



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

CEPOH-RO

10 March 2026

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) , POH-2015-00011

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.¹ 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.²

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),³ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ 33 CFR 331.2.

² Regulatory Guidance Letter 05-02.

³ 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.

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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. Section of Awanui Gulch, non-jurisdictional
 - ii. Uplands, non-jurisdictional

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

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3. REVIEW AREA.



The review area includes the 26.7-acre work area for the proposed project centered at (21.340851°, -158.097011°) including the 0.25-mile section of Awanui Gulch that intersects with the review area in TMK: 9-1-015:005, 011, 017, 9-2-050:001, Kapolei, Island of Oahu, HI and is shown in the above figure (Figure 1).

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

There are no aquatic resources with a connection to a traditional navigable water (TNW), territorial sea, or interstate water in the review area. The closest navigable waterway to the review area is Barbers Point Harbor, approximately 1.16 miles from the southwestern boundary of the review area.

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

N/A

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6. SECTION 10 JURISDICTIONAL WATERS⁴: 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 10.⁵

There are no jurisdictional aquatic resources in accordance with Section 10 of the Rivers and Harbors Act of 1899 in the review area. The closest navigable waterway to the review area is Barbers Point Harbor, approximately 1.16 miles from the southwestern boundary of the review 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*. 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

- 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

⁴ 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.

⁵ 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.

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).⁶

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.

- 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).

The section of Awanui Gulch in the review area is not jurisdictional because it does not meet one or more categories of waters of the United States under the 2023 Rule as amended. The National Hydrology Dataset classifies the section of Awanui Gulch in the review area as intermittent. Awanui Gulch flows southwest for 885 feet before converging with Palailai Gulch at (21.33942°, -158.10073°). The converging channels form Makakakilo Gulch, which continues to flow south under Interstate H1 before turning east and flowing parallel with H1 for 0.44 miles then continuing to flow southwest into a graded construction site. No standing or flowing water can be seen from aerial imagery throughout the construction area downstream of the review area. The NHD shows the channel ends 1.98 miles downstream of the review area at (21.32116°, -158.10697°). The National Wetland Inventory (NWI) follows the same flow path as the NHD and classifies the reviewed section of Awanui Gulch as a palustrine scrub-shrub system (PSS3A).

A site visit was conducted by the Corps on March 3, 2015, during the local wet season to determine the lateral limits of the Corps’ jurisdiction and support a preliminary jurisdictional determination (PJD). While the conclusion in the PJD was that there may be waters of the United States in the review area, the PJD was done under previous regulations and does not support the same determination under current regulations. Photos from the 2015 site visit show a dry stream bed with scattered grasses within the stream and along the streambank. Additional photos, taken October 17, 2014, were provided to the

⁶ 88 FR 3004 (January 18, 2023)

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Corps by Akinaka & Associates Ltd. to support the 2015 PJD; these photos also show a dry stream bed with scattered grasses along the streambank.

Aerial imagery shows a dry stream channel at the site in September and October 2025. In January 2026, aerial imagery shows the review area is vegetated and the Awanui Gulch channel is not visible.

Based on the evidence stated above, Awanui Gulch is not a relatively permanent tributary of a navigable water and is therefore not a water of the United States.

The surrounding uplands did not include hydric soils or wetland hydrology. According to the NRCS Web Soil Survey, soils in the review area consisted of 26% Honouliuli clay, 65% stony steep land, and <10% of various other soil types. All the soils in the review area were classified as well-drained and non-hydric. The NWI does not show any wetlands in the review area. Aerial imagery does not display any visible standing or flowing water, or dark patterns indicating soil saturation, in the review area.

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. Photos provided by Akinaka & Associates Ltd. taken 17 October 2014.
- b. Photos taken by the Corps on 3 March 2015
- c. NRCS Web Soil Survey accessed by the Corps on 9 March 2026.
- d. Photos provided by the applicant to the Corps on 28 August 2025
- e. National Hydrology Dataset accessed 3 March 2026
- f. National Wetland Inventory accessed 3 March 2026
- g. GEGD Pro imagery taken 20 January 2026, 28 October 2025, 17 September 2025.

10. OTHER SUPPORTING INFORMATION. N/A

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

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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
Review Area



City and County of Honolulu, Esri, HERE, Garmin, USGS, EPA, USDA, Resource Mapping Hawaii



®

POH-2015-00011

Intersection of Awanui Gulch and Farrington Highway, Ewa,
Island of Oahu, Hawaii

0 0.05 0.1 0.2



mi

Map Center: 158.097151°W 21.340702°N

Map Created by: David Rojek

Date: 3/9/2026

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