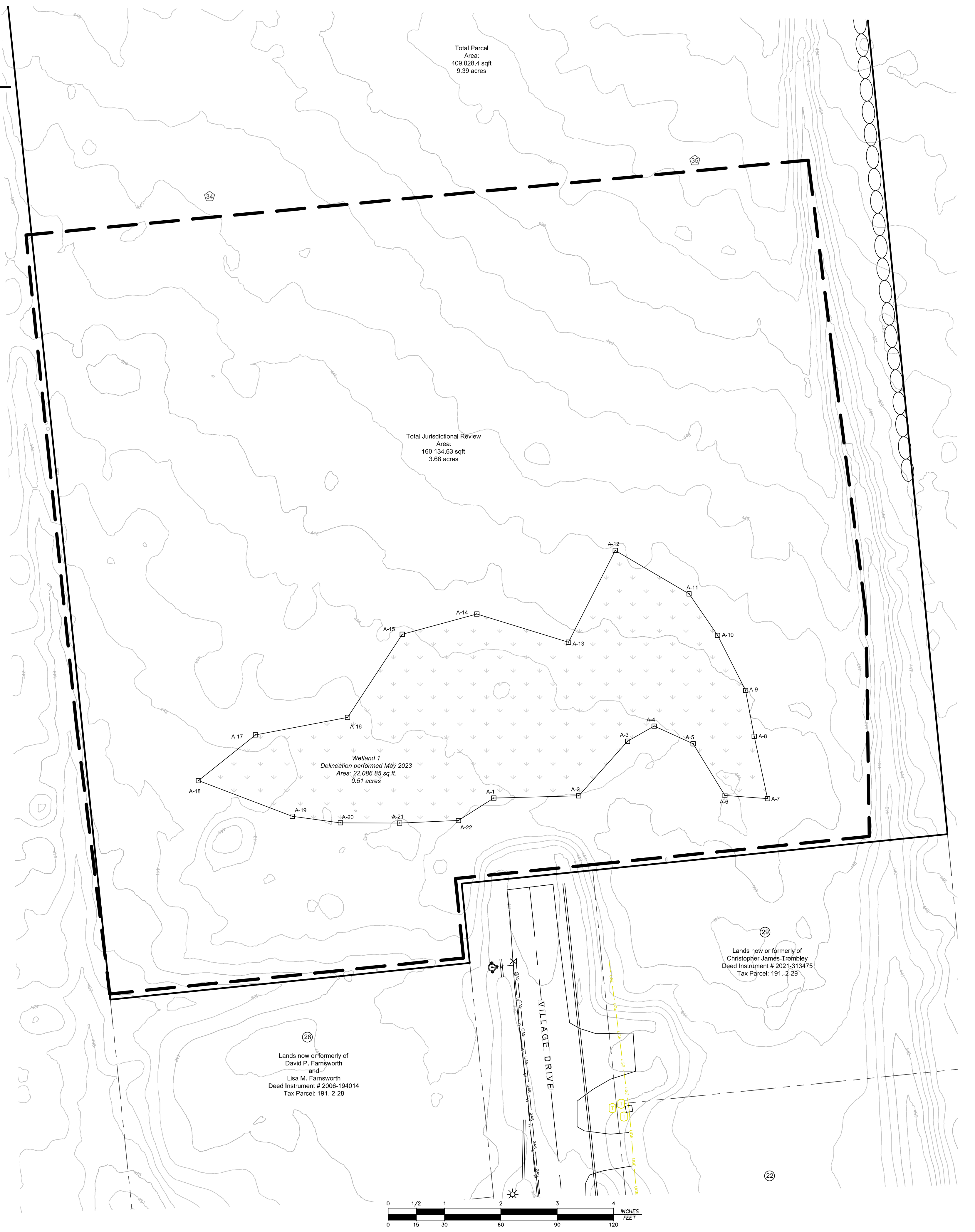
**Dig Safely New York**  
 1. Always call Dig Safely New York (1-800-962-7962) two-ten working days prior to your dig or excavation. Dig with care! Always hand dig when within 2 feet on either side of any marked lines. If damaged, contact, or disturbance of any underground utility line occurs, immediately notify the affected facility operator, utility or pipeline company. If damage to an underground facility creates an emergency, take immediate steps to safeguard health and property. Contact 911.

