The Impacts of Sackett on Project Implementation: Navigating the Permitting Pathway

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Stewardship Solutions

Introduction

The agencies have been clear that since the Sackett decision they are interpreting the definition of WOTUS consistent with Sackett. Implementing this interpretations involves navigating through the legal and regulatory landscape to ensure compliance with the updated rule while managing process, budgets, and timelines.

Agency Tools
to address issue that arise from the ruling:

- Jurisdictional Determinations
- Clean Water Act Permits
- Guidance from the Agencies
- Notice and comment rulemaking and
- Agency forms and training Material

2023 Timeline

January 2023	March 2023	May 2023	June 2023	September 2023
2023 Rule published – "Revised Definition of "Waters of the United State"	2023 Rule went into effect	Sackett Supreme Court Decision – **All Jurisdictional Determination were put on hold**.	EPA and USACE announce plans to issue a final rule amending the 2023 rule.	Final rule amending the 2023 rule: publication and effective date

Jurisdictional Determinations

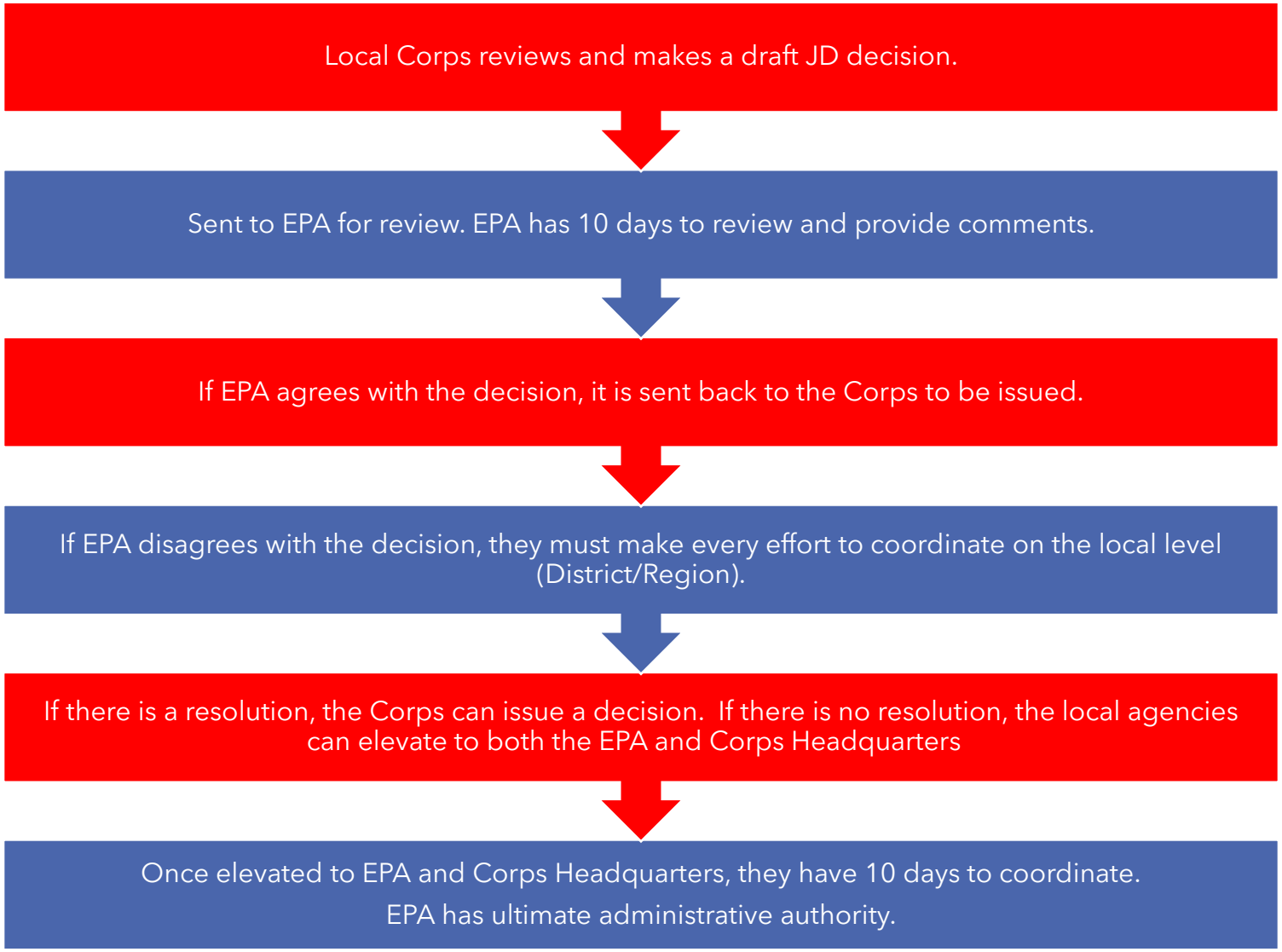
An approved jurisdictional determination ("AJD") is a document provided by the Corps stating the presence or absence of “waters of the United States” on a parcel or a written statement and map identifying the limits of “waters of the United States” on a parcel. *See* 33 C.F.R. § 331.2. Under existing Corps’ policy, AJDs are generally valid for five years unless new information warrants revision prior to the expiration date. See U.S. Army Corps of Engineers, Regulatory Guidance Letter No. 05–02, § 1(a), p. 1 (June 2005) (Regulatory Guidance Letter (RGL) 05–02).

