



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

CENWP-ODG

30 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-2023-620²

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. 651, 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,

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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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
 - ii. Wetland 2, non-jurisdictional
 - iii. Wetland 3, non-jurisdictional
 - iv. Wetland 4, non-jurisdictional
 - v. Wetland 5, non-jurisdictional
 - vi. Wetland 6, non-jurisdictional
 - vii. Wetland 7, non-jurisdictional
 - viii. WW_01, jurisdictional, Section 404
 - ix. WW_02, 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The Review Area is approximately 140.41 acres in size and lies within Suzanna Arlie Park (tax lots: 2500 and 4504 on tax map 18031630, lot 300 on map 18031500 and lot 300 on map 18032200) in Eugene, Lane County, Oregon; in Sections 15, 16, 21 and 22 in Township 18 South, Range 3 West. The approximate centroid of the Review Area is: 43.998096°, -123.04422°. Land use within the review

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area includes public natural areas and lands crossed by electric transmission infrastructure. Historic alterations include road construction and vegetation clearing for transmission line corridors. The Review Area consists primarily of rolling hills on southerly aspects vegetated by upland woods. A review of National Wetland Inventory (NWI) maps shows none of the seven wetland areas delineated are present in the NWI. The NWI shows two other short sections of seasonal waterways extending into the southern portion of the Review Area, however no ordinary high water mark (OHWM) indicators were found in these locations. Stand-alone upland plots were conducted to characterize these areas.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to the Review Area is the Willamette River. The Willamette River has been determined to be a TNW to river mile 183.2 by Portland District Corps of Engineers as described in the October 1993 District list of Navigable Riverways within the State of Oregon.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

WW_01: Water from WW_01 flows south through a culvert under a transmission line access road and extends offsite of the Review Area. WW_01 flows for approximately 0.3 mile until its confluence with Wild Hog Creek. Wild Hog Creek flows east for approximately 3.12 miles and discharges into Oxley Slough. Oxley Slough flows north for approximately 0.67 mile where it discharges into Berkshire Slough. The Berkshire Slough flows northwest for approximately 1.47 miles where it discharges into the Willamette River near river mile 187.

Wetland 1: Wetland 1 is an isolated depression which lacks a continuous surface connection to a relatively permanent water (RPW). For a surface flow path to exist between Wetland 1 and a downstream feature, Wetland 1 would need to exceed its storage capacity and sheet flow north for approximately 0.5 mile to the nearest mapped RPW, Russel Creek. Russel Creek then continues to flow north, northeast for approximately 1.5 miles to where it meets the nearest TNW (Willamette River).

Wetlands 2 through 7: Wetlands 2 through 7 are isolated depressions which lack a continuous surface connection to a relatively permanent water (RPW). For a surface flow path to exist between Wetlands 2-4, these features would need to overflow their storage capacity of the depressional feature and sheet flow southwest continuing through the flow path described above for WW_01 to the nearest RPW ((a)(3) tributary) before eventually flowing to the nearest TNW (Willamette River). For a surface flow path to exist between Wetlands 5-7, these features would need to

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overflow their storage capacity of the depressional feature and sheet flow southeast continuing through the flow path described above for WW_01 to the nearest RPW ((a)(3) tributary) before eventually flowing to the nearest TNW (Willamette River).

WW_02: Water from WW_02 is discontinuous and flows south to a broad, gently sloping terrace where surface waters are dispersed and infiltrate into soils. For a flow path to exist between WW_02 and the nearest TNW, water would overflow the capacity of the swale feature that consists of WW_02 and sheet flow southeast continuing through the flow path described above for WW_01 to the nearest RPW ((a)(3) tributary) before eventually flowing to the nearest TNW (Willamette River).

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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

⁶ 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.