**Subdivision with or without Improvements**  
 1. Unless otherwise extended by the Planning Board this Subdivision plan shall expire upon the following occurrences:

- a. Approval of the preliminary plan shall expire after one hundred eighty (180) days from the date of approval. Extension for two periods of ninety (90) days may be granted by the Planning Board upon application.
- b. Approval of the final plan shall expire within sixty (60) days from the date of such approval unless within such 60 day period, such plan shall have been duly recorded and/or filed in the County Clerk's Office.
- c. Upon completion of all proposed improvements, the developer shall provide the Town of Plattsburgh with "as-builts" subdivision plans for certification by the Planning Board Chairman. Certifications of the as-builts plans is required prior to issuance of a building permit by the Town of Plattsburgh code Enforcement officer.

**Zoning Information:**

LOCATION: Village Drive, Plattsburgh, NY		
ZONE: MH (R5) - with public water and on-site sanitary		
USE: Single-family residential		
Item	Requirements	Proposed Lots
Minimum lot area	15,000 sq. ft.	Total: 103,780.57 sq.ft. / 2.382 acres
Minimum road frontage	70 ft.	70 ft.
Minimum front setback	30 ft.	30 ft.
Minimum side setback	10 ft. min. / 25 ft. total	10 ft. min. / 25 ft. total
Minimum rear setback	15 ft.	15 ft.
Maximum building height	35 ft.	35 ft.
Maximum building coverage	30%	30%



**Legend:**

- 5/8" iron rod w/ RMS survey cap (to be set)
- Found property evidence (as described)
- Computed corner
- ⊕ Fire Hydrant
- Ⓣ Telephone pedestal
- Ⓢ Cable pedestal
- Ⓜ Water Valve
- ⊙ Light pole
- Ⓛ Utility pole
- Ⓜ Guy anchor
- Ⓜ Sign
- w — w — Waterline
- GAS — Underground gas main
- USE — Underground electric
- x — Barbed wire fence
- ⚡ Split rail fence
- ⊙ Stone wall
- Property line
- - - - - Adjoiner property line
- Proposed property line

**NOTICE**

This subdivision plan is approved by the Town of Plattsburgh as a **Preliminary Subdivision Plat**. Building/Development permits will be issued by the Town of Plattsburgh only after the As-Built Final Subdivision Plat is (1) accepted by the Town of Plattsburgh Planning Department, and (2) copy of the As-Built Final Subdivision Plat is signed by chairman/vic chairman of Town Planning Board and (3) all improvements proposed to be conveyed to the Town of Plattsburgh have been accepted and dedicated by the Town Board and (4) is filed in the Clinton County Clerk's Office.

Owner \_\_\_\_\_ Date \_\_\_\_\_

Per Planning Board Resolution No. \_\_\_\_\_ - \_\_\_\_\_, this Preliminary Subdivision Plat is hereby certified to be in compliance therewith:

Planning Department \_\_\_\_\_ Date \_\_\_\_\_

**Town of Plattsburgh Detailed Preliminary Subdivision Plat Approval**

This plat completed in compliance with Town Planning Board requirements is hereby approved as the Final Subdivision Plat:

Planning Board Chairman \_\_\_\_\_ Date \_\_\_\_\_

"Note: The issuance of this authorization, approval or permit does not relieve the project applicant/sponsor of any responsibility for obtaining any other approvals/permit from any other federal, state, or local agency including the US Army Corps of Engineers (USACE) which may be required."

**Owners/Applicants:** Joyce Rafferty  
 2735 Military Tpke  
 West Chazy, NY 12992

**Tax Map Reference:** Section 191. - Block 2 - Lot 40.1  
 Town of Plattsburgh  
 County of Clinton

No.	ACOE Comments	08/09/24
	Revision/Issue	Date



Project Name & Address  
 Map of Survey prepared for  
**Joyce Rafferty**  
 showing the  
**Country Village Subdivision**  
**Phase V, Lots 30-33**  
 - Situate -  
 Town of Plattsburgh  
 Clinton County State of New York

Project #	23046	Sheet	Wetland delineation
Date	06/08/2023		
Scale	1" = 30'		<b>W100</b>
Drawn	LSC	Checked	AJO