



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
332 MINNESOTA STREET SUITE E1500  
ST. PAUL MN 55101

MVP

October 17, 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),<sup>1</sup> [MVP-2024-01048-TKO MFR 1 of 1](#).<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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
W-3 (0.05-acre) Lat/Long: 43.1082, -88.3587	Non-Jurisdictional	None

## 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. [The review area is a 0.30-acre portion of the proposed 53-acre Hartland Senior Living project site, located directly across Campus Dr. from Lake County Lutheran High School, approximately 1,100 feet northeast of the intersection of Highway 83 and Campus Dr., in the Village of Hartland. The review area sits within the southwest portion of the proposed project site and is identified by a red circle on the attached figures. There are no other JDs associated with the review area. The review area is located in Section 34, Township 08 N, Range 18 E, Village of Hartland, Waukesha County, WI. See attached figures, labeled 2024-01048-TKO Figure 1-2 of 4. HUC 0709000203 - Bark River.]

- a. Project Area Size (in acres): 53.32
- b. Location Description: The project/review area is located in Section 34, Township 008N, Range 018E, Waukesha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 43.1082    Longitude: -88.3587
- d. Nearest City or Town: Hartland
- e. County: Waukesha
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A.]<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A.]
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 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.]

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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.

<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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- 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).<sup>9</sup> [Wetland 3 is not a water of the U.S. as it is a wetland created in dry land incidental to construction activities. This aquatic feature fits under the definition of a b(7) water, from 33 CFR 328.3(b), as it is a water-filled depression created in dry land incidental to construction activities. This is evident following review of the January 14, 2020, Heartland Ecological Group’s wetland delineation report, and supported by a desktop review.]

Wetland 3 sits in the southwest corner of the proposed Hartland Senior Living site. Review of historic aerial imagery shows the area containing Wetland 3 to be dry land prior to extensive, and ongoing, site disturbances. Review of more recent aerial imagery shows earthmoving activities occurring as recently as 2022. First signs of disturbance can be seen in the Waukesha County 2007 Historic Aerial showing earthmoving work for the adjacent Lake County Lutheran High School and Campus Drive. Following this initial disturbance, the area containing Wetland 3 appears to have been used as a staging/storage area for fill material. Piles of material are visible on current Google Earth Street View imagery. Review of additional years of aerial images show continued disturbances in the area. Prior to site disturbance, this area sat within an actively cropped agricultural field. Sporadic wetness signatures (2 of 9 years) can be seen throughout the review area however, no persistent wetness signature or any other indication of wetland presence (standing water, repeated crop/vegetation stress, distinct variation of vegetation) was observed. Additionally, USDA soil map data indicates the review

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



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area consists of entirely non-hydric soils, further supporting the waterfilled feature was excavated in uplands.]

- 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).

[N/A.]

- 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. No field visits were conducted. Desktop review evaluation was conducted on 10/09/2024.
- b. Permit Application "2024-01048-TKO 20240923 APP.pdf" in the administrative record.
- c. Mississippi Valley Division Regulatory Viewer, 10/09/2024.
- d. Wisconsin DNR Surface Water Data Viewer, 10/09/2024.
- e. Waukesha County GIS Interactive Mapping, 10/09/2024.

- 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.



# 2024-01048-TKO Figure 1 of 3



## Legend

- Wetland Indicators
- Ponds/Open Water
- Lake Class Areas
- Riverine/ditch Class Areas
- Wetland Class Areas
- Wetland Class Points
  - Dammed pond
  - Excavated pond
  - Filled/draind wetland
  - Wetland too small to delineate
  - Filled excavated pond
- Filled Points
- Wetland Class Areas
- Filled Areas
- Wetland Identifications and Confirmations
- NRCS Wetspots
- Municipality
- State Boundaries
- County Boundaries
- Major Roads
  - Interstate Highway
  - State Highway
  - US Highway
- County and Local Roads
  - County HWY
  - Local Road
- Railroads
- Tribal Lands
- Rivers and Streams
- Intermittent Streams
- Lakes and Open water

