



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

CENWP-ODG

15 April 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 [NWP-2023-295]

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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. Unnamed Slough to the Willamette River, 1.38 acre, Section 404, Jurisdictional
 - ii. Adjacent Slough Wetlands to the Willamette River, 0.54 acres, Section 404, Jurisdictional
 - iii. Wetland A, 0.15 acre, Non-jurisdictional
 - iv. Wetland B, 0.05 acre, Non-jurisdictional
 - v. Wetland C, 0.12 acre, Non-jurisdictional
 - vi. Turnage Brook, 956 linear feet, Section 404, Jurisdictional
 - vii. Wetland D, 1.62 acre, Section 404, Jurisdictional
 - viii. Wetland E, 0.16 acre, Section 404, 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The Review Area is composed of 36.82-acre parcel (tax lots 300, 304, 500, 700, 800, 1100, 1600 and OR Highway 22 Right-of-Way) and on tax map 7S03W29 at 1700 Edgewater Street NW near West Salem, Polk County, Oregon at Latitude/Longitude: 44.933906°, -123.071236°. (Township 7 South, Range 3 West, Sections 28 and 29). The Review Area lies on linear, well drained alluvial terraces formed by the Willamette River. A majority of the Review Area is sited on an alluvial terrace which has experienced extensive historic and more contemporary disturbances. Known disturbances result in an undulating fill terrace containing remnant pockets of native soil. The northern portion of the Review Area consists of Oregon Highway 22 (Salem Dallas Highway NW) and Edgewater Street NW. Fill

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material associated with these road grades results in steep escarpments. An escarpment along the southern boundary transitions to a low alluvial terrace which contains an Unnamed Slough to the Willamette River.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Adjacent Waters to the Willamette River, Unnamed Slough to the Willamette River, Wetlands A, B, C, D & E and Turnage Brook are approximately 0.25 river miles from the Willamette River which has been determined to be a TNW by Portland District Corps of Engineers to river mile 0.5, as described in the October 1993 District list of Navigable Riverways within the State of Oregon.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Adjacent Slough Wetlands to the Willamette River and Unnamed Slough to the Willamette River flow north/northeast. Adjacent Slough Wetlands to the Willamette River and Unnamed Slough to the Willamette River are tributaries to the Willamette River, a TNW, with its confluence near river mile 85.

Wetland D enters the project area via culvert beneath Oregon Highway 22. Wetland D surrounds Turnage Brook and flows into Turnage Brook. Turnage Brook is a tributary to the Willamette River, a TNW, that flows southeast into a culvert. Water would flow directly into the Willamette River downstream near river mile 85 via culvert.

Turnage Brook enters the project area via Wetland D which flows from a culvert beneath Oregon Highway 22. Turnage Brook is a tributary to the Willamette River, a TNW, that flows southeast into a culvert. Water would flow directly into the Willamette River downstream near river mile 85 via culvert.

There is no discrete flow path from Wetland C into a TNW. During extreme precipitation, water would flow from the steep slope of the northern boundary and pool up and surround Wetland C, an impounded wetland with depression features.

There is no discrete flow path from Wetlands A and B into a TNW. During extreme precipitation, water would flow from the steep slope of the northern boundary and pool up and surround Wetlands A and B, depression wetlands.

Wetland E. Water would flow from under the Edgewater Street NW culvert to Wetland E. Wetland E would drain and flow to the culvert under Oregon Highway 22

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and into Turnage Brook. Turnage Brook is a tributary to the Willamette River, a TNW, with its confluence near river mile 85.

