



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT
230 OAKE STREET, CEPOH-RO
FORT SHAFTER, HAWAII 96858-5440

CEPOH-RO

December 29, 2025

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 POH-2025-00176

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 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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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. Section of Anahaki Gulch that crosses under Farrington Avenue, Kualapuu, Island of Molokai, Hawaii (21.178925, -157.121301), non-jurisdictional
 - ii. Uplands, 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. ___, 143 S. Ct. 1322 (2023)
- d. January 2023 Rule preamble at 88 FR 3090

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3. REVIEW AREA.

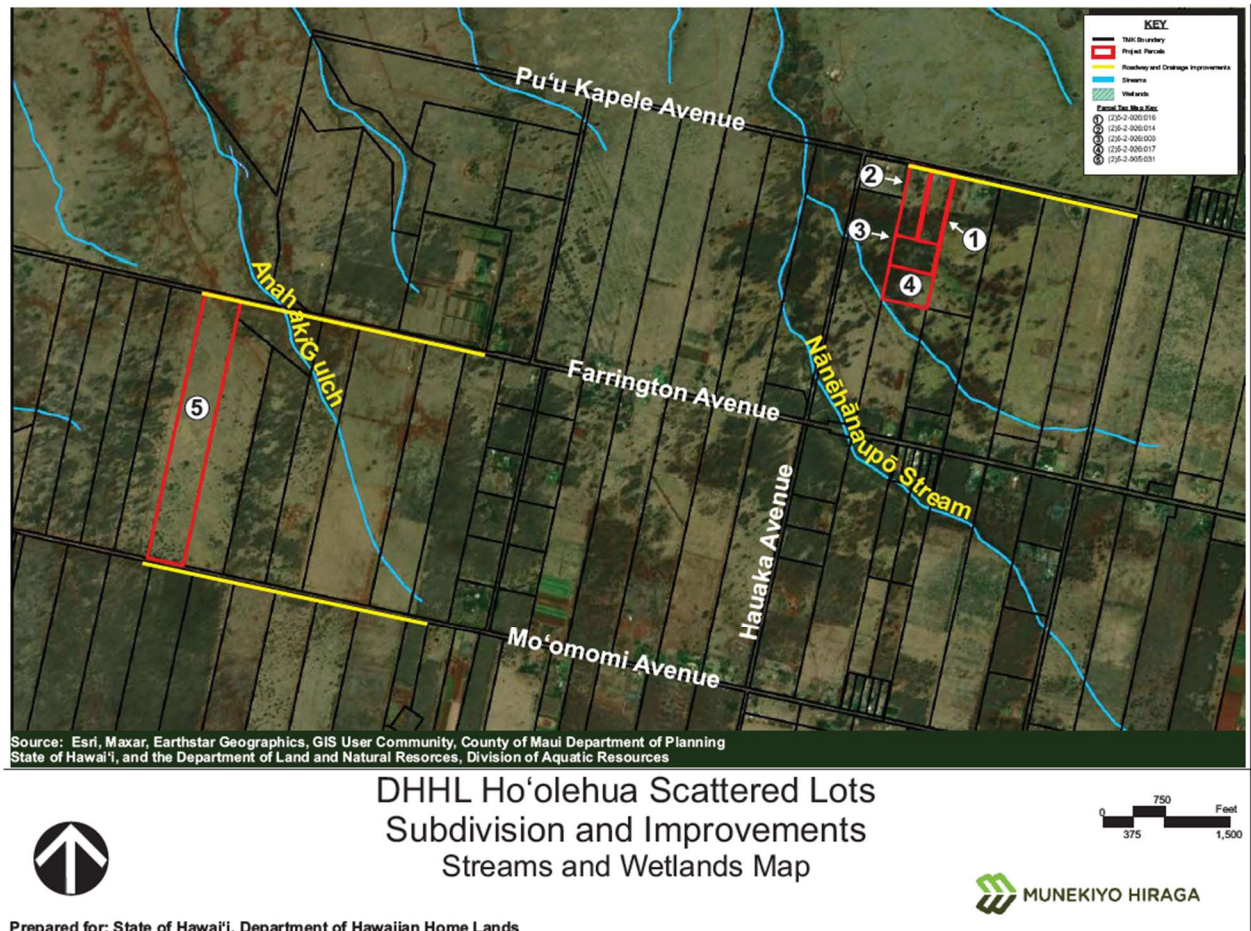


Figure 1: Review Area depicted in yellow.