⁷ 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):

WW_01: WW_01 is a narrow, unvegetated 3 foot wide channel that is 198 linear feet in length within the Review Area and originates within the middle portion of the site. Flow path of WW_01 is described above in Section 5. Common field indicators used to determine the OHWM during the June 27-29 onsite delineation included observing the upper limit of scour and sediment deposits, as well as noting the transition between upland and riparian-dependent vegetation. WW_01 is relatively incised and confined by steep slopes. The waterway extends beyond the Review Area to the south, and is conveyed under a transmission tower access road just outside the Review Area via a culvert. WW_01 is mapped as an “intermittent” stream according to United States Geological Survey (USGS) National Hydrography Dataset (NHD) map. No water was present in the channel at the time of the delineation. Precipitation data was analyzed by comparing rainfall amounts to historical averages (1991-2020) for the complete 2022 water year and the 2023 water year through the day of field investigation. Recent precipitation was also analyzed using a weighted scoring that compares historical averages to rainfall measured the three months prior to field investigation. A total of 0.14 inches of rain fell in the two weeks preceding the date of the onsite delineation. The 2022 water year ended September 30, 2022, at 93-percent of normal. The 2023 water year through June 27, 2022, was at 69-percent of normal. Analysis of precipitation over the preceding three months using the “Sumner” methodology determined that recent conditions were “drier”. Additionally, the Antecedent Precipitation Tool (APT) (Deters 2023) was used to analyze precipitation in a 90-day period preceding the investigation date; the APT determined that conditions were “drier than normal”. WW_01 lies in a continuous discrete channel with OHWM indicators and is a mapped “intermittent” stream that carries relatively permanent flow under above normal and normal precipitation conditions downstream to Wild Hog Creek, a tributary to an (a)(1) water. WW_01 meets the criteria described in 33 CFR 328.3(a)(3), and therefore the Corps has determined WW_01 is a water of the U.S.

- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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- 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).⁸ 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).
 - i. Wetland 1: Wetland 1 is an isolated 0.82-acre, non-tidal wetland with a palustrine emergent (PEM) Cowardin wetland classification and Slope Hydrogeomorphic (HGM) classification. Wetland 1 is located in the northeast corner of the Review Area. Vegetation within Wetland 1 consists of slough sedge, soft rush and pasture grass. Wetland 1 met hydric soil indicators (F6) and hydrology indicators (C3). The wetland occupies a gently sloping terrace amid surroundings dominated by steeper hillsides. Plot SP_05 found a restrictive layer that consisted of gravel fill from the road that divides Wetlands 1 and 2 in the northeast corner of the Review Area, and there are no culverts or pipes connecting the two wetlands. Wetland 1 extends beyond Review Area to the east and terminates where the wetland abuts an upland slope of oaks along a gravel access road near latitude/longitude 44.000151°, -123.034438° as confirmed by the requestor on 29 January 2024. The gravel access road is unimproved with no stormwater infrastructure or developed drainage ways. No discrete drainage pattern is apparent in LiDAR or aerial imagery that would carry confined flow from Wetland 1 to a downstream resource. It is also completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 1 is not a water of the U.S.
 - ii. Wetland 2: Wetland 2 is an isolated 0.2-acre, non-tidal wetland with a PEM Cowardin wetland classification and Slope HGM classification. Wetland 2 is located in the northeast corner of the Review Area. Vegetation within Wetland 2 consists of pasture grass, sedge (slough sedge, dense sedge, green sheath sedge), soft rush and Himalayan blackberry. Wetland 2 met hydric soil

⁸ 88 FR 3004 (January 18, 2023)