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 resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ 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): Unnamed Slough to the Willamette River. Unnamed Slough to the Willamette River is a Riverine, Lower Perennial, Unconsolidated Bottom, Permanently Flooded with a HGM classification of Riverine. The Unnamed Slough to the Willamette River is a tributary connected to the Willamette River, a TNW. Water sources include southern flow from Turnage Brook and southern and western flow from the Adjacent Slough Wetlands to the Willamette River. As seen in aerial imagery, US Geological Survey (USGS) topographic maps and the state Oregon Explorer viewer the Unnamed Slough to the Willamette River carries relatively permanent flow. Surface water in the Unnamed Slough to the Willamette Rivers are also seen in the wetland delineation in Photo 16. Unnamed Slough to the Willamette River is relatively permanent and contributes flow to an (a)(1), (a)(2), or (a)(3) water and is a water of the U.S.

Turnage Brook. Turnage Brook is a Riverine with a HGM classification of Slope. Wetland D enters the review area via culvert underneath Oregon Highway 22 and enters Turnage Brook. As seen in aerial imagery and the National Hydrography Dataset (NHD), Turnage Brook water is present and flows southeast downstream and discharges into the Willamette River, demonstrating a relatively permanent flow to a TNW. Turnage Brook is relatively permanent and contributes flow to an (a)(1), (a)(2), or (a)(3) water and is a water of the U.S.

Adjacent Wetlands (a)(4): Adjacent Slough Wetlands to the Willamette River. Adjacent Slough Wetlands to the Willamette River are Palustrine, Forested / Scrub-Shrub, Seasonally Flooded water with a HGM classification of Riverine. As seen in aerial imagery, such as USGS topographic maps and the state Oregon Explorer viewer, Slough Wetlands are adjacent to the Willamette River and have a continuous surface connection to an (a)(3) water, the Unnamed Slough to the Willamette River. Water flows from the west and south from the Adjacent Slough Wetlands to the Willamette River into the Unnamed Slough to the Willamette River. The Adjacent Slough Wetlands to the Willamette River has a continuous surface connection to the Willamette River, a TNW, through a shared physical boundary located outside of the Review Area. Water sources would include precipitation and subsurface flow. Surface water was present in the requestor's delineation at sample point T7-P1. Adjacent Slough Wetlands to the Willamette River has a continuous surface connection to a downstream (a)(1), (a)(2), or (a)(3) water and is a water of the U.S.

Wetland D. Wetland D is a Riverine with a HGM classification of Slope. Sampling point T6-P1 in the wetland delineation shows all three wetland indicators are present. Wetland D enters the review area via culvert underneath Oregon Highway 22 and drains into Turnage Brook. As seen in aerial imagery and the NHD, Wetland D would flow southeast downstream into Turnage Brook which discharges into the Willamette River, demonstrating a relatively permanent flow to a TNW. Wetland D is adjacent to Turnage Brook through a shared physical boundary. Wetland D has a continuous surface connection to a downstream (a)(1), (a)(2), or (a)(3) water and is a water of the U.S.

Wetland E. Wetland E is a Palustrine, Emergent, Seasonally Flooded, impounded wetland with a HGM classification of Depression. This depressional feature is contained and surrounded by Oregon Highway 22 and Edgewater Street NW. Main sources of hydrology for Wetland E include precipitation and stormwater runoff from adjacent roadways. Surface water is present in the wetland delineation as seen in sample point T8-P1 and Photo 19. Water flows approximately 230 feet through the culvert on Edgewater Street NW and flows

into Wetland E, near the center of the wetland depression. This culvert was verified by the requestor on 2 February 2024 and captured by the Corps on 12 February 2024. Water flows through this culvert under Oregon Highway 22 to Turnage Brook, an RPW. Wetland E has a continuous surface connection to a downstream (a)(1), (a)(2), or (a)(3) water and is a water of the U.S.

- f. 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).⁵ 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 A. Wetland A is a Palustrine, Scrub-Shrub, Seasonally Flooded, impounded wetland with an HGM classification of Depression. During extreme precipitation, Wetland A would sheet flow outside the Review Area to the west and flow into the Willamette River. At the northern boundary of the Review Area near Wetland A, there is a steep grade, where Wetland A would pool up at the center of the depression. Wetland A does not share any physical boundaries with nearby Wetland B or Wetland C, and review of aerial images, USGS topographic maps, the state Oregon Explorer viewer and LiDAR data do not show any discrete conveyance of surface water from Wetland A to Wetland B or Wetland C. Wetland A does not maintain a continuous surface connection to an (a)(1)-(3) water and does not meet the criteria defined in 33 CFR 328.3(a)(4) and is not a water of the U.S.