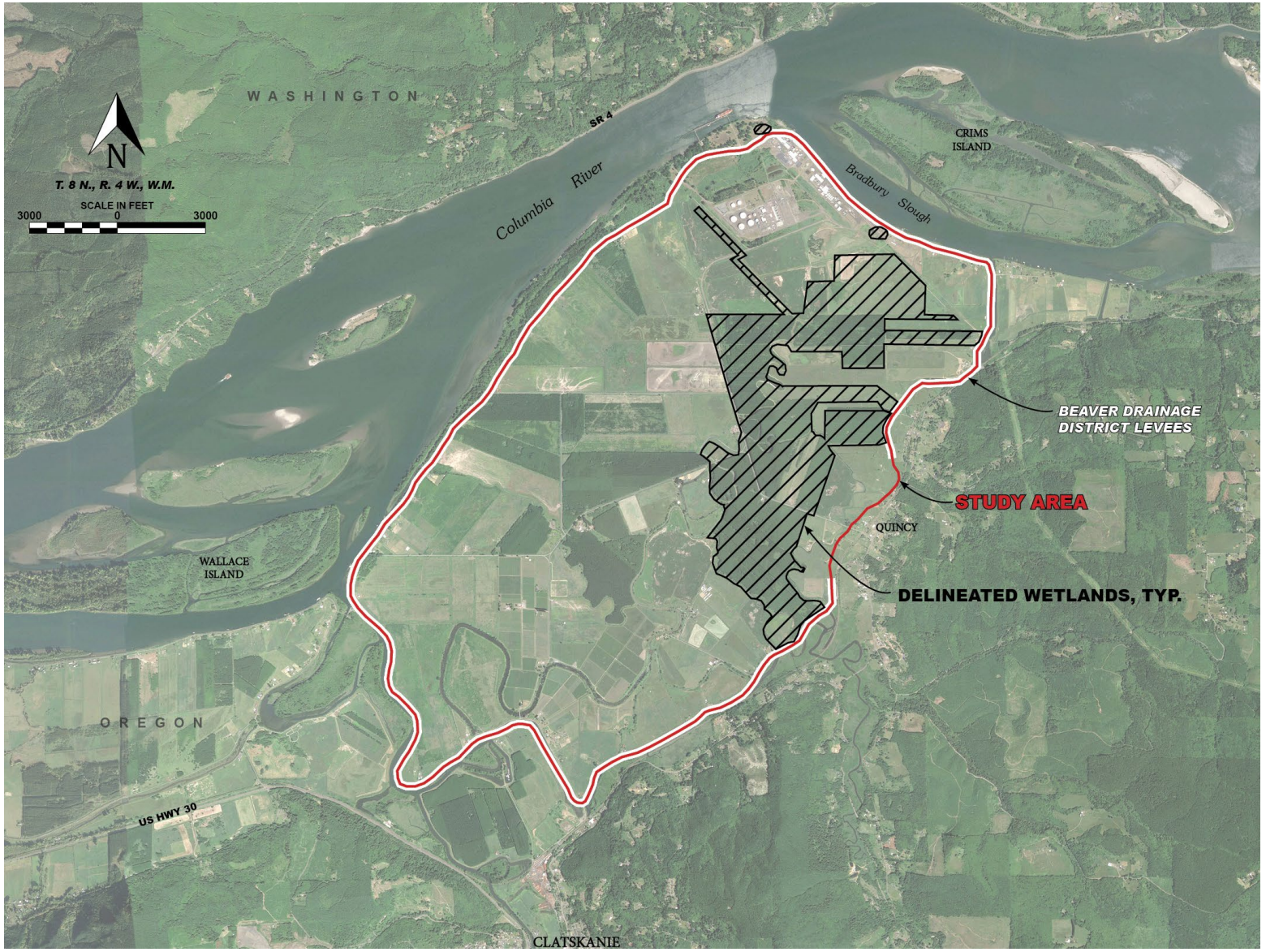
JOINT COORDINATION MEMORANDUM TO THE FIELD BETWEEN THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS (CORPS) AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