The review area includes, and is limited to, the three sections of drainage improvements, totaling 2.8 acres, along Mo'omomi Avenue (centered at 21.169901, -157.121590), Farrington Avenue (centered at 21.178704, -157.119895), and Pu'u Kapele Avenue (centered at 21.182776, -157.095557) located in Kualapuu, Island of Molokai, Hawaii, and is depicted in yellow, labeled "Roadway and Drainage Improvements" in the above map (Figure 1).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

There are no TNWs in the review area. The closest TNW is the Pacific Ocean located 0.78 miles north of the northernmost section of the review area.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Anahaki Gulch flows north and directly discharges into the Pacific Ocean 0.78 linear miles north of the northernmost section of the review area.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶

There are no jurisdictional aquatic resources in accordance with Section 10 of the Rivers and Harbors Act of 1899 in the review area. The closest navigable waterway is the Pacific Ocean located 0.78 miles north of the northernmost section of the review area.

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.

There are no aquatic resources in 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*. The review area

⁵ 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.

⁶ 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.

is comprised of entirely uplands. There are no impoundments, tributaries, adjacent wetlands, or additional waters in the review area with a significant nexus to a jurisdictional water.

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).⁷

There are no aquatic resources or other features within the review area identified in the 2023 Rules as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). There are no impoundments, tributaries, adjacent wetlands, or additional waters in the review area with a significant nexus to a jurisdictional water.

- 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).

Anahaki Gulch is determined to be non-jurisdictional because it does not meet one or more categories of waters of the United States under the 2023 Rule as amended. On April 11, 2025, AECOS Inc. surveyed the Anahaki Gulch site and found the site does not include any of the three parameters of a wetland (hydrophytic vegetation, hydric soils, hydrology). Photos of the site show a dry gulch at the site with no standing or flowing water. Additionally, the survey and photos lack indicators of an ordinary high water mark (i.e. no shelving, channel bar, or instream bedforms). Vegetation includes 90% coverage of *Megathyrus maximus* (FAC) and 20% coverage of *Leucaena leucocephala* (UPL). Soil at the site is characterized as sandy down to 13 inches depth and does not contain hydric soils.

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.

⁷ 88 FR 3004 (January 18, 2023)