Wetland B. Wetland B is a Palustrine, Scrub-Shrub, Seasonally Flooded, impounded wetland with an HGM classification of Depression. During extreme precipitation, Wetland B would sheet flow outside the Review Area to the west and flow into the Willamette River. At the northern boundary of the Review Area

⁵ 88 FR 3004 (January 18, 2023)

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near Wetland B, there is a steep grade where Wetland B would pool up at the center of the depression. There is an existing culvert that originates beneath Oregon Highway 22 and discharges between Wetland A and Wetland B. The culvert does not discharge into Wetland B based on the topography of the site. Wetland B does not share any physical boundaries with nearby Wetland A or Wetland C, and review of aerial images, USGS topographic maps, the state Oregon Explorer viewer and LiDAR data do not show any discrete conveyance of surface water from Wetland A to Wetland B or Wetland C. Wetland B does not maintain a continuous surface connection to an (a)(1)-(3) water and does not meet the criteria defined in 33 CFR 328.3(a)(4) and is not a water of the U.S.

Wetland C. Wetland C is a Palustrine, Unconsolidated Bottom, spoils impounded wetland with an HGM classification of Depression. At the northern boundary of the Review Area near Wetland C, there is a steep grade where water such as precipitation would flow downhill and pool up in and near Wetland C due to its depressional and impoundment features and topography. Wetland C and Wetland D are separated by a gravel access road; therefore these are two separate wetlands with no continuous surface connection. Wetland C does not share any physical boundaries with nearby Wetland A, Wetland B, Wetland D and Turnage Brook, and review of aerial images and LiDAR data do not show any discrete conveyance of surface water from Wetland A to Wetland B or Wetland D or Turnage Brook. Based on topography and gravel access roads surrounding Wetland C, Wetland C would not flow to Wetland D or Turnage Brook. No flow was observed to Turnage Brook or Wetland D during the 29 March 2023 delineation. The gravel access roads adjacent to Wetland C creates an impoundment. There is no culvert through this feature to connect Wetland C to Wetland D. Soils are described in the delineation as gravelly loam with no restrictive layer within Wetland C or Wetland D. The NRCS soil survey also classifies these soils as having a low KSAT rating for soil transmissivity. These characteristics indicate that flow is likely to drain slowly down through the substrate rather than laterally. Based on available information, there is no evidence Wetland C maintains a shallow subsurface connection to Wetland D. Wetland C does not maintain a continuous surface connection to an (a)(1)-(3) water and does not meet the criteria defined in 33 CFR 328.3(a)(4) and is not a water of the U.S.

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. Office (Desk) Determination. Date 6 March 2024.

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- b. Field Determination. Date 12 February 2024.
- c. *Wetland Delineation Report, Edgewater Commercial Property, West Salem, Polk County, Oregon*, dated 23 May 2023.
- d. Google Earth Pro, last accessed 15 December 2023.
- e. U.S. Geological Survey (USGS) National Hydrography Dataset: National Regulatory Viewer, last accessed 15 December 2023.
- f. USGS maps. USGS Historical Topographic Map Explorer, last accessed 15 December 2023. Salem West OR 1969; 1986, 24K.
- g. United States Department of Agriculture Natural Resources Conservation Service (NRCS) Soil Survey. Citation: NRCS Web Soil Survey, last accessed 27 October 2023.
- h. National wetlands inventory map(s). United States Fish and Wildlife Service National Wetlands Inventory Mapper, last accessed 15 December 2023.
- i. USGS StreamStats Web Application, last accessed 15 December 2023.
- j. Oregon Department of Mining and Minerals Industries Bare Earth Slope LiDAR: National Regulatory Viewer, last accessed 15 December 2023.
- k. Corps Portland District, Navigable Riverways within the State of Oregon, October 1993, last accessed 15 December 2023.
- l. Federal Emergency Management Agency (FEMA), FEMA Flood Map Service Center, last accessed 29 December 2023.
- m. Oregon Department of Transportation TransGIS, last accessed 15 December 2023.
- n. Oregon Rapid Wetland Assessment Protocol Map Viewer, last accessed 15 December 2023.
- o. Stream Function Assessment Method Map Viewer, last accessed 15 December 2023.
- p. StreamNet.org Mapper, last accessed 15 December 2023.

