



**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-2017-00067  
 Associated JDs: POH-2017-00067 dated AUG 2017  
 Review Area Location<sup>1</sup>: State/Territory: HI City: Waimea County/Parish/Borough: Hawaii  
 Center Coordinates of Review Area: Latitude 20.074679 Longitude -155.858244

**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)<sup>2</sup>**

§ 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): <sup>3</sup>			
(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.

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

<sup>2</sup> 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.

<sup>3</sup> 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)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Gulch C	878	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The portion of Gulch C within the Area of Review (AOR) is located on the south side of Akoni Pule Highway, approximately 100 feet southeast of the intersection of Kohala Ranch Road and Akoni Pule Highway. One 84-inch culvert is located above the AOR under the Akoni Pule Highway. Aerial imagery was reviewed during the rain event period and no observation of flow was present. Gulch C is not a named gulch on the 2017 USGS Kawaihae quadrangle topographic map data layer for Google Earth Pro within the AOR. The terrain data layer for Google Earth Pro indicates that Gulch C has a general topographic gradient to the east-southeast, towards Waiakailio Bay.</p> <p>The following information provides the supporting documentation in regard to the Corps determination:</p> <p>Gulch C is not shown on the EPA Waters Layer in Google Earth.</p> <p>Gulch C is indicated on StreamStats.usgs.gov which identifies the total drainage area to be 0.2 square miles with an average annual precipitation of 10.2 inches. Since the annual rainfall amount is low, and no hydrological flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the system does not support perennial or intermittent surface water flow as defined in the Navigable Waters Protection Rule.</p> <p>Gulch C is not mapped on the USFWS NWI data layer as a wetland.</p> <p>The Corps has determined that Gulch C is not</p>

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			a tributary in accordance with 33 CFR 328 (b)(3) based on the information above. Gulch C 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 features, (b)(3), are not Waters of the U.S. and is therefore not jurisdictional.
Keawewai Gulch	845	linear feet	<p>(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.</p> <p>The USFWS National Wetlands Inventory data layer for Google Earth Pro, Keawewai Gulch originates east-northeast and flows southwest to Waiakailio Bay (a TNW) through the eastern portion of the AOR. Two 120-inch culverts are located above the AOR under the Akoni Pule Highway. Aerial imagery was reviewed during the rain event period (see below) and no observation of hydrological flow was present.</p> <p>The EPA Water Features GeoViewer layer on Google Earth Pro depicts Keawewai Gulch as a stream. The watershed report (last updated 15 FEB 2017) indicates that Keawewai Gulch is a second order stream. According to the GeoViewer, Keawewai Gulch's catchment is approximately 0.17 square mile, with a drainage area measurement of 5.3 square miles.</p> <p>Keawewai Gulch is shown on 2017 USGS Quadrangle topographic map data layer for Google Earth Pro as an intermittent stream.</p> <p>According to the DLNR Watershed Atlas, the entire Keawewai Gulch watershed is 5.3 square miles. Keawewai Gulch (DAR Watershed Code 85022) is listed as a non-perennial stream with a total length of 12.7 miles. Land use in the Keawewai Gulch watershed is primarily agricultural (81.9%) followed by urban (18.1%).</p> <p>The Corps evaluated rainfall data for MAR 2021. The USACE Antecedent Precipitation</p>



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			<p>Tool, which evaluates whether precipitation was normal for the AOR indicates that the precipitation conditions were normal.</p> <p>The Corps used Gulch C as a precipitation reference due to its proximity (0.19 miles south-southeast) to Keawewai Gulch in the AOR. The rainfall data from Streamstats.usgs.gov indicated an average annual precipitation of 10.2 inches for Gulch C. The annual rainfall amount is low, and hydrologic flow was observed on the MAR 2021 aerial images after a 1” rainfall event, the conclusion was made that the Keawewai Gulch does not support perennial or intermittent surface water flow as defined in the NWPR.</p> <p>The Corps has determined that Keawewai Gulch is not a tributary based on the information above. Keawewai Gulch 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: [“Figure Jurisdictional Determination Site Plan, Kohala Shoreline 2017, Kohala Shoreline, LLC, March 27, 2017.](#)

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: [Aerial: Google Earth, dated DEC 2012, DEC 2015, JUL 2018, JUN 2019.](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [POH-2017-00067, dated AUG 2017](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Google Earth NRCS Soil Survey layer, 2021.](#)



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- USFWS NWI maps: [Google Earth USFWS NWI layer, 2021.](#)
- USGS topographic maps: [2017 USGS Kawaihae Quadrangle](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">StreamStats.usgs.gov</a>
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	N/A.
<a href="#">State/Local/Tribal Sources</a>	<a href="#">DLNR Watershed Atlas, 07 APR 2008.</a>
<a href="#">Other Sources</a>	<a href="#">EPA Water Features Layer, Google Earth (updated FEB 2017).</a>

**B. Typical year assessment(s):** The Corps evaluated rainfall data for MAR 2021. The USACE Antecedent Precipitation Tool, which evaluates whether precipitation was normal for the AOR indicates that the precipitation conditions were normal.

**C. Additional comments to support AJD:** [N/A](#)