- indicators (F6) and hydrology indicators (C3). The wetland occupies a gently sloping terrace amid surroundings dominated by steeper hillsides. Plot SP_05 found a restrictive layer that consisted of gravel fill from the road that divides Wetlands 1 and 2 in the northeast corner of the Review Area, and there are no culverts or pipes connecting the two wetlands. Wetland 2 is entirely contained within Review Area. It is also completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 2 is not a water of the U.S.
- iii. Wetland 3: Wetland 3 is an isolated 0.11-acre, non-tidal wetland with a PEM Cowardin wetland classification and Slope HGM classification. Wetland 3 is located in the eastern portion of the Review Area. Vegetation within Wetland 3 consists of slough sedge, rushes and pea fruit rose among upland grassland. Wetland 3 met hydric soil indicators (F6) and hydrology indicators (C3) Old well catchment is located in low portion of wetland. Wetland 3 is entirely contained within Review Area. There is an old well catchment that is located within the low portion of the wetland. Wetland 3 is completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 3 is not a water of the U.S.
- iv. Wetland 4: Wetland 4 is an isolated 0.03-acre, non-tidal wetland with a PEM Cowardin wetland classification and Depression HGM classification. Wetland 4 is located in the middle portion of the Review Area. Vegetation within Wetland 4 consists of spreading rush, pasture grasses and English hawthorn. The adjacent uplands are woodlands of oak and bigleaf maple. Wetland 4 met hydric soil indicators (F6) and hydrology indicators (C3). Wetland 4 occupies an old road grade and is entirely contained within Review Area. It is also completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Wetland 4 is located upslope from WW_01, however no discrete feature is present in LiDAR or aerial imagery that would carry flow from Wetland 4 to WW_01. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 4 is not a water of the U.S.
- v. Wetland 5: Wetland 5 is an isolated 0.07-acre, non-tidal wetland with a PEM Cowardin wetland classification and Slope HGM classification. Wetland 5 is located in the northern portion of the Review Area. Vegetation within Wetland

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- 5 consists of soft rush and spreading rush. Wood chip mulch covers portions of the wetland. Wetland 5 met hydric soil indicators (F6) and hydrology indicators (C3). The wetland occupies a Sloping terrace bound by upland slopes on north, east and south sides and fill from gravel access road on the west side. Wetland 5 is entirely contained within Review Area. It is also completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 5 is not a water of the U.S.
- vi. Wetland 6: Wetland 6 is an isolated 0.08-acre, non-tidal wetland with a palustrine scrub-shrub (PSS) Cowardin wetland classification and Slope HGM classification. Wetland 6 is located in the western portion of the Review Area. Vegetation within Wetland 6 consists of pea fruit rose, poison oak and Oregon ash. Wetland 6 met hydric soil indicators (F6) and hydrology indicators (C3). The wetland occupies a gently sloping terrace amid surroundings dominated by steeper hillsides. Wetland 6 extends beyond Review Area to the southeast along a dry slope that eventually dissipates before reaching an access road. There are no culverts or pipes through the road connecting Wetland 6 to any downstream resources. Wetland 6 is also completely separated from and without a continuous surface connection to the other six wetlands and two linear features within the Review Area. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 6 is not a water of the U.S.
- vii. Wetland 7: Wetland 7 is an isolated 0.03-acre, non-tidal wetland with a PEM/PSS Cowardin wetland classification and Slope HGM classification. Wetland 7 is located in the middle portion of the Review Area. Vegetation within Wetland 7 consists of soft rush, spreading rush, pea fruit rose, teasel and Himalayan blackberry. Wetland 7 met hydric soil indicators (F3,F6) and hydrology indicators (C3,D2). The wetland occupies a gently sloping terrace amid surroundings dominated by steeper hillsides. Wetland 7 is entirely contained within Review Area. Wetland 7 drains through WW_02 to the southwest, however, a discrete pathway or channel is lost as WW_02 leaves the Review Area and loses channel signatures where the slope lessens and WW_02 disperses into uplands, as shown on City of Eugene aerial imagery, Oregon Department of Mining and Minerals Industries LiDAR imagery, and as described by the Requestor's additional information provided on 29 January 2024. Based on the lack of continuous surface connection to a paragraph (a)(1) water or RPW, the Corps has determined that Wetland 7 is not a water of the U.S.

