



**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): 8/2/2021
 ORM Number: POH-2021-00060
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Hawaii City: Puako County/Parish/Borough: Hawaii
 Center Coordinates of Review Area: Latitude 19.969974 Longitude -155.819212

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
Wailea Gulch	4,422	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Field observations of Wailea Gulch included a dry stream bed ranging from 7 to 33 ft across, and incised at a maximum of 6 feet deep. The vegetation present consisted of buffelgrass (FACU) covering 75% of the gulch bottom along with dead and dying kiawe trees (FACU) rooted near the base of the gulch walls. There were drift lines present indicating high flow had occurred in the gulch. Data taken from the antecedent precipitation tool indicated the site is in normal conditions. The Corps used the consultant provided data from the North Carolina stream duration assessment method (SDAM) data for Wailea Gulch and entered it into the Arid West SDAM. Each tool keyed Wailea Gulch as an ephemeral feature. The Corps has determined Wailea Gulch is an excluded ephemeral feature per 33 CFR 328.3(b)(3) and therefore not a waters of the U.S
Middle Gulch	7,998	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Field observations of the Middle Gulch included gradual sloped walls , incised in the landscape a maximum of 3 ft. There are signs that the gulch was modified to manipulate flow in this gulch with man-made rock walls and multiple road crossings absent of culverts. Vegetation was dominated by 75% buffleggrass (FACU) and kiawe tree’s (FACU) along the banks of the gulch. Data taken from the antecedent precipitation tool indicated the site is in normal conditions. The Corps used the consultant provided data from the North Carolina stream duration assessment method (SDAM) data for the Middle Gulch and entered it into the Arid West SDAM. Each tool keyed the Middle Gulch as an ephemeral feature. The gulch during the

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
			time of the site visit had no evidence of surface flow and/or evidence of recent surface flow. The Corps has determined the Middle Gulch is an excluded ephemeral feature per 33 CFR 328.3(b)(3) and therefore not a waters of the U.S.
Kamakoa Gulch	7,055	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Field observations of Kamakoa Gulch were deep, well defined gulch, incised over 20 feet deep in some places. Vegetation is mostly absent on the stream bed with buffelgrass (FACU) and kiawe trees (FACU) occasionally encountered. Physical indicators of flow within the gulch are shelving, racking, and sediment deposit. The consultant provided North Carolina stream duration assessment method (SDAM) tool keyed Kamakoa gulch as intermittent due to high scores in geomorphology but scored low in hydrology and biology assessments. When the Corps entered the data using the Arid West SDAM Kamakoa Gulch keyed an as ephemeral. The Corps has determined the Middle Gulch is an excluded ephemeral feature per 33 CFR 328.3(b)(3) and therefore not a waters of the U.S.

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: **Title(s) and date(s)**
This information **is and is not** sufficient for purposes of this AJD.
Rationale: **Applicant information was sufficient and enhanced by USACE with additional Arid West stream duration assessment method sheets.**
- Data sheets prepared by the Corps: **Title(s) and/or date(s).**
- Photographs: **Other: MFR 8/2/2021**
- Corps site visit(s) conducted on: **7/12/2021**
- Previous Jurisdictional Determinations (AJDs or PJDs): **ORM Number(s) and date(s).**
- Antecedent Precipitation Tool: **provide detailed discussion in Section III.B.**
- USDA NRCS Soil Survey: **Title(s) and/or date(s).**
- USFWS NWI maps: **Title(s) and/or date(s).**
- USGS topographic maps: **Title(s) and/or date(s).**

Other data sources used to aid in this determination:



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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):** Antecedent precipitation tool data showed conditions were wetter than normal.
- C. Additional comments to support AJD:** OHWM methods (February 2012 regional supplement, Hawaii and Pacific Islands) were used to determine the lateral limits of each feature