



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT
FORT SHAFTER, HAWAII 96858-5440

CEPOH-RO

20 December 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 POH-2023-00187

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., 651 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. San Roque Wetland: Section 404 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 S. Ct. 1322 (2023)

3. REVIEW AREA

The Review Area is a 12.9-acre site around the largest wetland (San Roque Wetland) within the San Roque Wetlands Complex (centroid: 15.24728°, 145.76955°). The enclosed figure depicts the Review Area (Enclosure 1).

The Review Area overlaps all or portions of Lots 008 B 09, 008 B 36, 008 B 04, 008 B 05, 013 B 02, 013 B 03, 013 B 05, 013 B 13, 013 B 15, 013 B 18, and 013 B 36 in Achugao and San Roque, Island of Saipan, Commonwealth of the Northern Mariana Islands. Land ownership in this coastal area is a mix between public ownership and several private entities with low density development. A four lane paved highway (Route 30, Chalan Pale Arnold) bisects the wetland, but a large 75 ft long culvert under the highway maintains a clear hydrologic connection between the wetlands on both sides of the highway. No prior jurisdictional determinations have been issued for the review area.

No project is associated with this AJD.

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

Saipan Lagoon (Pacific Ocean) is subject to the ebb and flow of the tide (33 CFR 329.4).

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

A distinct 490 ft long by 6-9 ft wide earthen drainage ditch provides a continuous surface connection between the wetland and Saipan Lagoon ((a)(1) TNW). The maintained ditch passes through a 10 ft long concrete box culvert under a private driveway between the wetland and lagoon. The ditch is unobstructed except for a ditch gate or other structure on private lands approximately 98 ft from the outlet into the lagoon.

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

No Section 10 waters are present in 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.

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.

- 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): The 9.7-acre palustrine emergent wetland lies within a distinct, shallow depression separated from Saipan Lagoon by a densely vegetated berm. The narrowest point between the wetland and lagoon is 240 ft.

A site visit on November 13, 2023, showed a maintained ditch constructed between the wetland and the lagoon. The ditch is concealed under dense tree canopy on private land and passes through a 10 ft by 6 ft concrete box culvert under a private driveway to a gated residence. A review of 2020 LiDAR data shows the ditch follows a straight line 490 ft long connecting the wetland directly to the lagoon. LiDAR data also shows a ditch gate or other structure on private land approximately 98 ft from the outlet to the lagoon. Satellite imagery shows sediment plumes extending from the ditch outlet into the lagoon in various years.

The wetland is in an area with an NRCS flood rating of “Very frequent”. A “Very frequent” flood rating indicates flooding is likely to occur very often under normal weather conditions, with a >50% chance of flooding in all months of any year.

The maintained ditch conveys flood waters overflowing the wetland area directly to the lagoon to reduce flooding into surrounding upland areas, especially the private residence. The concrete box culvert allows unobstructed flow through the ditch.

No further evaluation of the relative permanence of flow in the ditch was attempted due to lack of access and limited remote information available. The ditch may or may not be a water of the United States, but it and the culvert are discrete features that provide a continuous surface connection between the wetland ((a)(4) adjacent wetland) and the lagoon ((a)(1) TNW).

Together, this information shows evidence of an unimpaired, continuous physical connection, including during not only storm events, but also during bank

full periods, and/or ordinary high flows. In this case, the ditch and culvert are features that provide an unimpaired, continuous physical connection between the San Roque Wetland and the Saipan Lagoon, a traditional navigable water.

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).⁷ 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). N/A

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. November 13, 2023. Corps site visit with John Gourley, AJD Requestor, to determine if there was any evidence of a connection between the wetland and the ocean. The man-made ditch, well-hidden by the tree canopy, was discovered during the site visit and later depicted clearly in LiDAR evaluation.
- b. U.S. Fish and Wildlife Service National Wetland Inventory Mapper. [accessed November 8, 2023: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>]
- c. Natural Resources Conservation Service. Web Soil Survey. Islands of Aguijan, Rota, Saipan and Tinian, Commonwealth of the Northern Mariana Islands. Survey Area Data: Version 8. September 8, 2023. [accessed December 4, 2023: <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>]

⁷ 88 FR 3004 (January 18, 2023)

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- d. NOAA Office for Coastal Management. Digital Coast. 2019-2020 USGS/NOAA Topobathy LiDAR. [accessed December 1, 2023: <https://coast.noaa.gov/dataviewer/#/lidar/search/>]
- e. USGS. National Hydrography Dataset in The National Map. [accessed November 8, 2023: <https://apps.nationalmap.gov/viewer/>]
- f. Antecedent Precipitation Tool Version 2.0.
- g. Rainfall Climatology for Saipan: Distribution, Return-periods, El Niño, Tropical Cyclones, and Long-term Variations (2004). Water and Environmental Research Institute of the Western Pacific, University of Guam. [accessed November 8, 2023: <https://www.weriguam.org/reports/item/rainfall-climatology-for-saipan-distribution-return-periods-el-nino-tropical-cyclones-and-long-term-variations/>]
- h. Satellite Imagery (2014, 2016, 2017, 2018 Google Earth)
- i. ORM2 Database

10. OTHER SUPPORTING INFORMATION.

"Memorandum On POH-2023-00187," issued by the U.S. EPA and OASACW (November 20, 2024).

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.



Review Area is orange polygon. Black dashed polygon is the San Roque wetland boundary. Red dashed ellipse shows area with the drainage ditch. The ditch is a 150 m long, 2-3 m wide man-made drainage observed during a November 15, 2023, site visit. The ditch is clearly depicted in 2019-2020 USGS/NOAA LiDAR, including a noticeable downward grade from the wetland toward the lagoon. The apparent obstruction of the ditch near the outlet is likely a bridge connecting the private land to the Plumeria Resort lot.