## Notes

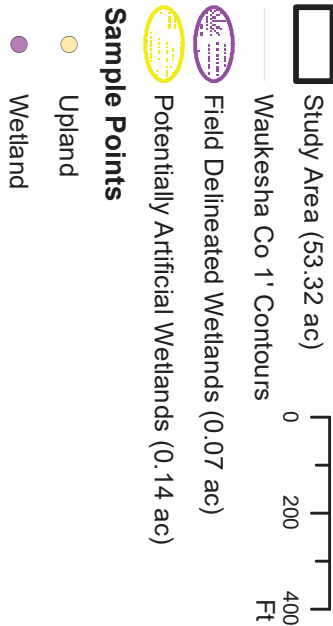
0.3 0 0.13 0.3 Miles

NAD\_1983\_HARN\_Wisconsin\_TM

1: 7,920

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

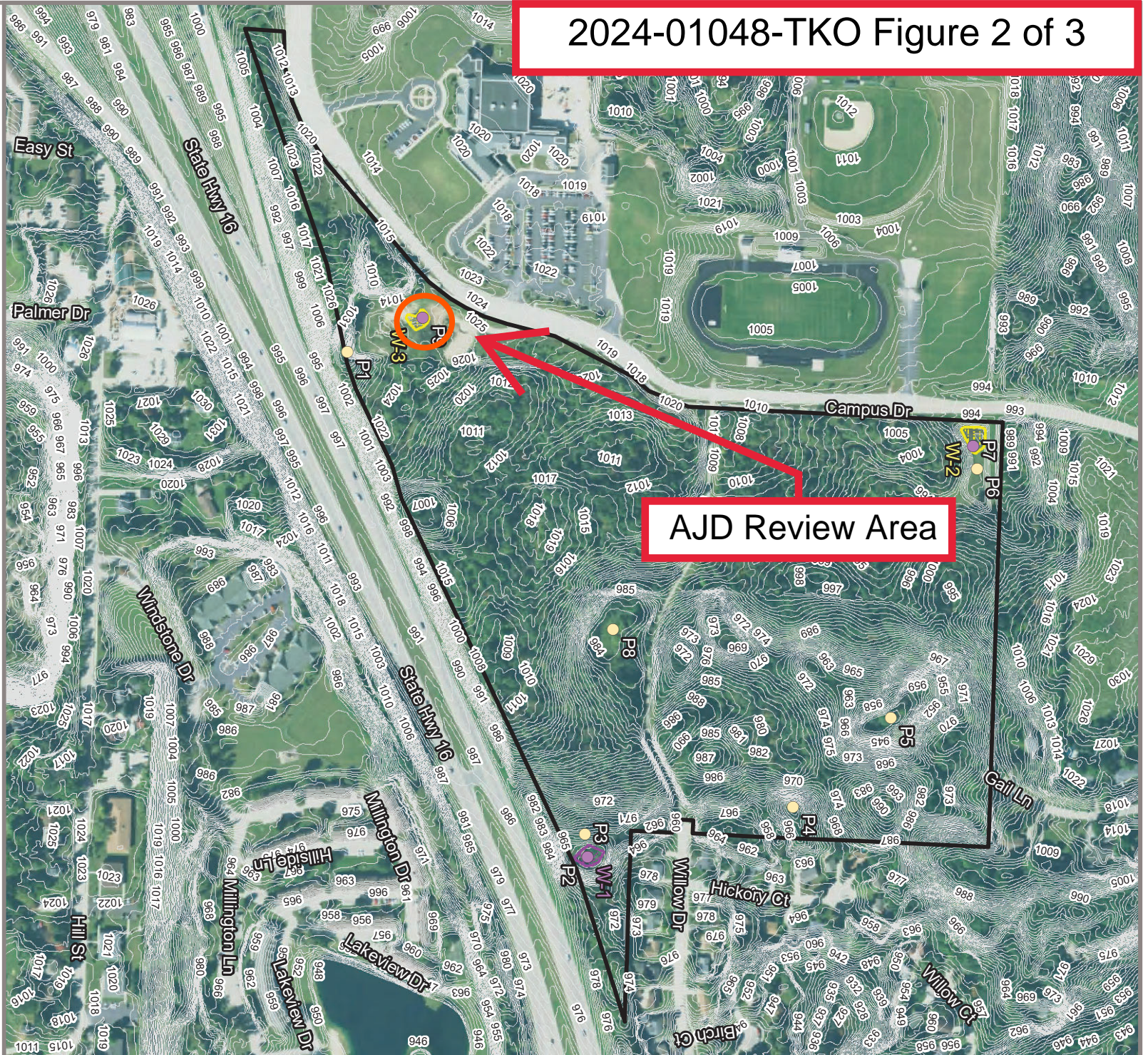




**Heartland**  
ECOLOGICAL GROUP INC

**Figure 6. Field Delineated Wetlands**  
Campus Drive Parcel  
Project #20190274  
T8N, R18E, S34  
V Hartland,  
Waukesha Co, WI

2018 NAIP  
Date: Waukesha Co  
1/13/2020





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## SITE DATA

EXISTING LOT DATA - LOT 2 OF CSM #12091  
EXISTING ZONING: (I-1) Institutional  
EXISTING TOTAL LOT AREA: 8.88 Acres

## PROPOSED LOT 2 DATA

TOTAL LOT AREA: 3.35 Acres  
GREENSPACE AREA: 3.24 Acres (96.72%)  
IMPERVIOUS AREA: 0.11 Acres (3.28%)  
BUILDING: 0 Acres  
PAVEMENT: 0.11 Acres  
SIDEWALK: 0.00 Acres

## PROPOSED LOT 2 DATA

TOTAL LOT AREA: 3.76 Acres  
GREENSPACE AREA: 1.59 Acres (42.3%)  
IMPERVIOUS AREA: 2.17 Acres (57.7%)  
BUILDING: 1.25 Acres  
PAVEMENT: 0.85 Acres  
SIDEWALK: 0.07 Acres

## PROPOSED OUTLOT 1 DATA

TOTAL LOT AREA: 1.77 Acres  
GREENSPACE AREA: 1.00 Acres (56.50%)  
IMPERVIOUS AREA: 0.77 Acres (43.50%)  
BUILDING: 0.00 Acres  
PAVEMENT: 0.76 Acres  
SIDEWALK: 0.01 Acres

## TOTAL UNITS

DENSITY: 118 UNITS  
21.3 UNITS/AC.

## REQUIRED PARKING:

PARKING SPACES REQUIRED:  
- ASSISTED & MEMORY CARE (44 BEDS) 1 SPACE/5 BEDS  
- 1 SPACE/3 EMPLOYEES  
11 SPACES  
- INDEPENDENT LIVING (78 UNITS) 1 SPACE/UNIT  
78 SPACES

TOTAL REQUIRED SPACES: 89 SPACES

## PROPOSED PARKING:

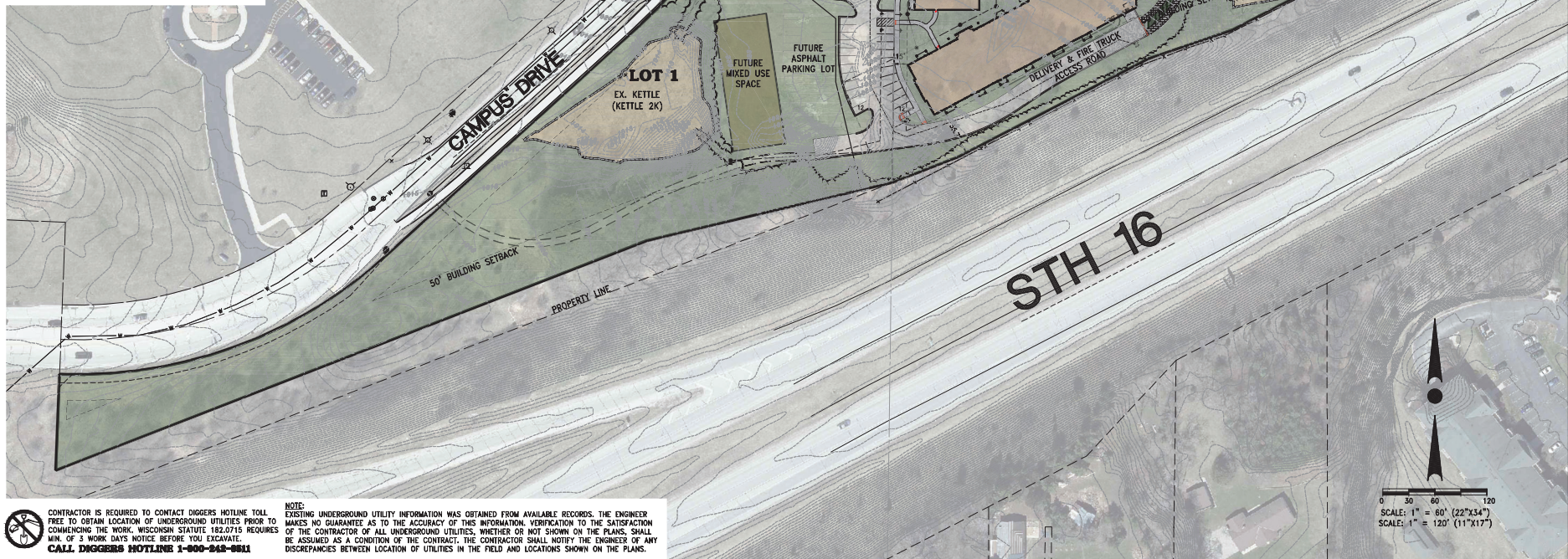
SURFACE PARKING:  
STANDARD SPACES: 43 SPACES  
ADA SPACES: 4 SPACES  
TOTAL SURFACE: 47 SPACES  
GARAGE PARKING: 70 SPACES  
TOTAL PARKING: 117 SPACES

## ADDITIONAL ZONING DATA FOR LOT 2 AND O.L. 1

Land Use:	PER CODE	PROPOSED CONDITIONS
Elderly Housing	Elderly Housing	Elderly Housing
Density:	22 Units/Net Acre	22 Units/Net Acre
Min Lot Area:	4,000 S.F./Unit	2,060 S.F./Unit
Max Building Height:	35 ft.	36x Average Grade Plane (72'-3" Garage to Roof Peak)
Min Lot Width:	80 ft.	80 ft.
Min Side Setback:	15 ft. Each Side,	15 ft. Each Side,
Min Rear Setback:	35 ft. in Total	35 ft. in Total
Min Street Setback:	40 ft.	40 ft.
Min Highway Setback:	30 ft.	30 ft.
Min Highway Setback:	50 ft.	50 ft.

## LEGEND:

---	EXISTING CONTOUR
---	EXISTING SANITARY SEWER
---	EXISTING SANITARY MANHOLE
---	EXISTING WATER MAIN
---	EXISTING HYDRANT
---	EXISTING STORM SEWER
---	EXISTING STORM MANHOLE
---	EXISTING STORM INLET
---	EXISTING TRANSFORMER
---	EXISTING ELECTRIC PEDESTAL
---	EXISTING TELEPHONE PEDESTAL
---	EXISTING CATV PEDESTAL
---	EXISTING POWER POLE
---	PROPOSED SANITARY SEWER
---	PROPOSED SANITARY MANHOLE
---	PROPOSED FORCE MAIN
---	PROPOSED WATER MAIN
---	PROPOSED HYDRANT
---	PROPOSED WATER VALVE
---	PROPOSED STORM SEWER
---	PROPOSED STORM MANHOLE
---	PROPOSED STORM INLET
---	PROPOSED STORM END SECTION



CONTRACTOR IS REQUIRED TO CONTACT DIGGERS HOTLINE TOLL FREE TO OBTAIN LOCATION OF UNDERGROUND UTILITIES PRIOR TO COMMENCING THE WORK. WISCONSIN STATUTE 182.0715 REQUIRES MIN. OF 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE.  
**CALL DIGGERS HOTLINE 1-800-948-8811**

NOTE: EXISTING UNDERGROUND UTILITY INFORMATION WAS OBTAINED FROM AVAILABLE RECORDS. THE ENGINEER MAKES NO GUARANTEE AS TO THE ACCURACY OF THIS INFORMATION. VERIFICATION TO THE SATISFACTION OF THE CONTRACTOR OF ALL UNDERGROUND UTILITIES, WHETHER OR NOT SHOWN ON THE PLANS, SHALL BE ASSUMED AS A CONDITION OF THE CONTRACT. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES BETWEEN LOCATION OF UTILITIES IN THE FIELD AND LOCATIONS SHOWN ON THE PLANS.



4700 N. CHANDLER RD., SUITE 200  
WISCONSIN, WI 53588  
PHONE: (262) 798-4400  
FAX: (262) 798-4401  
WWW: gouldingtrio.com

PROJECT: **HARTLAND SENIOR LIVING**  
VILLAGE OF HARTLAND, WISCONSIN  
BY: **THREE LEAF PARTNERS**  
13560 WATERTOWN PLANK ROAD, STE 204  
ELM GROVE, WI 53122

REVISION HISTORY	
DATE	DESCRIPTION
07/09/24	INITIAL SUBMITTAL
08/08/24	PG SUBMITTAL

DATE: **AUGUST 12, 2024**

JOB NUMBER: **24-29-1138**

DESCRIPTION: **PROPOSED DEVELOPMENT PLAN**

SHEET

**C1.1**