DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT
230 OTAKE STREET, CEPOH-RO
FORT SHAFTER, HAWAII 96858-5440

CEPOH-RO April 25, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,[1] POH-2025-00053

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[2] AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.[3]

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

[1] While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.
[2] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

1. SUMMARY OF CONCLUSIONS.

   a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

      There are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 or Clean Water Act of 1972 in the review area. A review of the National Hydrography Dataset (NHD), the U.S. Fish and Wildlife National Wetlands Inventory (NWI), as well as aerial imagery showed no bodies of surface water or water flow paths in the review area. A review of the NRCS Web Soil Survey showed the review area consisted of Manana silty clay loam and contains no hydric soils. The review area was previously developed as an educational facility. A review of multiple aerial photos during different seasons showed no dark signatures or smooth reflective surfaces which normally depict ponding or saturated soils. The aerial photos also showed no evidence of spatial variations in vegetation, depicting only large trees around the road and mowed grasses. The review area does not include any of the three parameters of a wetland (hydrophytic vegetation, hydric soils, hydrology).

2. REFERENCES.

   a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)

   b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))

   c. *Sackett v. EPA*, 598 U.S. _, 143 S. Ct. 1322 (2023)

   d. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

Figure 1: Review Area

The 18.6-acre review area is located at 21.487203°, -158.038671° along the northern boundary of Wheeler Army Airfield (WAAF), bordered by Wilikina Drive and Kunia Road on the north, Old Kamehameha Highway to the west, and WAAF to the south, on the Island of Oahu, Hawaii, (TMK) (1) 7-7-001:002, and is depicted in the map (Figure 1). The review area is the entire parcel, (TMK) (1) 7-7-001:002.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

The review area is comprised of entirely uplands. The closest navigable waterway to the review area is Pearl Harbor, approximately 7.4 miles from the southern boundary of the project area.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

N/A

6. SECTION 10 JURISDICTIONAL WATERS[5]: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[6]

   There are no jurisdictional aquatic resources in accordance with Section 10 of the Rivers and Harbors Act of 1899 in the review area. The review area is comprised of entirely uplands. The closest navigable waterway to the review area is Pearl Harbor, approximately 7.4 miles from the southern boundary of the project area.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

   There are no aquatic resources in the review area that were found to meet the definition of waters of the United States in accordance with the 2023 rule as amended, consistent with the Supreme Court's decision in Sackett. The review area is comprised of entirely uplands. There are no impoundments, tributaries, adjacent wetlands, or additional waters in the review area with a significant nexus to a jurisdictional water.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

[5] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

[6] This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).[7]

   There are no aquatic resources or other features within the review area identified in the 2023 Rules as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). There are no impoundments, tributaries, adjacent wetlands, or additional waters in the review area with a significant nexus to a jurisdictional water. The review area is comprised of entirely uplands.

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

   There are no aquatic resources or features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended. The review area is comprised of entirely uplands.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

   a. Google Earth aerial imagery accessed April 25, 2025.

   b. National Hydrology Dataset accessed April 25, 2025.

   c. FWS National Wetland Inventory accessed April 25, 2025.

   d. EPA WATERS GeoViewer accessed April 25, 2025.

   e. NRCS Web Soil Survey accessed April 25, 2025.

10. OTHER SUPPORTING INFORMATION. N/A

[7] 88 FR 3004 (January 18, 2023)

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

POH-2025-00053

0 0.13 0.25 0.5

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Map Center: 158.038731°W 21.486609°N

Map Created by: David Rojek

Date: 3/14/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere