



**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): 12/21/2020
 ORM Number: POH-2015-00119
 Associated JDs: POH-2015-00119-JAP (herein "2016 AJD")
 Review Area Location¹: State/Territory: Hawaii City: Kahaluu County/Parish/Borough: Honolulu
 Center Coordinates of Review Area: Latitude 21.46333 Longitude -157.84682

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)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wailehua Road Wetlands	1.2	acre(s)	(b)(1) Non-adjacent wetland.	Wailehua Road Wetlands were determined to meet the (b)(1) exclusion based on the rationale provided in Section III.C below and in Exhibit 2.
Wailehua 1 Drainage Feature	685	linear feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	Wailehua 1 Drainage Feature was determined to meet the (b)(10) exclusion based on the rationale provided in Section III.C below and Exhibits 1 and 2.
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: [“Draft Conceptual Proposal for Compensatory Mitigation, Offsetting Impacts of an Unauthorized 1.3-acre Fill into Jurisdictional Wetlands by Wailehua 1 LLC”, dated April 8, 2019.](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [The information and evidence presented in the draft report is relevant and sufficient for purposes of providing the necessary standards of evidence to support the AJD reconsideration, but the conclusions drawn by the author in the draft report are incorrect because they were based on the Rapanos guidance and not the NWPR.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth Pro, UH Manoa Historic Aerial Imagery \(USGS 1951, 1960s, 1978\), and on-the-ground photographs \(2019, 2020\).](#)
- Corps site visit(s) conducted on: [October 1, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [POH-2015-00119, February 5, 2016](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [USDA NRCS Online Soil Survey](#)
- USFWS NWI maps: [Wetands Mapper, retrieved 10/22/2020](#)
- USGS topographic maps: [1:24000 Kaneohe, HI](#)

Other data sources used to aid in this determination:

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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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.
Other state/local data (specify)	1) City and County of Honolulu, Stormwater Quality Division – stormwater system database and maps; 2) personal communication with Randall Wakumoto, Branch Head, CCH-SQD; 3) State of Hawaii, City and County Tax Map Keys ((1) 4-7-14:051, 052, 055)
Other Sources	N/A.

B. Typical year assessment(s): The Corps, Honolulu District used the Antecedent Precipitation Tool (APT) to understand whether normal Typical Year conditions (i.e., precipitation levels within the normal periodic range) were present within the Review Area at the time that field assessments were completed for the Wailehua Road project area. The APT output for the JD Review Area is provided as Exhibit 1.

C. Additional comments to support AJD: The Corps has determined that the Wailehua Road Wetland is not an adjacent wetland per 33 CFR 328.(c)(1) and that the subject reach of Wailehua 1 Drainage Feature within the Review Area is a stormwater feature excluded from Corps jurisdiction per 33 CFR 328(b)(10). Rationales for these determinations are summarized below and expanded upon in the USACE, Honolulu District “Jurisdictional Reconsideration, Report of Findings: Field Visit & Evaluation, Wailehua 1 LLC Residential Development, Unauthorized Activity, DA File No. POH-2015-00119”, dated November 1, 2020 (Exhibit 2):

WAILEHUA ROAD WETLANDS:

Field observations made during site investigations conducted on 10/27/2015, 11/5/2015 and 10/1/2020 confirm the presence an upland barrier/berm between the Wailehua 1 Drainage Feature (also known as Drainage Feature A in the 2016 AJD) and the Wailehua Road Wetlands. This upland barrier/berm appears to be an artificial (manmade) feature that rises an average of 4 to 6 feet above the ground surface elevation and runs longitudinally along the right bank of the Wailehua 1 Drainage Feature before sloping landward into the Wailehua Road Wetlands area. This artificial barrier physically separates the two aquatic features and consequently, the Wailehua Road Wetlands do not abut (touch) the Wailehua 1 Drainage Feature. Furthermore, no structure or features were found within the artificial barrier/berm that provide a direct hydrologic surface connection between the drainage feature and the Wailehua Road Wetlands in a typical year. For these reasons, the Wailehua Road Wetlands are not adjacent wetlands because they do not meet the conditions of 33 CFR 328.3(c)(1). Therefore, the wetlands are non-jurisdictional and not a waters of the U.S.

WAILEHUA 1 DRAINAGE FEATURE:

Wailehua 1 Drainage Features extends approximately 688 linear feet through the Review Area, flowing west to east. The drainage feature exits the Kim property at the Review Area’s eastern boundary as it continues to flow an additional 900 linear feet before terminally discharging into Kaneohe Bay, a traditional navigable water. At the time of the October 1, 2020 field visit, the reach of the drainage feature located within the Reivew Area did not exhibit an OHWM and was overgrown with dense vegetation.



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Based upon examination of historic and current aerial photographs and the City and County of Honolulu Stormwater System GIS database, the Wailehua 1 Drainage Feature appears to be a feature excavated in uplands to convey stormwater run-off from adjoining roadways and the neighboring development located to the west. As evidenced by the drainage inlet feature that is constructed at the edge of the upslope residential development, stormwater runoff is carried from the development through a concrete culvert underneath Lamaula Road that outlets into what is referred to as Wailehua 1 Drainage Feature at the westernmost boundary of the Review Area (refer to Observation Point #1 in Exhibit 2). The Wailehua 1 Drainage Feature carries stormwater run-off that comingles with other surface water inputs located downstream before eventually discharging into Kaneohe Bay, a navigable in-fact water. While record searches with the City and County of Honolulu Land Division did not reveal precisely when and who constructed the drainage feature, the State of Hawaii tax map keys show the City and County of Honolulu as the easement holder. Some hypothesize the prior landowner, Oceanview Cemetary Lmtd., may have constructed the feature while other evidence suggests the Wailehua 1 Drainage Feature may have first been excavated/constructed during the sugar cane agricultural era at or around the turn of the 19th century. Presently, the feature is identified on the City and County of Honolulu database as a “constructed ditch” that has been incorporated as an integral part of the City and County of Honolulu’s stormwater system in the region.

Within the Review Area, the uppermost reach of the Wailehua 1 Drainage Feature appears to exhibit ephemeral flow, as it conveys stormwater run-off and surface water flows only in direct response to precipitation (rainfall). A qualitative assessment of Wailehua 1 Drainage Feature was performed by extrapolating streamflow duration assessment method (SDAM) protocol from other regional SDAMs, including the Pacific Northwest (Nadeau 2015) and New Mexico (SWQB 2010). The qualitative assessment evaluated 10 physical indicators of flow at four sample points along the drainage feature. The results of the evaluation suggest that Wailehua 1 Drainage Feature supports an ephemeral flow regime and not perennial flow as was originally documented in the 2016 AJD. Overall results of this qualitative evaluation of relevant indicators are summarized below:

- (1) Water in channel: Stagnant water was observed in some segments of the 3-foot-wide feature and appeared to be ponded due to the thickness of vegetation within the drainage.
- (2) Fish and Other Aquatic Biota: While it may be possible that some fish (e.g., mosquitofish, goby, talapia) migrate upstream from the perennial reach of the Wailehua 1 Drainage Feature during rain events, the drainage feature otherwise does not appear capable of supporting fish due to a lack of flowing water in the channel. In addition, the drainage feature does not support other features characteristic of fish habitat, such as sinuosity or riffle pool sequences. While not observed in the drainage feature during the October 1, 2020 field visit, the presence of marine toad (*Rhinella marina*) and/or American bullfrog (*Lithobates catesbeianus*) are expected to inhabit the area and may reproduce and forage within the drainage feature as evidenced by two dead toads observed on the shoulder of Wailehua Road, adjacent to the Kim property in the Review Area.
- (3) Benthic macroinvertebrates: Due to the ponding of water in some segments of the drainage feature, the Wailehua 1 Drainage Feature appears capable of supporting benthic macroinvertebrates. As described in the Wailehua 1 LLC report, dated April 8, 2019, the landowner’s consultant examined the Wailehua 1 Drainage Feature and indicated that it is likely to support aquatic invertebrates, including species common to the island of Oahu, such as dragonfly (*Pantala flavescens*) and damselfly (*Enallagma civile*). However, during the October 1, 2020 field visit, it was noted the Wailehua 1 Drainage Feature lacked habitat features known to occur in riparian areas where benthic macroinvertebrates are most often observed, such as



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sandy channel margins, localized ponding features, dried-out pools, or stream cobbles.

(4) Differences in vegetation: No compositional or density differences in vegetation were observed between the drainage banks and adjacent uplands throughout Wailehua 1 Drainage Feature.

(5) Absence of rooted upland plants in streambed: Rooted plants were observed occurring at consistent degrees of density throughout the streambed of Wailehua 1 Drainage Feature. Refer to photographs contained in Exhibit 2.

(6) Sinuosity: Wailehua 1 Drainage Feature mostly consists of a straight channel that has been subject to infill with accumulated sediments and heavy vegetative growth.

(7) Floodplain and channel dimensions: The channel dimensions are small, measuring approximately three feet in width and on average ½ foot to one foot in depth.

(8) In-channel structure - riffle pool sequences: No riffle pool complexes were observed.

(9) Particle size or stream substrate sorting: Particle sizes within Wailehua 1 Drainage Feature were observed to be similar or comparable to particle sizes in areas close to, but not within, the drainageway. Where stagnant water was observed within the drainage feature, the underlying sediments appeared mucky.

(10) Sediment on plants and debris: No sediment was observed on plants or debris within Wailehua 1 Drainage Feature.

Outside and beyond the Review Area, the downstream reach of the Wailehua 1 Drainage Feature appears to sustain perennial flow, owing to the diverted flows from the Kaalaea watershed that discharge into the Wailehua 1 Drainage Feature below the Kim property (i.e., outside the Review Area). As this downstream segment of the Wailehua 1 Drainage Feature is located outside the Review Area, a complete evaluation of flow regime was not performed.

Based on the foregoing, the reach of the Wailehua 1 Drainage Feature located in the Review Area (i.e., Kim property) has been determined to be a stormwater control feature excavated in uplands to convey stormwater run-off. Therefore, per 33 CFR Section 328(b)(10), this drainage feature is non-jurisdictional and not a waters of the U.S.