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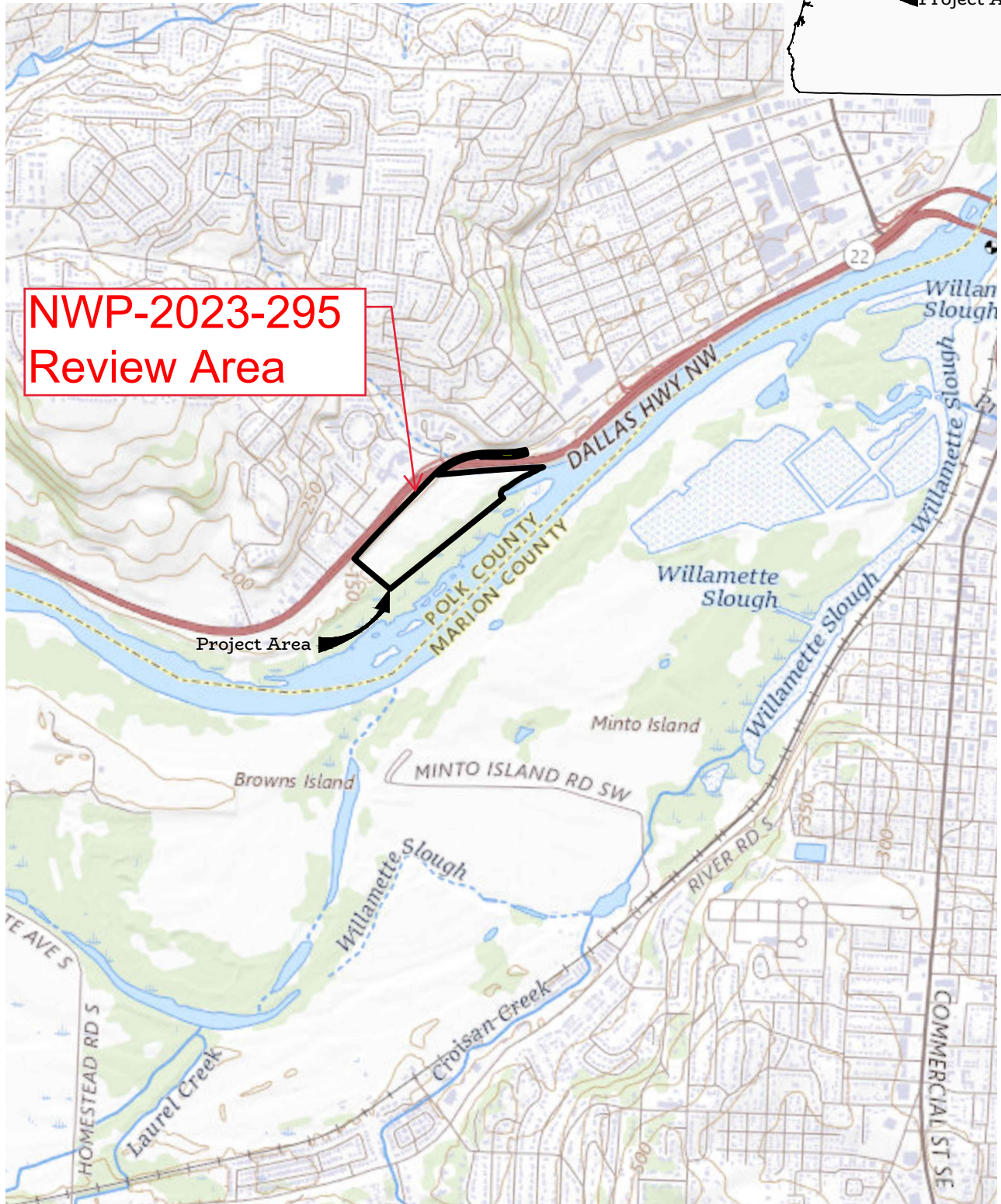
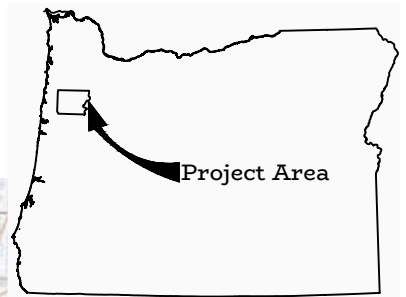
q. State of Oregon Tax Accessor Map, last accessed 15 December 2023

