



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

CEPOH-RO

22 September 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-2025-00111, MFR 1 of 1²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CEPOH-RO

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POH-2025-00111

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Kaloi Gulch, ephemeral stream, non-jurisdictional under Section 404, from the upstream point (21.368554°, -158.0623051°) to the downstream point at (21.369294°, -158.0605874°), see attached map (Enclosure 1), located at 91-3881 Kualakai Parkway, Tax Map Key (1) 9-2-002:007, Kapolei, Island of Oahu, Hawaii (21.368919°, -158.061544°).

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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

The review area is a 690-foot section of Kaloi Gulch from the upstream point (21.368554°, -158.0623051°) to the downstream point at (21.369294°, -158.0605874°), see attached map (Enclosure 1), located at 91-3881 Kualakai Parkway, Tax Map Key (1) 9-2-002:007, Kapolei, Island of Oahu, Hawaii (21.368919°, -158.061544°).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest TNW is the West Lock of Pearl Harbor a bay of the Pacific Ocean on the southern shore of the Island of Oahu, Hawaii.⁶

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

CEPOH-RO

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POH-2025-00111

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. While the closest TNW to the subject aquatic resource is the West Lock of Pearl Harbor, this aquatic resource does not flow in that direction. The assessed branch of Kaloι Gulch flows northeast being joined by two other branches of Kaloι Gulch entering from the north, before turning south-southwest and flowing approximately 1.6 miles through heavily modified stream channels to where it is joined by two other forks of Kaloι Gulch flowing in from the western side of the stream. From there it continues flowing south-southeast through heavily modified stream channels, golf course ponds, and artificial channels before finally discharging into an artificial lagoon on the Pacific Ocean which is used by Wai Kai Waterpark, on the Pacific Ocean.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ N/A
7. SECTION 404 JURISDICTIONAL WATERS: There were no aquatic resource within the review area which were found to be jurisdictional under Section 404.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.
 - b. The Territorial Seas (a)(1)(ii): N/A.
 - c. Interstate Waters (a)(1)(iii): N/A.
 - d. Impoundments (a)(2): N/A.
 - e. Tributaries (a)(3): N/A.
 - f. Adjacent Wetlands (a)(4): N/A.

⁷ 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.

⁸ 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.

CEPOH-RO

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POH-2025-00111

g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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).⁹ N/A.

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).

i. Kaloi Gulch, ephemeral stream, non-jurisdictional under Section 404, from the upstream point (21.368554°, -158.0623051°) to the downstream point at (21.369294°, -158.0605874°), see attached map (Enclosure 1), located at 91-3881 Kualakai Parkway, Tax Map Key (1) 9-2-002:007, Kapolei, Island of Oahu, Hawaii (21.368919°, -158.061544°).

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. Site visit conducted on May 30, 2025.

b. GEGD Pro, May 27, 2025.

c. Google Earth Pro, May 27, 2025.

d. City and County of Honolulu’s hydraulic data set, May 27, 2025.

e. National Hydraulic Dataset Plus May 27, 2025.

10. OTHER SUPPORTING INFORMATION. N/A.




⁹ 88 FR 3004 (January 18, 2023)

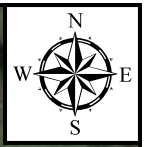
CEPOH-RO

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POH-2025-00111

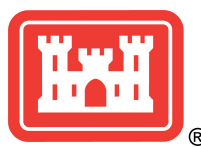
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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

Legend

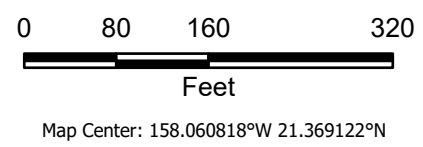
-  Assessed Stream - Ephemeral
-  Non-assessed Streams
-  Review Area



Resource Mapping Hawaii



**Jurisdictional Determination request
for the section of Kaloi Gulch where
two crossing would be replaced.**



By: Joshua Moffi
Date: 9/22/2025

POH-2025-00111