



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 9/11/2020

ORM Number: POH-2020-00063

Associated JDs: None

Review Area Location¹: State/Territory: Hawaii City: Kihei County/Parish/Borough: Island of Maui

Center Coordinates of Review Area: Latitude 20.724314 Longitude - 156.446389

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):³

(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Unidentified Feature	1020	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The Corps evaluated rainfall data at the time of the applicant’s 21 July 2020 site visit photographs. The USACE Antecedent Precipitation Tool, which evaluates whether precipitation was normal for the AOR indicates that the precipitation level was normal for 21 July 2020. The Corps reviewed the NOAA Daily Summaries Map for the nearest sampling location, approximately 6.1 miles southeast inland from the AOR. The sampling location indicated that no precipitation was recorded for 20 or 21 July 2020. The Corps also reviewed unofficial weather data gathered in the Weather Underground website for sampling location Keawakapu, Kihei, HI (KHIKIHEI53) at elevation 167, 20.71, - 156.44, located 1.24 miles south-southeast as the crow flies of the AOR. No precipitation was recorded for 20 or 21 July 2020. According to the Online Rainfall Atlas of Hawai’i (Giambelluca et al. 2013), the Kihei area receives a mean annual rainfall of approximately 20 inches (505 millimeters [mm]). Rainfall is typically highest in December/January with between 2.8 to 3.4 inches (70 to 85 mm) per month and lowest in July.</p> <p>The portion of the feature within the AOR is 1,020 linear feet. The feature is not shown on the USFWS NWI data layer or the Earth Point USGS topographic data layer for Google Earth Pro. The feature is also not shown on the EPA Waters GeoViewer application. In the USGS StreamStats application, the feature is visible in the HI map layers and the feature’s drainage area is 4.09 square miles with a maximum 24-hour precipitation that occurs on average once in two years (equivalent to precipitation intensity index) of 3.77 inches. As shown in the USGS StreamStats application, the feature starts near Kula Highway, approximately 5 miles east of the AOR. Based on the terrain data layer for Google Earth Pro, the feature changes by approximately 20 feet in elevation within the AOR from east to west. In a flora and fauna survey report dated February 2019 provided by the agent, the vegetation in the area of review is dominated by buffelgrass (<i>Cenchrus ciliaris</i>, FACU) and kiawe trees (<i>Prosopis pallida</i>, FACU) with koa haole (<i>Leucaena leucocephala</i>, UPL) and Guinea grass (<i>Megathyrsus maximus</i>, FAC) also common (Hobdy, 2019).</p> <p>The Corps also reviewed the ORM database and found that no prior projects, AJDs, or PJDs had occurred within the AOR or elsewhere outside the AOR on the feature. SSURGO data layer for Google Earth Pro: The two soil series mapped for the portion of the unnamed feature within the AOR are Puuone sand, 7 - 30 % slopes and Jaucas sand, 0 – 15 percent slopes. The Puuone and Jaucas soil series consist primarily of Typic Torripsamments and Typic Ustipsamments, both of which are within the Entisol soil order, typically indicating newly formed soils with limited morphological development, such as the soils that form in sand dunes. The soil layers shown in the NRCS SSURGO data layer for both soil series do not indicate gleying or a confined layer to a depth of 102 cm and 152 cm respectively. The hydraulic rating for the Puuone and Jaucas soil series are listed as somewhat excessively drained and excessively drained, respectively. Both soil</p>

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>series in the AOR are listed on the NRCS Web Soil Survey application as Not Hydric.</p> <p>Based on the Corps review of desktop references Feb 2019 flora and fauna report, and the applicant’s photographs from a 21 July 2020 site visit, the feature within the AOR is an ephemeral feature. Much of the land in urban corridor of Kihei between Piilani Highway and the Pacific Ocean is developed for residential and commercial use, including the parcels surrounding the AOR. However, the urban corridor of Kihei (2,080 acres) is a relatively small portion of the Wailea watershed (21,985 acres) that contains Kihei and extends east toward Haleakala. According to the March 2014 State Land Use District Boundaries, the majority of the land in the Wailea watershed is classified as agricultural (80.9%), followed by urban (13.55%), conservation (3.14%) and rural (2.04%) (DOH, 2019).</p> <p>In a pre-application web meeting with the Corps on 05 May 2020, the agent stated that the features only flows ephemeral in direct response to heavy precipitation. Photographs provided from the agent’s 21 July 2020 site investigation show that water was not flowing in the vicinity of or through the feature. The photographs show the feature within the AOR to be confined in a defined channel with bed and bank and physical indicators of the OHWM delineated by a change in slope. The photographs also show thick cover of herbaceous vegetation and some sapling-height trees both growing at the same height and density within and adjacent to the 1,020-foot-long feature.</p> <p>The Corps has determined that the feature is not a tributary based on the information above. The feature is an ephemeral feature (b)(3) that does not contribute surface water flow to a water identified as an (a)(1) water in a typical year either directly or through one or more waters identified in (a)(2),(3) or (4) of the NWPR. In accordance with the NWPR, ephemeral, (b)(3), waters are not Waters of the U.S. and therefore not jurisdictional.</p>

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [vicinity map](#)
This information **is** sufficient for purposes of this AJD.
Rationale: [The Area of Review is clearly shown.](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Aerial photographs acquired from Google Earth Pro. Photographs from the agent’s 21 July 2020 site visit.](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [No prior AJDs or PJDs were conducted on this feature within, above, or below the AOR.](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [SSURGO data layer for Google Earth Pro and NRCS Web Soil Survey](#)



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- USFWS NWI maps: [data layer for Google Earth Pro](#)
- USGS topographic maps: [Earth Point Topo Map data layer for Google Earth Pro](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS StreamStats web application
USDA Sources	N/A.
NOAA Sources	NOAA Daily Summaries precipitation web application.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): [The Corps used the APT for a typical year assessment for the date of the agent's site visit 21 July 2020. The APT report stated that the date of the site visit was normal.](#)

C. Additional comments to support AJD: [N/A or provide additional discussion as appropriate.](#)