10. OTHER SUPPORTING INFORMATION. On 20 February 2024 we coordinated this JD with EPA Region 10 and Corps HQs. On 4 April 2024, EPA HQ and Corps HQ concurred with our findings.

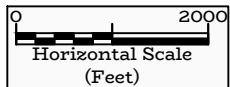
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



Directions: From Salem, exit Interstate I-5 south at Oregon Highway 99E (Exit 260A) and proceed south-southwest for approximately 4.2 miles. Proceed west on Oregon Highway 22 (over the Willamette River) to Edgewater Street NW. Project Area is accessible from private drive extending beneath Oregon Highway 22. Centroid of Project Area is approximated at 44.933906° north and -123.071236° west.



**NWP-2023-295
Review Area**



Source: U.S. Geological Survey National Map.



Wetland & Waters Delineation Report






Edgewater Commercial Property
West Salem, Polk County, Oregon
May 2023

EXHIBIT 1

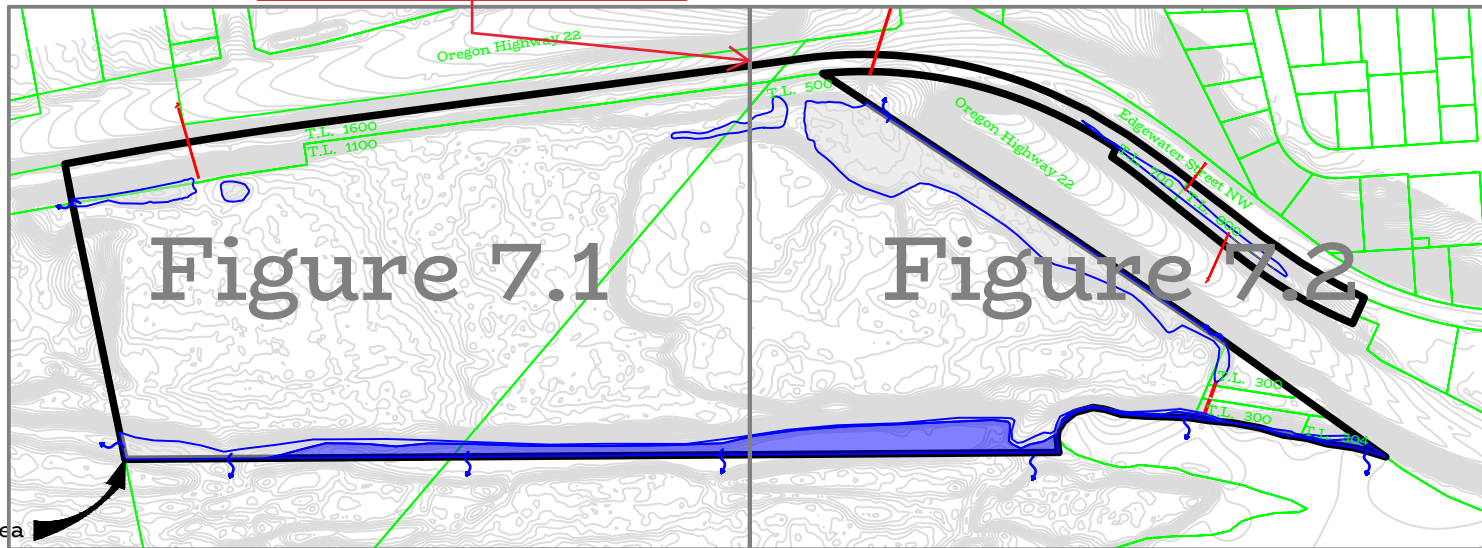
PROJECT VICINITY



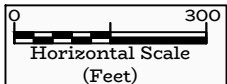
Existing Conditions Legend, Index

-  Contemporary Polk County Parcels
-  2018 1-Foot LiDAR Contours
-  Contemporary Wetland
-  Contemporary Waters
-  Identified Infrastructure

