



**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): 7/19/2021

ORM Number: POH-2021-00087

Associated JDs: n/a

Review Area Location¹: State/Territory: Hawaii City: Kula County/Parish/Borough: Kamaole, Maui County

Center Coordinates of Review Area: Latitude 20.711678 Longitude -156.395342

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.

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):				
Exclusion Name	Exclusion Size		Exclusion ⁴	Rationale for Exclusion Determination
Li'ilioholo Stream	3,890	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Li'ilioholo Stream was found to have a bed and bank and physical indicators of an Ordinary High Water Mark (OHWM) within the Area of Review (AOR). Physical indicators of the OHWM observed were typical of streams in arid environments, including a change in the slope and a change in vegetation. Kiawe trees (<i>Prosopis pallida</i> ; FACU) were observed to occur outside the channel, but not below the OHWM. Buffelgrass (<i>Cenchrus ciliaris</i> ; FACU) was observed above the OHWM. Some sections of Li'ilioholo Stream within the AOR had a substrate of rocky lava, but the majority of the channel was observed to be littered with drift, unconsolidated rock and exposed roots from the recent flood event. During the site visit there was no surface water and/or conveyance of water observed in the stream. Based the data described above, the Corps has determined that Li'ilioholo Stream within the AOR is an ephemeral channel which flows only in direct response to rain events. Li'ilioholo Stream only flows during and immediately following a heavy rain event.

⁴ 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)):				
Exclusion Name	Exclusion Size		Exclusion ⁴	Rationale for Exclusion Determination
Keawakapu Stream	720 linear feet		(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Keawakapu Stream was found to have a bed and bank and physical indicators of an Ordinary High Water Mark (OHWM) within the AOR. Physical indicators of the OHWM observed were typical of streams in arid environments, including a change in the slope and a change in vegetation. Kiawe trees (<i>Prosopis pallida</i> ; FACU) were observed to occur outside the channel, but not below the OHWM. Buffelgrass (<i>Cenchrus ciliaris</i> ; FACU) was observed above the OHWM. Some sections of Keawakapu Stream within the AOR had a substrate of rocky lava, but the majority of the channel was observed to be littered with drift, unconsolidated rock and exposed roots from the recent flood event. No evidence of surface water or hydrology was observed. Based the data described above, the Corps has determined that Keawakapu Stream within the AOR is an ephemeral channel which flows only in direct response to rain events. Keawakapu Stream only flows during and immediately following a heavy rain event.
N/A.	N/A.	N/A.	N/A.	N/A.

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, Kamaole Solar Project, Kamaole, Kula, Maui, March 2021](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: .

Photographs: [Other: Corps Site Visit April 21, 2021](#)

Corps site visit(s) conducted on: [April 21, 2021](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [None](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: .

USFWS NWI maps: .

USGS topographic maps: [POH-2021-00087 image](#)



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Other data sources used to aid in this determination:

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

B. Typical year assessment(s): The Antecedent Precipitation Tool indicated wetter than normal conditions occurred on March 13 and March 14. Additionally on April 21, normal conditions were indicated

C. Additional comments to support AJD: On March 12th the consultant took photos of the area prior to a storm which released 6 inches of rain on the following day March 13th. On March 15th the consultant took additional photos at the same location. The photos showed evidence of a high flow event with bank scouring 2-4 feet. The photos also provided evidence that the stream was dry less than 48hrs after the 6-inch rain event.

Prior to the flooding event, observations of the stream vegetation in the channel bottom was found to be identical with that growing on the surrounding uplands. Fourteen of fifteen of the most common plant species were found to be Upland or Facultative Upland species. Scoured channels with barren uneven lava substrate remained with scattered boulders, debris and wrack deposited above the margins.

Based the data described above, The Corps has determined that both streams within the AOR are ephemeral channels which flows only in direct response to rain events. In accordance with the Navigable Waters Protection Rule, 33 CFR 328 (b)(3) ephemeral features are non-jurisdictional and excluded from the definition of waters of the U.S.