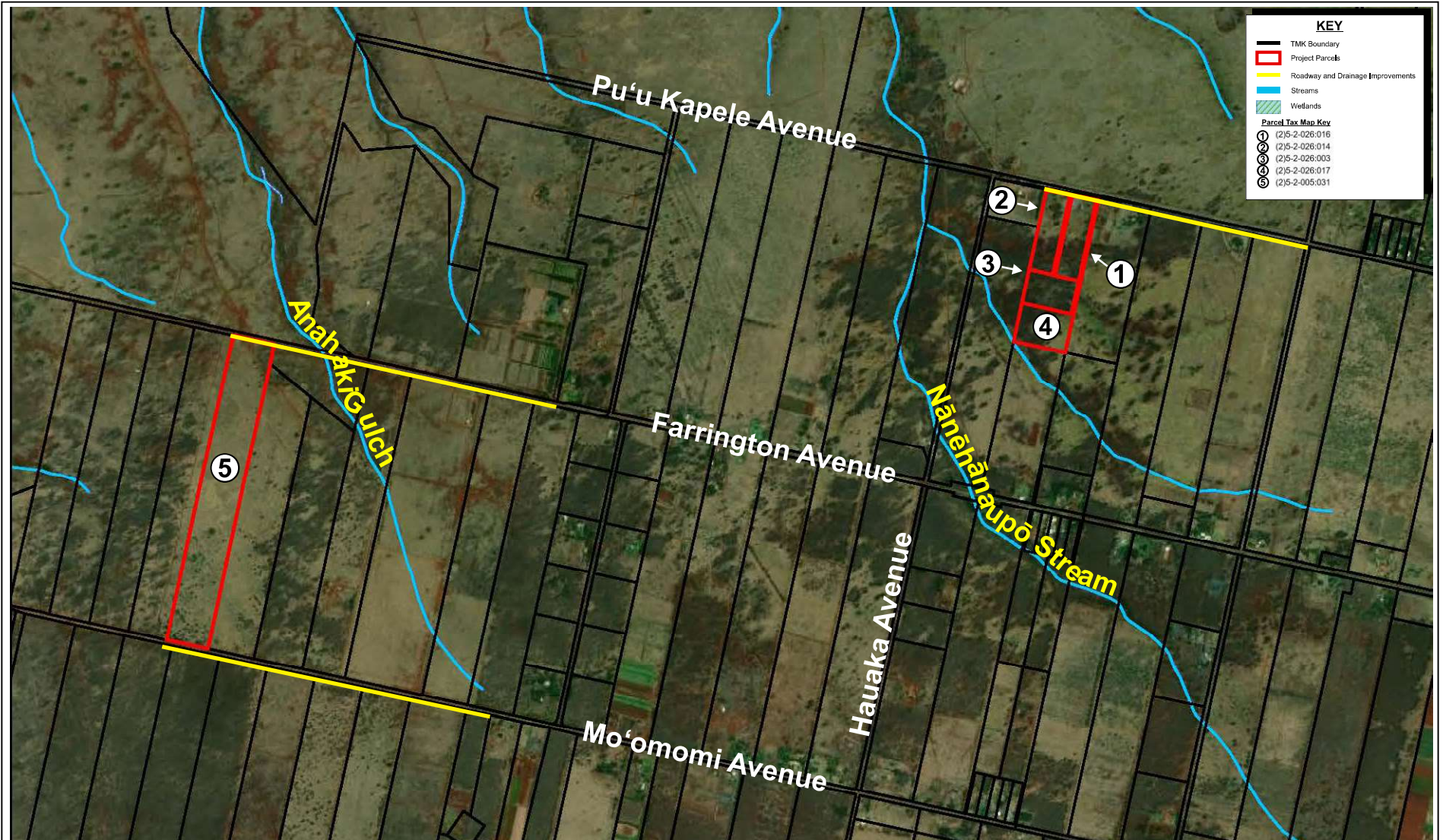
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- a. GEGD Pro aerial imagery taken December 12, 2025.
- b. National Hydrology Dataset accessed December 15, 2025.
- c. Photos provided by the applicant in their report dated June 12, 2025.
- d. FWS National Wetland Inventory accessed December 15, 2025.
- e. Wetland Survey conducted by AECOS Inc. on April 11, 2025.

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.



KEY

- TMK Boundary
- Project Parcels
- Roadway and Drainage Improvements
- Streams
- Wetlands

Parcel Tax Map Key

- (2)5-2-026-016
- (2)5-2-026-014
- (2)5-2-026-003
- (2)5-2-026-017
- (2)5-2-005-031

Source: Esri, Maxar, Earthstar Geographics, GIS User Community, County of Maui Department of Planning State of Hawai'i, and the Department of Land and Natural Resources, Division of Aquatic Resources

DHHL Ho'olehua Scattered Lots Subdivision and Improvements Streams and Wetlands Map



Prepared for: State of Hawai'i, Department of Hawaiian Home Lands