**NWP-2023-295
Review Area**



Project Area

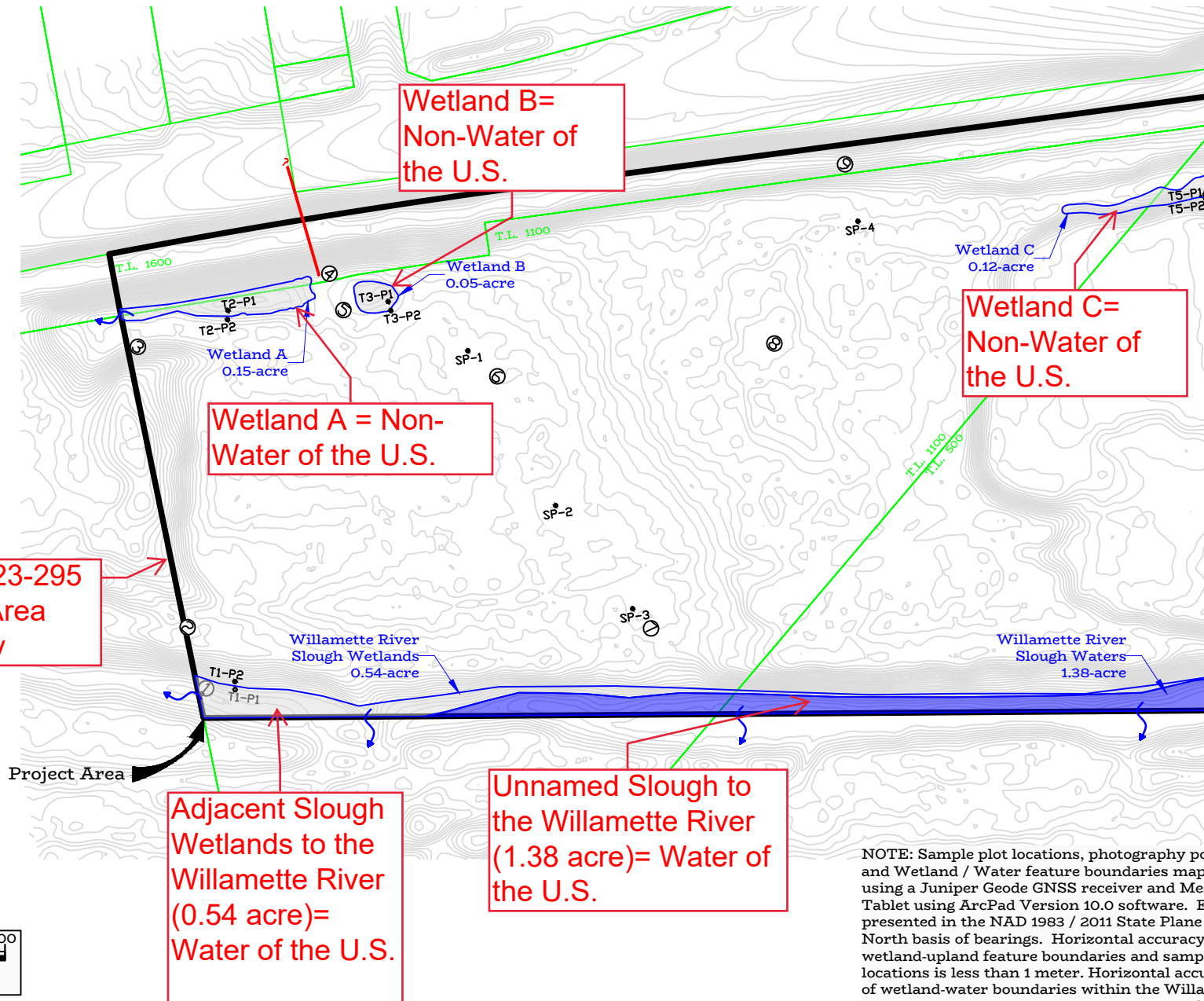


Source: NOAA LiDAR, SWALE shapefiles, and Polk County GIS.



Existing Conditions Legend

- Contemporary Polk County Parcels
- 2018 1-Foot LiDAR Contours
- Contemporary Wetland
- Contemporary Waters
- T#-P# Sample Plot Location
- # Photograph Location
- Identified Infrastructure
- Feature Extends Offsite



See Figure 7.2

NWP-2023-295 Review Area Boundary

Wetland A = Non-Water of the U.S.

Wetland B = Non-Water of the U.S.

Wetland C = Non-Water of the U.S.

Adjacent Slough Wetlands to the Willamette River (0.54 acre) = Water of the U.S.

Unnamed Slough to the Willamette River (1.38 acre) = Water of the U.S.

NOTE: Sample plot locations, photography points, and Wetland / Water feature boundaries mapped using a Juniper Geode GNSS receiver and Mesa Tablet using ArcPad Version 10.0 software. Exhibit presented in the NAD 1983 / 2011 State Plane Oregon North basis of bearings. Horizontal accuracy of wetland-upland feature boundaries and sample plot locations is less than 1 meter. Horizontal accuracy of wetland-water boundaries within the Willamette River slough is accurate to approximately 5 feet.



Source: NOAA LiDAR, SWALE shapefiles, and Polk County GIS.



