

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 30 September 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Honolulu District, AES Mountain View Solar LLC, Mountain View Solar + Storage Project, Kawiwi Stream, Wai'anae, Island of O'ahu, Hawai'i

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Hawai'i County/parish/borough: Honolulu City: Wai'anae
Center coordinates of site (lat/long in degree decimal format): Lat. 21.460261° **N**, Long. -158.177098° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Poka'i Bay

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): 200600

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 13 SEP 2021

Field Determination. Date(s): 07 JUL 2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: "Kawiwi Stream" (western branch)

The portion of "Kawiwi Stream" (western branch) within the AOR is located on the northwestern portion of the AOR. Aerial imagery was reviewed during the rain event period (see below) and no observation of flow was present. "Kawiwi

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

Stream” (western branch) is present, however is not a named stream on the 2017 USGS Wai’anae quadrangle topographic map data layer for Google Earth Pro within the AOR. The terrain data layer for Google Earth Pro indicates that “Kawiwi Stream” (western branch) has a general topographic gradient to the south, towards Poka’i Bay (a TNW).

The following information provides the supporting documentation in regard to the Corps determination:

“Kawiwi Stream” (western branch) is shown on the EPA Waters Layer in Google Earth. The EPA Watershed Report indicates that the drainage area for the “Kawiwi Stream” (western branch) is 0.27 square miles.

“Kawiwi Stream” (western branch) is indicated on StreamStats.usgs.gov which identifies the total drainage area to be 0.28 square miles with an average annual precipitation of 25.8 inches. Since the annual rainfall amount is low, and no hydrological flow was observed on the 11 MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the system does not support perennial or intermittent surface water flow.

“Kawiwi Stream” (western branch) is mapped on the USFWS NWI data layer as an intermittent stream.

The Corps has determined that “Kawiwi Stream” (western branch) is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to Waters of the U.S., or 8) prior converted cropland. “Kawiwi Stream” (western branch) does not have a significant nexus to a RPW or TNW.

“Kawiwi Stream” (western branch) is an ephemeral feature that does not contribute surface water flow to a downstream water identified as a Traditionally Navigable Water (TNW) or a Relatively Permanent Water (RPW) that contributes to a TNW in a typical year either directly or indirectly. “Kawiwi Stream” (western branch) is not a Water of the U.S.

“Kawiwi Stream” (middle branch)

The portion of “Kawiwi Stream” (middle branch) within the AOR is located on the northeastern portion of the AOR. Aerial imagery was reviewed during the rain event period (see below) and no observation of flow was present. “Kawiwi Stream” (middle branch) is present on the 2017 USGS Wai’anae quadrangle topographic map data layer for Google Earth Pro within the AOR. The terrain data layer for Google Earth Pro indicates that “Kawiwi Stream” (middle branch) has a general topographic gradient to the southwest, towards Poka’i Bay (a TNW).

As shown in USFWS National Wetlands Inventory data layer for Google Earth Pro, “Kawiwi Stream” (middle branch) flows southwest to Poka’i Bay through the central portion of the AOR. Aerial imagery was reviewed during a 1-inch rain event period (see below) and no observation of hydrological flow was present. The terrain data layer for Google Earth Pro indicates that “Kawiwi Stream” (middle branch) has a general topographic gradient to the southwest, towards Poka’i Bay.

The EPA Water Features GeoViewer layer on Google Earth depicts “Kawiwi Stream” (middle branch) as Kawiwi Stream. The watershed report (last updated MAR 2019) indicates that Kawiwi Stream is a first order stream. According to the GeoViewer, Kawiwi Stream (middle branch) catchment is approximately 0.17 square miles.

“Kawiwi Stream” (middle branch) is shown on 2017 USGS Quadrangle topographic map data layer for Google Earth Pro as an intermittent stream.

USACE’s Antecedent Precipitation Tool (APT) for 07 JUL 2021 (the date of the site visit) indicated that climatic conditions were drier than normal.

The Corps used the Waianae Kawiwi Station as a precipitation reference due to its proximity (0.5 mile east) for “Kawiwi Stream” (middle branch) on the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 23.02 inches for “Kawiwi Stream” (western branch). The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the “Kawiwi Stream” (middle branch) does not support perennial or intermittent surface water flow and does not contribute flow to a downstream TNW.

In accordance with 33 CFR 328, based on the information above, the Corps has determined that “Kawiwi Stream” (middle branch) is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to

Waters of the U.S., or 8) prior converted cropland. “Kawiwi Stream” (middle branch) does not have a significant nexus to a RPW or TNW. The Corps has determined that “Kawiwi Stream” (middle branch) is an ephemeral feature.

“Kawiwi Stream” (middle branch) is not a Water of the U.S.

“Kawiwi Stream” (eastern branch)

The portion of “Kawiwi Stream” (eastern branch) within the AOR is located on the southeastern portion of the AOR. Aerial imagery was reviewed during the rain event period (see below) and no observation of flow was present. “Kawiwi Stream” (eastern branch) is present on the 2017 USGS Wai’anae quadrangle topographic map data layer for Google Earth Pro within the AOR. The terrain data layer for Google Earth Pro indicates that “Kawiwi Stream” (eastern branch) has a general topographic gradient to the southwest, towards Poka’i Bay (a TNW).

The EPA Water Features GeoViewer layer on Google Earth depicts “Kawiwi Stream” (eastern branch) as a stream. The watershed report (last updated MAR 2019) indicates that “Kawiwi Stream” (eastern branch) is a first order stream. According to the GeoViewer, the “Kawiwi Stream” (eastern branch) catchment is approximately 0.19 square miles.

“Kawiwi Stream” (eastern branch) is shown on 2017 USGS Quadrangle topographic map data layer for Google Earth Pro as an intermittent stream.

USACE’s Antecedent Precipitation Tool (APT) for 07 JUL 2021 (the date of the site visit) indicated that climatic conditions were drier than normal.

The Corps used the Waianae Kawiwi Station as a precipitation reference due to its proximity (0.5 mile east) to “Kawiwi Stream” (eastern branch) on the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 23.02 inches for “Kawiwi Stream” (middle branch). The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the “Kawiwi Stream” (middle branch) does not support perennial or intermittent surface water flow.

In accordance with 33 CFR 328, based on the information above, the Corps has determined that “Kawiwi Stream” (eastern branch) is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to Waters of the U.S., or 8) prior converted cropland. “Kawiwi Stream” (eastern branch) does not have a significant nexus to a RPW or TNW. The Corps has determined that “Kawiwi Stream” (eastern branch) is an ephemeral feature and not a Water of the U.S.

“Gully 1”

“Gully” 1 is located on the northwestern portion of the AOR and flows south. As “Gully 1” loses elevation on the AOR, it also loses bed and bank. Aerial imagery was reviewed during the rain event period (see below) and no observation of hydrological flow was present. The terrain data layer for Google Earth Pro indicates that “Gully 1” has a general topographic gradient to the south, towards Poka’i Bay.

“Gully 1” is not shown on the EPA Water Features GeoViewer layer on Google Earth Pro.

“Gully 1” is not shown on 2017 USGS Quadrangle topographic map data layer for Google Earth Pro.

USACE’s Antecedent Precipitation Tool (APT) for 07 JUL 2021 (the date of the site visit) indicated that climatic conditions were drier than normal.

The Corps used the Waianae Kawiwi Station as a precipitation reference due to its proximity (0.5 mile east) to “Gully 1” on the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 23.02 inches for “Gully 1”. The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the “Gully 1” does not support perennial or intermittent surface water flow.

In accordance with 33 CFR 328, based on the information above, the Corps has determined that “Gully 1” is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to Waters of the U.S., or 8) prior

converted cropland. “Gully 1” does not have a significant nexus to a RPW or TNW. The Corps has determined that “Gully 1” is an ephemeral feature and is not a Water of the U.S.

“Gully 4”

Aerial imagery was reviewed during the rain event period (see below) and no observation of hydrological flow was present. The terrain data layer for Google Earth Pro indicates that “Gully 4” has a general topographic gradient to the southwest, towards Poka’i Bay.

“Gully 4” is not shown on the EPA Water Features GeoViewer layer on Google Earth Pro.

“Gully 4” is not shown on 2017 USGS Quadrangle topographic map data layer in Google Earth Pro.

USACE’s Antecedent Precipitation Tool (APT) for 07 JUL 2021 (the date of the site visit) indicated that climatic conditions were drier than normal.

The Corps used the Waianae Station as a precipitation reference due to its proximity (0.5 mile east) for “Gully 4” on the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 23.02 inches for “Gully 4”. The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the “Gully 4” does not support perennial or intermittent surface water flow.

In accordance with 33 CFR 328, based on the information above, the Corps has determined that “Gully 4” is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to Waters of the U.S., or 8) prior converted cropland. “Gully 4” does not have a significant nexus to a RPW or TNW. The Corps has determined that “Gully 4” is an ephemeral feature and is not a Water of the U.S.

“Gully 5”

Aerial imagery was reviewed during the rain event period (see below) and no observation of hydrological flow was present. The terrain data layer for Google Earth Pro indicates that “Gully 5” has a general topographic gradient to the west-southwest, towards Poka’i Bay.

“Gully 5” is not shown on the EPA Water Features GeoViewer layer on Google Earth Pro.

“Gully” 5 is not shown on 2017 USGS Quadrangle topographic map data layer for Google Earth Pro.

USACE’s Antecedent Precipitation Tool (APT) for 07 JUL 2021 (the date of the site visit) indicated that climatic conditions were drier than normal.

The Corps used the Waianae Station as a precipitation reference due to its proximity (0.5 mile east) of “Gully 5” on the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 23.02 inches for Kawiwi Stream (middle branch). The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the “Gully 5” does not support perennial or intermittent surface water flow.

In accordance with 33 CFR 328, based on the information above, the Corps has determined that “Gully 5” is not: 1) currently used, nor was used in the past for interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, 2) an interstate water or wetland, 3) an intrastate lake, river, stream (including intermittent streams), mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, or natural pond, 4) an impoundment of Waters of the U.S., 5) a tributary of Waters of the U.S., 6) a territorial sea, 7) a wetland adjacent to Waters of the U.S., or 8) prior converted cropland. “Gully 5” does not have a significant nexus to a RPW or TNW. The Corps has determined that “Gully 5” is an ephemeral feature and is not a Water of the U.S.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: _____ .

Summarize rationale supporting determination: _____ .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”?: _____ .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: _____ inches
Average annual snowfall: _____ inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: _____ .

Identify flow route to TNW⁵: _____ .
Tributary stream order, if known: _____ .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: _____
 Manipulated (man-altered). Explain: _____

Tributary properties with respect to top of bank (estimate):

Average width: _____ feet
Average depth: _____ feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: _____
 Other. Explain: _____

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: _____

Presence of run/riffle/pool complexes. Explain: _____

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): _____ %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: _____

Other information on duration and volume: _____

Surface flow is: **Pick List**. Characteristics: _____

Subsurface flow: **Pick List**. Explain findings: _____

Dye (or other) test performed: _____

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list): _____
 Discontinuous OHWM.⁷ Explain: _____

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list): _____

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: _____

Identify specific pollutants, if known: _____

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: See Section II B.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: See Section II B.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: See Section II B .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: .
 Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
 Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): **6,973** linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "Mountain View Solar + Storage Draft Delineation of Wetlands and Other Water of the United States", composed by Tetra Tech (report dated APR 2021) .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24000 & Wai'anae Quad (2017).
- USDA Natural Resources Conservation Service Soil Survey. Citation: Accessed Google Earth Pro layer, 2021.
- National wetlands inventory map(s). Cite name: Accessed Google Earth Pro layer, 2021.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro (AUG 2004, APR 2007, JAN 2011, AUG 2014, and DEC 2017).
 or Other (Name & Date): Digital Globe online (08 and 12 MAR 2021 images).
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): USACE Antecedent Precipitation Tool, data for 07 JUL 2021 (site visit date), USGS National Water Information System (online access), Weather Underground's weather data from Wai'anae Station, 11 MAR 2021 data (online access) Rainfall Atlas of Hawai'i data (accessed online), EPA Waters Layer (accessed online).

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