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viii. WW_02: WW_02 is a narrow, unvegetated 3 foot wide channel that is 99 linear feet in length and originates within the middle portion of the Review Area. WW_02 is mapped as an “intermittent” stream according to USGS NHD map. A portion of WW_02 lies within Wetland 7 and is positioned on a terrace that has been graded for road access and use. WW_02 extends beyond the Review Area to the southwest and is discontinuous, losing channel signatures where the slope lessens and any runoff can infiltrate. No open connections were discovered that connects WW_02 to downstream RPW’s or wetlands. The slope swale containing WW_02 in its upper reaches eventually reaches a broader, gently sloping terrace that did not contain a continuous channel, and disperses into uplands. WW_02 captures runoff from the gravel access just upslope from the channels head. No water was discovered at the time of the delineation. Precipitation data was analyzed by comparing rainfall amounts to historical averages (1991-2020) for the complete 2022 water year and the 2023 water year through the day of field investigation. Recent precipitation was also analyzed using a weighted scoring that compares historical averages to rainfall measured the three months prior to field investigation. A total of 0.14 inches of rain fell in the two weeks preceding the date of the onsite delineation. The 2022 water year ended September 30, 2022, at 93-percent of normal. The 2023 water year through June 27, 2022, was at 69-percent of normal. Analysis of precipitation over the preceding three months using the “Sumner” methodology determined that recent conditions were “drier”. Additionally, the Antecedent Precipitation Tool (APT) (Deters 2023) was used to analyze precipitation in a 90-day period preceding the investigation date; the APT determined that conditions were “drier than normal”. Based on the lack of relatively permanent flow to a downstream (a)(1)-(3) water, WW_02 does not meet the criteria defined in 33 CFR 328.3(a)(3). Therefore, the Corps has determined WW_02 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 (Desktop) Determination. Determination Date: 5 April 2024
- b. *Wetland Delineation Report for Suzanna Arlie Park Improvements Lane County, Oregon*; dated September 1, 2023.
- c. Portland District Corps National Regulatory Viewer (NRV) eGIS mapping tools accessed by Corps staff on 12 January 2024; National Hydrography Dataset (NHD), National Wetland Inventory (NWI), Oregon Department of State Lands

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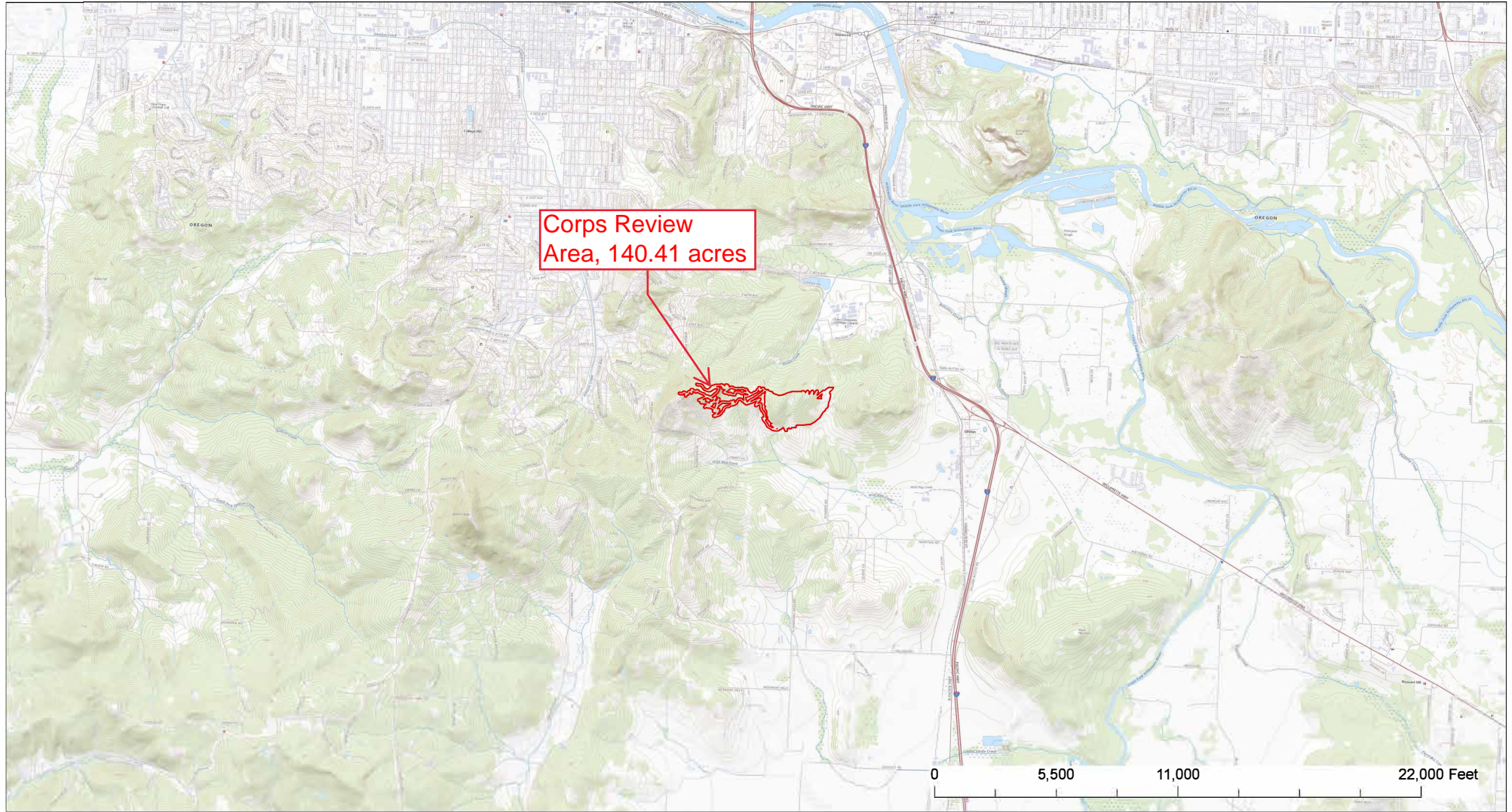
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(DSL) Streams, National Resources Conservation Service (NRCS) Hydric Soils, Oregon Department of Geology and Mineral Industries LiDAR DTM.

- d. USGS Eugene East 2020 and Creswell 2020 Quadrangle Maps, Oregon – Lane County, 7.5- Minute Series, retrieved from <https://ngmdb.usgs.gov/topoview/viewer/#4/40.00/-100.00> on 12 January 2024.
- e. Google Earth Aerial Imagery. Accessed 12 January 2024.
- f. City of Eugene “EugMaps” webmapping application last accessed 23 April 2024

10. OTHER SUPPORTING INFORMATION. On 5 April 2024 we coordinated this JD with EPA Region 10. On 26 April 2024 the EPA 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.



**Figure 1:
Overview
Map**
8/23/2023

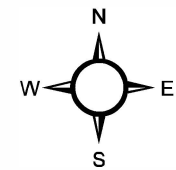
**Suzanne Arlie Park
Eugene Parks and Open Space
Wetland Delineation**
Eugene, Lane County, Oregon

Legend

 Review Area

Notes:

1. Topographic basemap courtesy USGS The National Map, 2023
2. Native size of map layout is 11"x17".



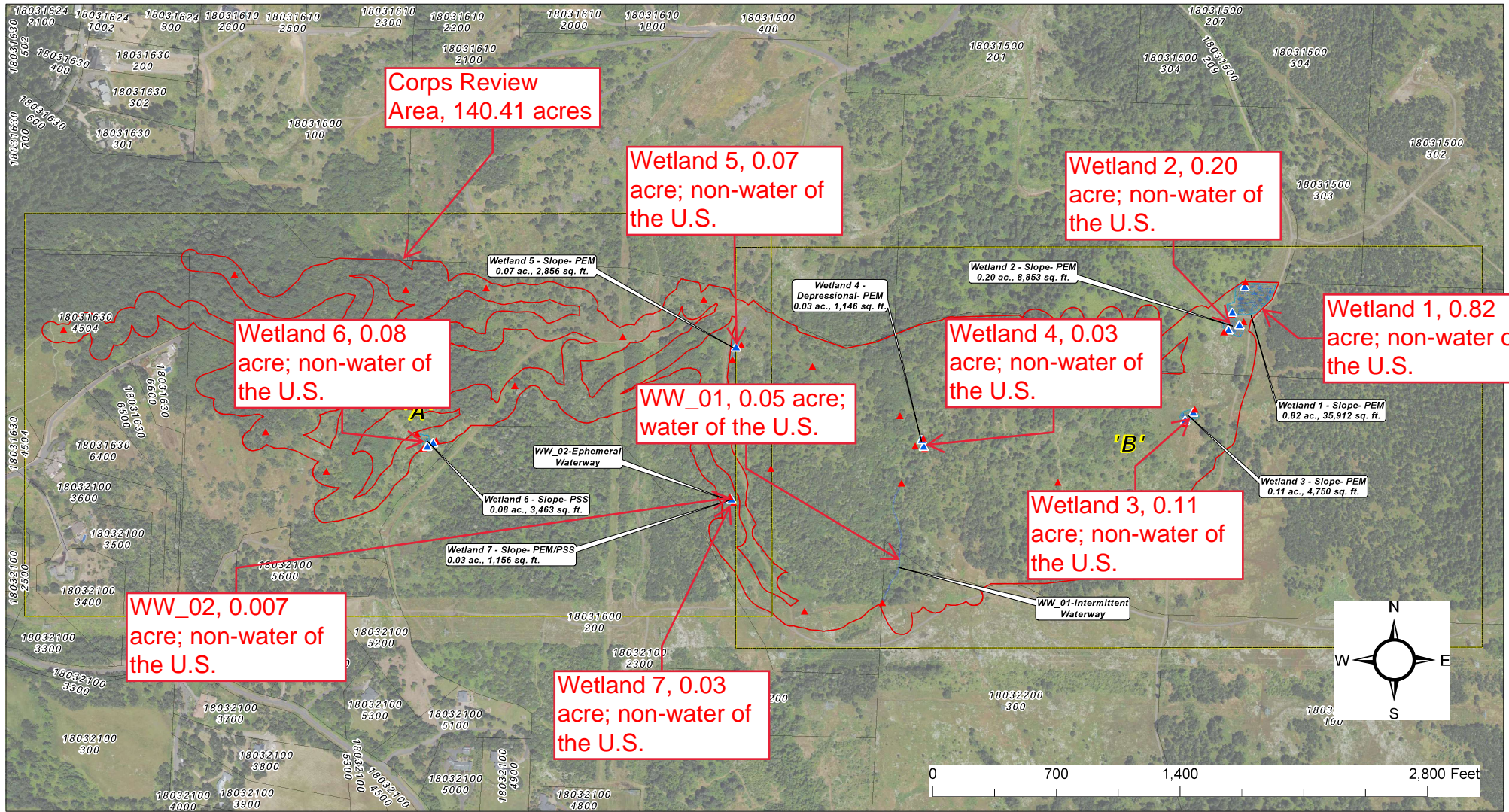


Figure 6:
Wetland
Delineation
Map 1/3
(Overview)
8/31/2023

**Suzanne Arlie Park
Eugene Parks and Open Space
Wetland Delineation**
Eugene, Lane County, Oregon

- Legend**
- Detail Map
 - Tax Lots
 - W Wetland
 - S Sample Plot
 - ▲ Upland
 - ▲ Wetland
 - W Waterway

- Notes:**
1. All wetland points and boundary features were collected with a resource grade GPS and have a horizontal accuracy of 0.5 meter or less.
 2. Tax Lot boundaries provided by Lane County, assumed accurate to within 1-meter.
 3. Native size of map layout is 11"x17".
 4. Aerial imagery courtesy Lane County, 2022 (flight date 5/17/2022)

