



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

CENWP-ODG

3 October 2025

MEMORANDUM FOR RECORD

SUBJECT: U.S. Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; 88 FR 3004 (18 January 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (8 September 2023),¹ NWP-2025-00064 (MFR #1 of #1).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 18 January 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 (18 January 2023) ("2023 Rule"). On 8 September 2023 the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", 88 FR 61964 (8 September 2023) 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). [When utilizing this version of section 1.a., DELETE the dry land section 1.a, above]
 - i. WL1, non-jurisdictional.
 - ii. WL2, non-jurisdictional.
 - iii. Ditch 1, non-jurisdictional.
 - iv. Ditch 2, non-jurisdictional.

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (18 January 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (8 September 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The review area covers approximately 4.5 acres of disturbed grassland and portions of paved access road on Portland-Hillsboro Airport (HIO) property west of the existing Air Traffic Control Tower (ATCT). The review area is located at the Federal Aviation Administration (FAA) building, 3119 NR Cornell Rd, Hillsboro, Washington County, Oregon, Section 28, Township 1 N, Range 2 W, 45.538056°, -122.95245° (latitude, longitude).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Dairy Creek is the nearest TNW. Dairy Creek has been determined to be a TNW to river mile 8.3 as described in the Corps' Portland District October 1993 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. WL1 and WL2 discharge through constructed ditches into the HIO stormwater conveyance system, maintaining a continuous surface water (CSC) connection for approximately 1.2 miles downstream to the Glencoe Swale. Glencoe Swale flows east-southeast for approximately 2.7 miles before its confluence with McKay Creek. McKay Creek continues southward for approximately 1.4 miles to its confluence with Dairy Creek (TNW).
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 10.⁸ 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 at 33 CFR § 328.3(a)(1) through (a)(5), 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

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.

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 § 329.14 to make a determination that a water is a navigable water of the United States subject to Section 10 of the RHA.

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

Ditch 1:

Determination: Ditch 1 is determined to be a non-jurisdictional stream because it fails to meet the criteria related to bed, bank, ordinary high-water mark (OHWM), and flow characteristics necessary to be considered a jurisdictional tributary.

- Lack of Bed, Bank, and OHWM: According to the Waters and Wetland Delineation Report, Ditch 1 lacks discernible bed, bank, and OHWM features. Analysis of historical imagery (Google Earth aerial imagery) and Light Detection

⁹ 88 FR 3004 (18 January 2023)

and Ranging (LiDAR) data (Corps' National Regulatory Viewer 3DEM) supports this determination.

- Lack of Relatively Permanent Flow: The Waters and Wetland Delineation Report indicates that Ditch 1 does not carry relatively permanent flow.
- Indiscernible Contribution to a TNW: While Ditch 1 exits the review area via a discrete feature, it is indiscernible whether this aquatic feature contributes flow to a TNW due to the presence of the extensive Portland-Hillsboro Airport stormwater system.

Ditch 2:

- Determination: Ditch 2 is determined to be a non-jurisdictional stream because it fails to meet the criteria related to bed, bank, OHWM, and flow characteristics necessary to be considered a jurisdictional tributary.
- Lack of Bed, Bank, and OHWM: According to the Waters and Wetland Delineation Report, Ditch 2 lacks discernible bed, bank, and OHWM features. Analysis of historical imagery (Google Earth aerial imagery) and LiDAR data (Corps' National Regulatory Viewer 3DEM) supports this determination.
- Lack of Relatively Permanent Flow: The Waters and Wetland Delineation Report indicates that Ditch 2 does not carry relatively permanent flow.
- Indiscernible Contribution to a TNW: While Ditch 2 exits the review area via a discrete feature, it is indiscernible whether this aquatic feature contributes flow to a TNW due to the presence of the extensive Portland-Hillsboro Airport stormwater system, according to the Portland-Hillsboro Airport stormwater drainage map.

WL1:

- Determination: Wetland 1 is determined to be a non-jurisdictional wetland because it lacks a CSC to a downstream (a)(1), (a)(2), or (a)(3) water. Wetland 1 is also not abutting an (a)(1), (a)(2), or (a)(3) water.
- Lack of CSC: Wetland 1 drains to non-relatively permanent Ditch 1, as documented in the Waters and Wetland Delineation Report. Ditch 1 then flows into the extensive Portland-Hillsboro Airport stormwater system, according to the Portland-Hillsboro Airport drainage map. The stormwater system represents a discrete feature that does not provide a CSC to a downstream TNW.

WL2:

- Determination: Wetland 2 is determined to be a non-jurisdictional wetland because it lacks a CSC to a downstream (a)(1), (a)(2), or (a)(3) water. Wetland 2 is also not abutting an (a)(1), (a)(2), or (a)(3) water.
- Lack of CSC: Wetland 2 drains to non-relatively permanent Ditch 2, as documented in the Waters and Wetland Delineation Report. Ditch 2 then flows into the extensive Portland-Hillsboro Airport stormwater system, according to the

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Portland-Hillsboro Airport drainage map. The stormwater system represents a discrete feature that does not provide a CSC to a downstream TNW.

