



**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): 7/27/2020
 ORM Number: POH-2020-00087
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Hawaii City: Kihei County/Parish/Borough: Island of Maui
 Center Coordinates of Review Area: Latitude 20.6927 Longitude -156.4328

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
- 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.

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.

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.

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.

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.

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
Keawakapu Stream	660	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>Keawakapu Stream begins at Okolani drive and flows east for approximately 660 feet to Wailea Golf Course. The stream has a 31-foot decline in elevation over 660 feet (4.7% slope) with zero sinuously within the review area. According to EPA Waters GeoViewer, the stream’s catchment is approximately 145 acres. The stream is not indicated on the EPA Waters GeoViewer, topographical maps, or FWS Wetland mapper. The stream is indicated on StreaStats.usgs.gov which identifies the total drainage area at 20.69506, -156.43508 to be 33.28 acres with a 2 year peak flood flow of 12.4 cubic feet per second and a 5 year peak flood flow of 24.8 cubic feet per second*.</p> <p>Information and photos provided by the applicant show no evidence of continuous bed and bank or definable ordinary high water mark present within Keawakapu Stream in the review area. Primary vegetation along and within the channel consists primarily of buffelgrass (Cenchrus ciliaris, FACU) and kiawe trees (Prosopis pallida, FACU). There are two 48-inch culverts and one 18-inch culvert directly abutting the review area, running under Okolani Drive. These culverts were dry, with water staining and sediment deposits. The channel above and below the culverts has no evidence of hydrology. Because these culverts exhibit only minor evidence of hydrology which does not extend up or downstream indicates that they experience little water flow which is conveyed from the nearby residential developments. Even with concentrated flow which results from these culverts collecting and conveying storm water from the adjacent residential development, the channel in the review area still has insufficient hydrology to form a continuous bed and bank with definitive ordinary high water mark (OHWM).</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
			*Because of the relatively small size of the drainage area, StreamStats used extrapolated estimates to determine peak flow.
Paeahu Stream	655	linear feet	<p>(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.</p> <p>Paeahu Stream enters the review area at Piilani Highway and flows east for approximately 655 feet to the Wailea Golf Course. The stream has a 49-foot decline in elevation over 655 feet (7.5% slope) with vary minor sinuously. According to EPA Waters GeoViewer, the stream’s catchment is approximately 2110 acres. The stream is indicated on EPA Waters GeoViewer as well as, topographical maps, and FWS Wetland mapper. FEMA Flood Plain mapper has the stream mapped as a “low to moderate risk area”. ORM was researched for additional projects in or near to the review area. ORM identified POH-2006-00220 in the vicinity of the review area. This project determined the parcel directly abutting the review area to the south to be Uplands and did not conduct any site visit. The report submitted for POH-20006-00220 also stated that Pauahu Stream (name Kihei Gulch in the 2006 report) was a “dry gulch”. Exact dates were not provided, however, photos taken in December 2015 are similar to those provided in the request being reviewed: a wide gulch with dry vegetation present throughout. The photo was not clear enough to identify the plants nor to see the material that makes up the channel bed (i.e rocks, soil).</p> <p>Information and photos provided by the applicant shows a continuous channel with vegetation, boulders, and cobble for its bed and bank. The photos do not show a definitive OHWM. There are two 120-inch culverts directly abutting the east end of the review area running under Piilani Highway (a two lane highway with shoulders). These culverts convey hydrology from east of the review area and have minimal water staining (approximately 1-foot wide). There is no other evidence of hydrology or any buildup of sedimentation. This water staining is unique to the culvert and does not extend downstream into the review area or upstream east of the review area. Because these culverts exhibit only minor evidence of hydrology, which does not extend up or downstream, indicates that they experience</p>



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			little water flow from the rest of the catchment. Even with the concentrated flow which results from these culverts, the channel in the review area still has insufficient hydrology to form a definitive OHWM. Furthermore, primary vegetation along and within the channel consists primarily of buffelgrass (<i>Cenchrus ciliaris</i> , FACU) and kiawe trees (<i>Prosopis pallida</i> , FACU).

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: [Waters of the U.S. Assessment Wailea Resort SF-7A, MF-12 & MF-13 Residential Project, June 22, 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Select. Title\(s\) and/or date\(s\)](#).
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [POH-2006-00220](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Soil Web layer for Google Earth Pro, USDA 2020](#)
- USFWS NWI maps: [FWS Wetlands and Riparian layer for Google Earth Pro, USFWS 2020](#)
- USGS topographic maps: [Earth Point Topo Map layer for Google Earth Pro, USGS 2020](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Streamstats.usgs.gov
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	Stay Dry and Flood Smart layer for Google Earth Pro, FEMA 2020
EPA sources (specify)	EPA WATERS Geoviewer, USEPA
Other information (specify)	Droughtmonitor.unl.edu, June 16, 2020
Other Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The Anticident Precipitation Tool (APT) was used for June 22, 2020 (date of report) which showed the review area was “drier than normal” when compared to a Typical Year as defined in 33CFR328(c)(13). Aerial imagery from this date was comparatively analysed with imagery from April 19, 2019. The APT for this date indicated the area was under “normal conditions” and in the “wet season”. Neither image showed evidence of hydrology in the stream or an increase of flow. Additionally,



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while the surrounding areas did have higher vegetation growth in the April 19 image, the two streams appeared unchanged between the images.

- C. Additional comments to support AJD:** Additional aerial imagery was viewed and all showed similar conditions as those described in section B. The review area is within the leeward rain shadow of southern East Maui created by Haleakala Volcano (elevation 10,023 feet). This area of Maui receives 12-15 inches of rain a year. Additionally, this area of Maui has well drained, extremely stony silty clay loam, non-hydric soils with 3 to 25 percent slopes (SoilWeb, USDA). The two streams within the review area show no evidence of ground water connectivity. The dominance of FACU vegetation within the channel, as well as boulders and large cobble demonstrate low flow without the ability to wrack the vegetation or sort and transport any sediment. Both streams appear to only flow in response to rain events and at most would be classified as ephemeral channels, and at a minimum, erosional features.