- All draft approved JDs assessing wetlands under paragraph (a)(4) and waters under paragraph (a)(5) of the 2023 rule, as amended shall be coordinated at the local level in accordance with the procedures in this memorandum.

- EPA retains ultimate administrative authority to construe geographic jurisdiction and EPA HQ may notify Corps HQ or OASACW that it plans to make a project-specific jurisdictional decision covered by the draft approved JD, and consistent with 33 CFR 325.9(b).

Current AJD Review Process





Case Study: Beaver Drainage District

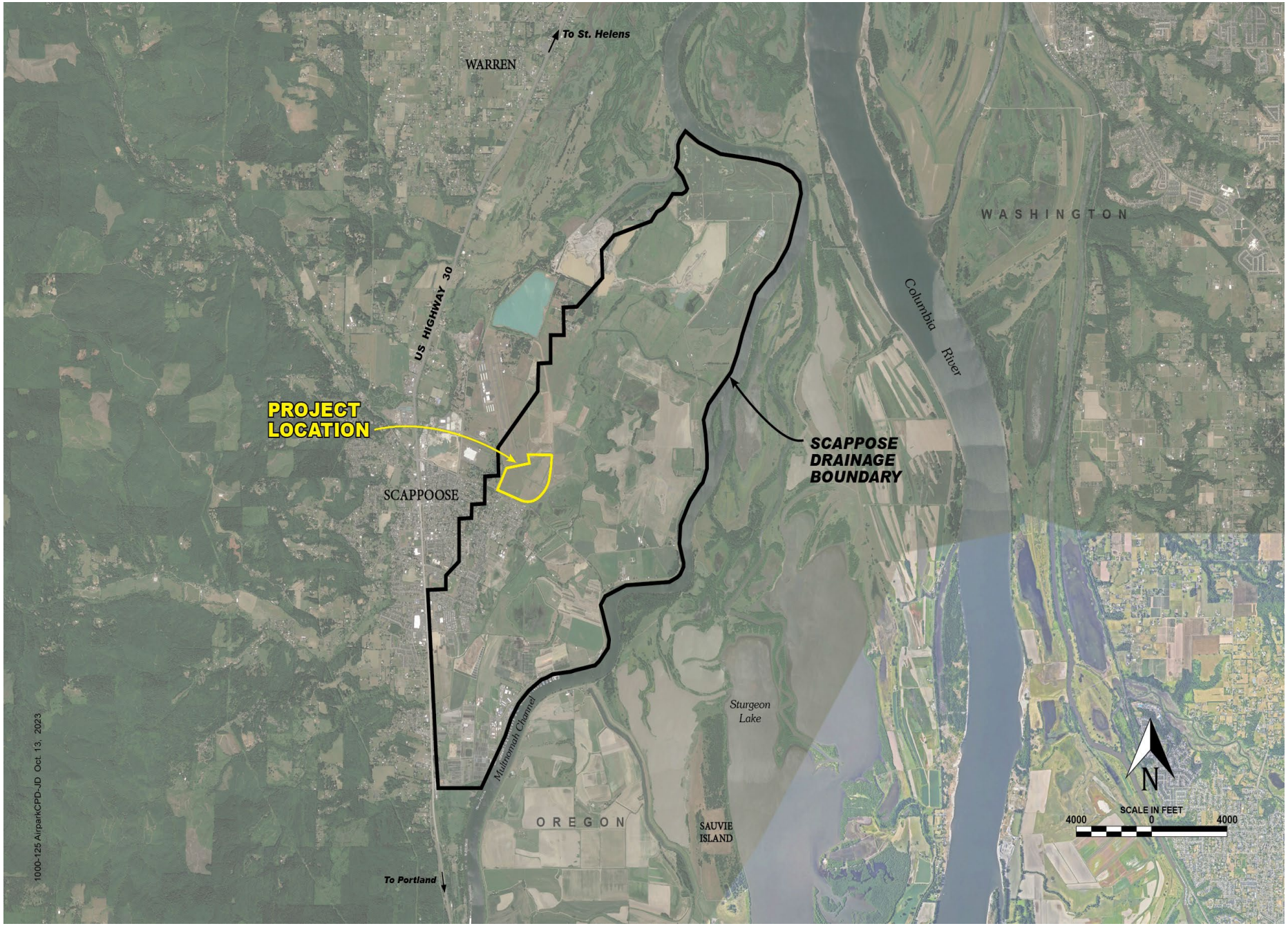
Fresh Water Inlet

Pump Station

Pump Station

Pipelines

Scappoose Drainage District



For More information:

https://www.epa.gov/

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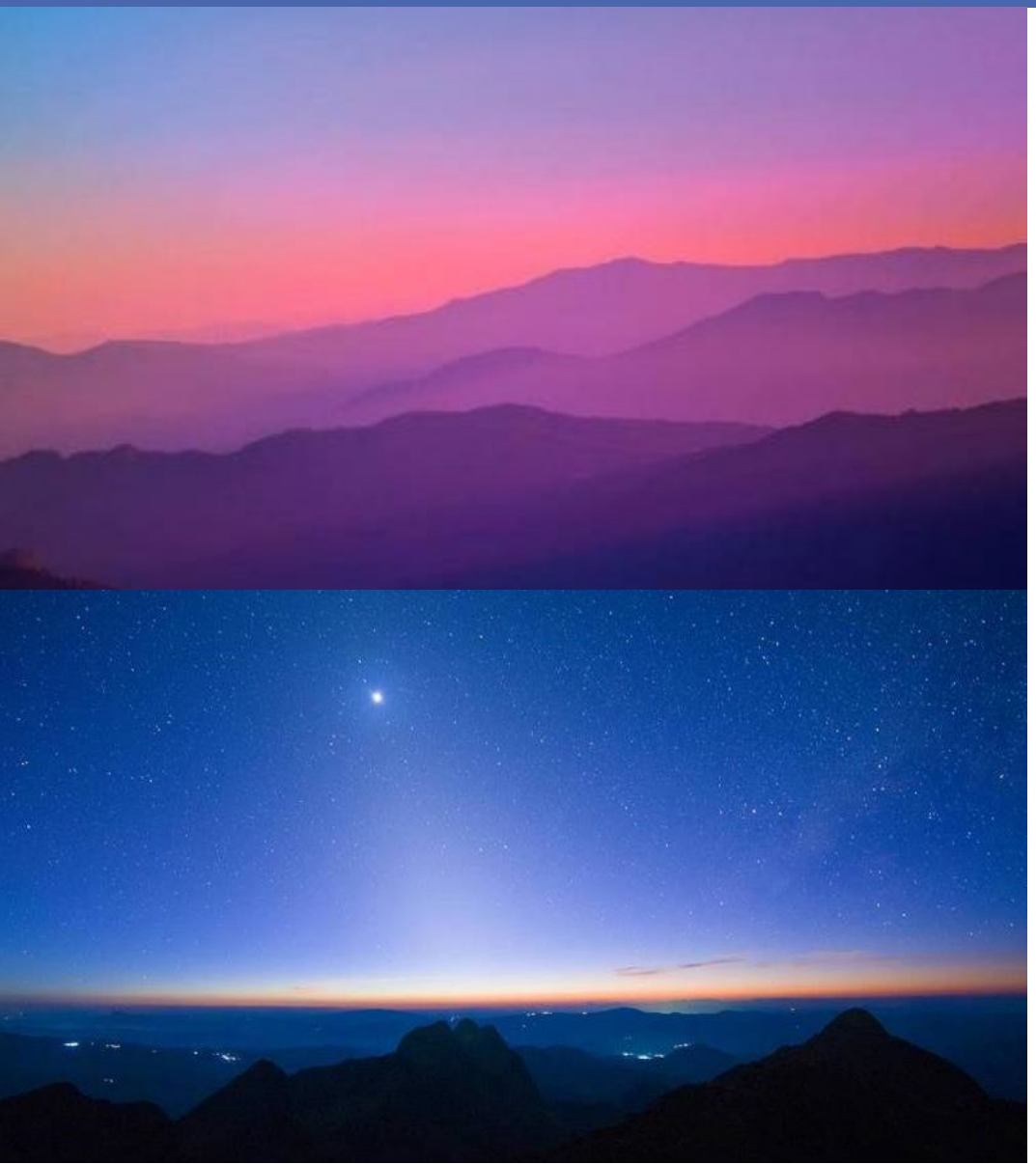

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