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. Desktop Review conducted 2 October 2025
- b. Aerial Imagery: Google Earth assessed July 2025
- c. National Regulatory Viewer (NRV)
- d. "Waters and Wetland Delineation Report Portland-Hillsboro Airport (HIO)" dated January 2025.
- e. "Navigable Riverways within the State of Oregon, Portland District – Corps of Engineers" dated October 1993 accessed 2 October 2025 at https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable_US_Waters_Oregon_1993.pdf

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.

APPENDIX A | FIGURES

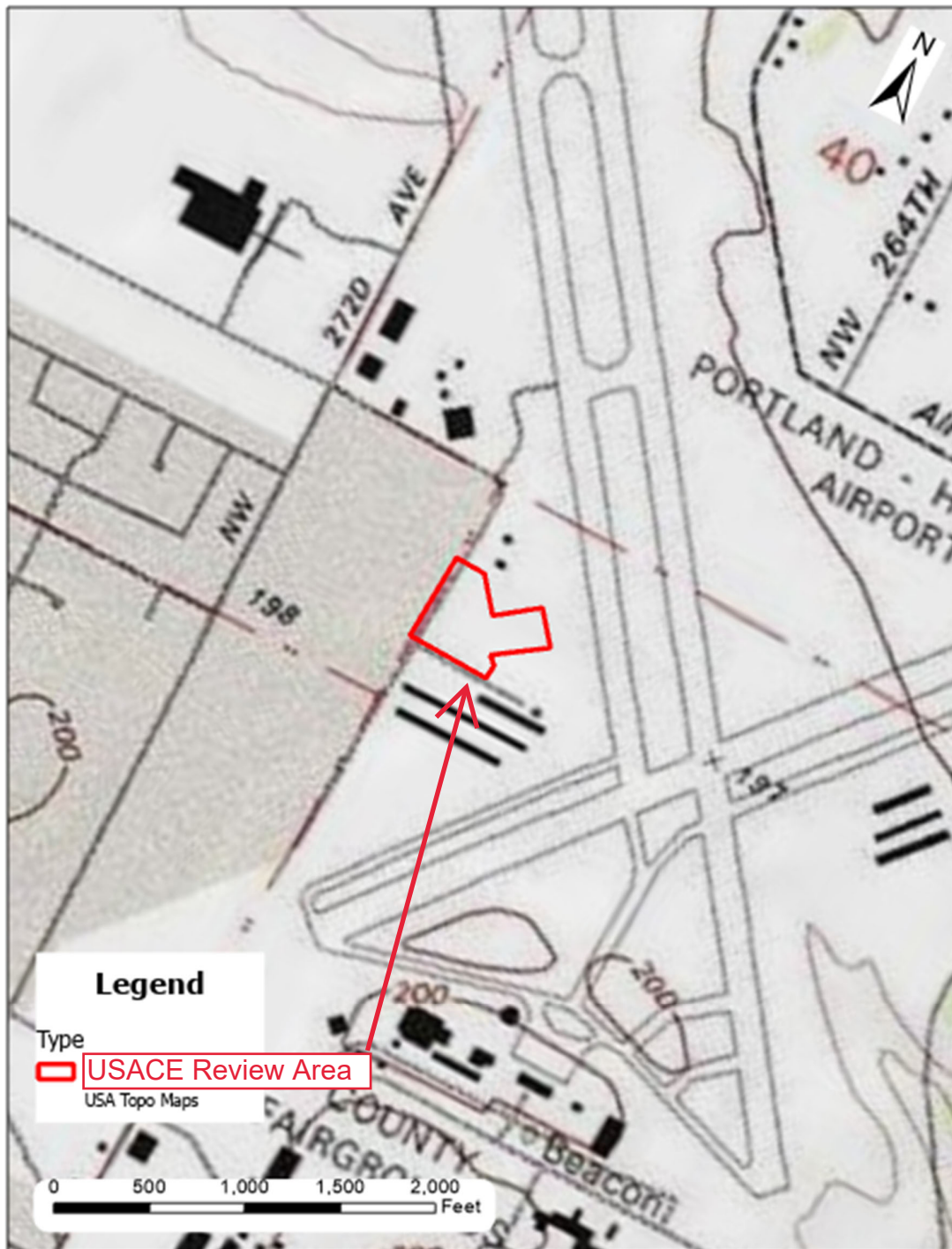


Figure 1. Waters and Wetland Delineation Study Area



Figure 5. HIO State and Local Wetlands Inventory (LWI)