Existing Conditions Legend

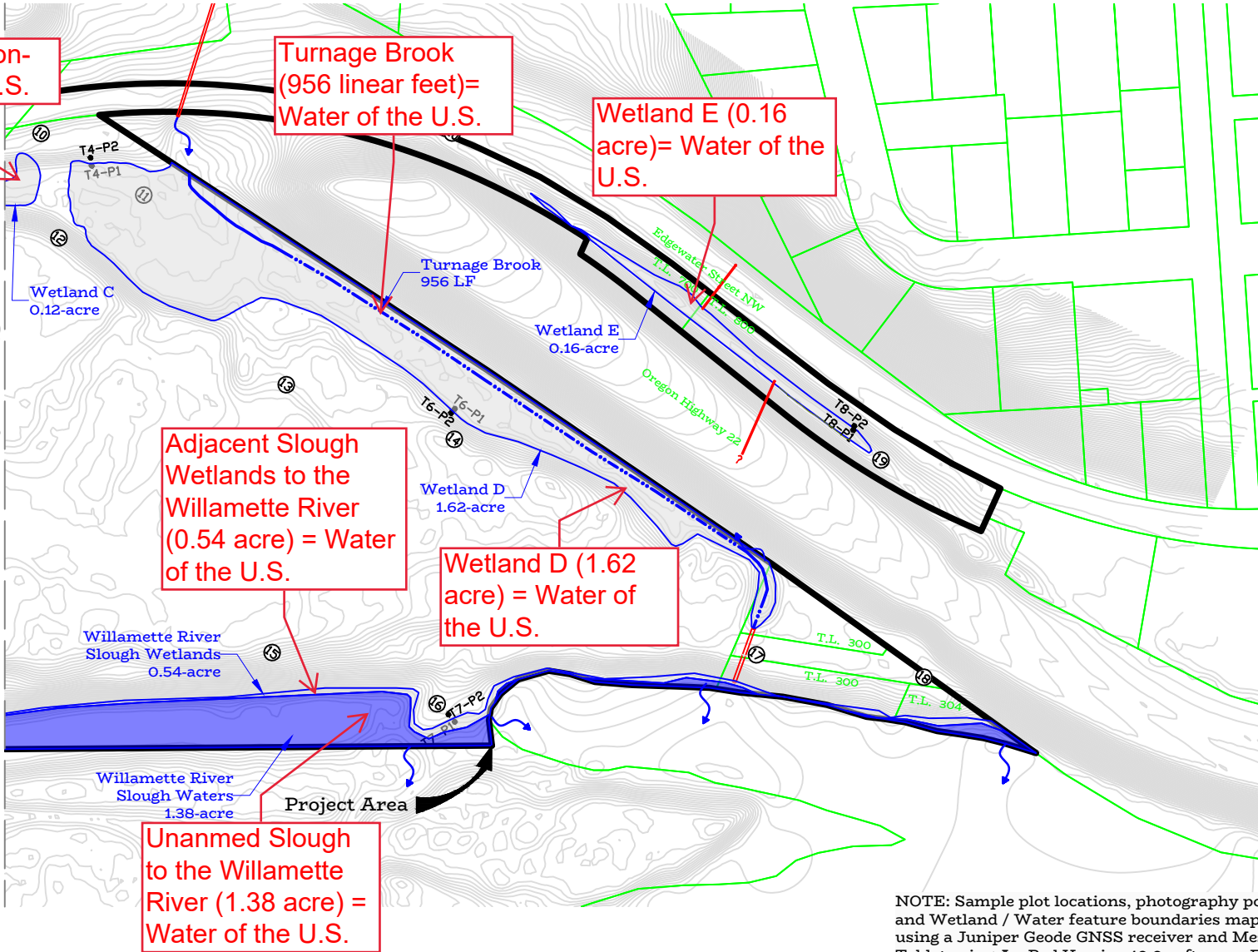
- Contemporary Polk County Parcels
- 2018 1-Foot LiDAR Contours
- Contemporary Wetland
- Contemporary Waters
- Turnage Brook Centerline
- T#-P# Sample Plot Location
- Photograph Location
- Identified Infrastructure
- Feature Extends Offsite

Wetland C= Non-Water of the U.S.

Turnage Brook (956 linear feet)= Water of the U.S.

Wetland E (0.16 acre)= Water of the U.S.

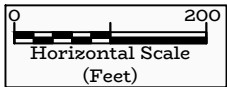
See Figure 7.1



Adjacent Slough Wetlands to the Willamette River (0.54 acre) = Water of the U.S.

Wetland D (1.62 acre) = Water of the U.S.

Unarmed Slough to the Willamette River (1.38 acre) = Water of the U.S.



NOTE: Sample plot locations, photography points, and Wetland / Water feature boundaries mapped using a Juniper Geode GNSS receiver and Mesa Tablet using ArcPad Version 10.0 software. Exhibit presented in the NAD 1983 / 2011 State Plane Oregon North basis of bearings. Horizontal accuracy of wetland-upland feature boundaries and sample plot locations is less than 1 meter. Horizontal accuracy of wetland-water boundaries within the Willamette River slough is accurate to approximately 5 feet.

Wetland & Waters Delineation Report
 Edgewater Commercial Property
 West Salem, Polk County, Oregon
 May 2023

EXHIBIT 7.1
 EXISTING CONDITIONS, WEST

