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

CEPOH-RO 12 January 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) ,[1] POH-2025-00049.

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.

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[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).

      The review area consists of a 10 acre square subsection along the easter edge of TMK parcel (4)8-008:020 where it abuts Puolo Road in Hanapepe, Island of Kauai, Hawaii, as depicted on Page 1 of the JD Maps (see Attachment 1). The entire TMK parcel (4)8-008:020 is 373.06 acres. The center of the review area is located at 21.805435°, -159.55987662°.

      Both the U.S. Geological Survey (USGS) National Hydrography Dataset Plus (NHD+) data and U.S. Fish and Wildlife Services' (USFWS) National Wetland Inventory (NWI) data show an intermittent stream, locally called Kukamahu Gulch, crossing the northeast corner of the review area. However, the State of Hawaii's Light Detection and Ranging (LiDAR) data shows no stream channel with the review area (See Page 2 of the JD Maps). The lack of stream channel in northeast corner the review area was confirmed by photographs submitted by the agent which show no features which might be considered a stream channel in the vicinity. Additionally, the LiDAR data shows a roadside ditch along the south side of the Kaumualii Highway which turns south along the west side of Puolo Road as depicted on page 2 of the JD Maps. It appears that Kukamahu Gulch was diverted to this drainage ditch. There has been no Jurisdictional Determination made for Kukamahu Gulch as it does not cross the review area.

      The State of Hawaii's LiDAR data also shows what could be a drainage feature running through generally north/south through the middle of the review area and exiting the area along the southern edge. This feature does not show up in either the NHD+ data or the NWI data and is nothing visible on either Google Maps, Digital Globe satellite imagery, or ESRI's ArcGIS Pro imagery, which suggests a flow pattern. When comparing the LiDAR data to the available imagery in ESRI's ArcGIS Pro, the feature looks like it would run right along the western edge of the developed portion of the review area. On the eastern edge of the feature, from the closest top of a pile of fill to the closest low point of the feature resulted in a 12% slope, while the slope on the western side of this feature works out to 4%. This feature is not distinct enough to show up on the grading survey for current site conditions drawing provided in the application package. This suggests that feature is an anomaly in the LiDAR data and does not convey water. Based on

this information the feature is either an upland swale or a drainage ditch which was constructed entirely in uplands and draining only uplands.

The U.S. Department of Agriculture (USDA) Web Soil Survey (WSS) Mapper data shows four different soil types within the review are as shown in Table 1 below. None of these soils as listed as hydric. The agent dug a soil pit in the northeast corner of the review area at 21.906092º, - 159.598053º, near where the U.S. Geological Survey's National (USGS) Hydrography Plus Dataset (NHD+) mapper depicts an intermittent stream. The soil pit was located in a portion of the review area with the lowest elevation and close to where the stream should be if it was there. While the agent did not have a Munsell soil color guide they did dig a two foot deep soil pit and took photos, which show the soils to be a consistent a red/brown color with no indicators of redox reactions and thus non-hydric.

Table 1. Soil Units and descriptions for the National Resources Conservation Services, Custom Soils Report for Island of Kauai, Hawaii, POH-2025-00049.

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI	Hydric
MgB	Makaweli silty clay loam, 0 to 6 percent slopes, MLRA 158	6.2	58.90%	No
MgC	Makaweli silty clay loam, 6 to 12 percent slopes, MLRA 158	2.5	24.00%	No
NnC	Nonopahu clay, 2 to 10 percent slopes	0.2	2.10%	No
PdA	Pakala clay loam, 0 to 2 percent slopes	1.2	11.20%	No
rRR	Rough broken land	0.4	3.80%	No
	Totals for Area of Interest	10.5	100.00%	

In addition to the photos of the soil, the applicant provided photos of the vegetation along the location where the HND+ mapper depicts the intermittent stream. The tree and Sapling/Shrub Strata are dominated by *Acacia Koa* (Koa), which are an upland species, while the Herb Statum consists of *Megathyrsus maximus* (Guinea Grass) which is Facultative. Thus, there no hydrophytic vegetation present in this low lying area.

Photos provided by the applicant show the area where the NHD+ mapper depicts the intermittent stream should be as an even surface. The State of Hawaii's Light Detection and Ranging (LiDAR) data shows that the Kukamahu Gulch has been diverted to flow along the road network and there are no other hydrological features within the review area which look like they might convey water. Given that there are no indications of

hydrology which would hold or convey water within the review area, the review area is uplands.

Given the above information the entire review area consists of uplands.

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 consists of a 10 acre square subsection along the easter edge of TMK parcel (4)8-008:020, which is a 373.06 acre parcel in Hanapepe, Island of Kauai, Hawaii (See Attachment 1 – Page 1). The center of the review area is located at 21.805435°, -159.55987662°. There have been no JDs in the vicinity of the project.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest TNW is the Pacific Ocean, which is approximately 1,210 feet, straight line distance, southeast from the center of the review area.[5]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water flowing off the north side of review area would enter the Kukamahu Gulch which has been diverted and is now a roadside ditch along the Puolo Road, turning east and flowing under Puolo Road, before flowing downstream into a fully lined concrete stream channel, which then enters Hanapepe Bay on the Pacific Ocean. All imagery shows a sandplug consistently at the mouth of Kukamahu Gulch. The length of the flowpath from water entering Kukamahu Gulch to the Pacific Ocean is approximately 1,250 feet. There are no identifiable features along the south edge of the review area which look to convey water. Water flowing off the south edge of the review area likely percolates into the soil.

[5] 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.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7] N/A.

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.

    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.

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

[6] 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.
[7] 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.

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).[8] 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).

      The State of Hawaii's LiDAR data shows what could be a drainage feature running through the middle of the review area and exiting the area along the southern edge (See Attachment 1 – Pages 2 and 4). This feature does not show up in either the NHD+ data or the NWI data and is not visible on either Google Maps or Digital Globe satellite imagery. When comparing the LiDAR data to the base imagery in ESRI's ArcGIS Pro the feature looks like it would run right along the western edge of the developed area. Given where this feature seems run it would appear to be either an upland swale or a drainage ditch which was constructed entirely in uplands and draining only uplands. On the eastern edge of the feature, from the closest peak fill pile to the low point of the feature resulted in a 12% slope, while the slope on the western side of this feature works out to 4%. This drastic difference is likely the result of that fill that has been added to the site. This feature is not distinct enough to show up on the current grading survey provided as part of the drawings in the application package. Based on this information, it is likely that the feature which appears in the LiDAR data is an anomaly due to previous activities on the site and does not actually convey water. If the feature does convey water, it would be an upland swale and thus non jurisdictional.

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. U.S. Geological Survey (USGS) – National Hydrological Dataset Plus (NHD+) – December 12, 2025.

[8] 88 FR 3004 (January 18, 2023)

b. U.S. Fish and Wildlife Service (USFWS) – National Wetland Inventory – December 12, 2025.

c. State of Hawaii – GIS LiDAR – December 12, 2025.

d. Digital Globe – Satellite Imagery – December 12, 2025.

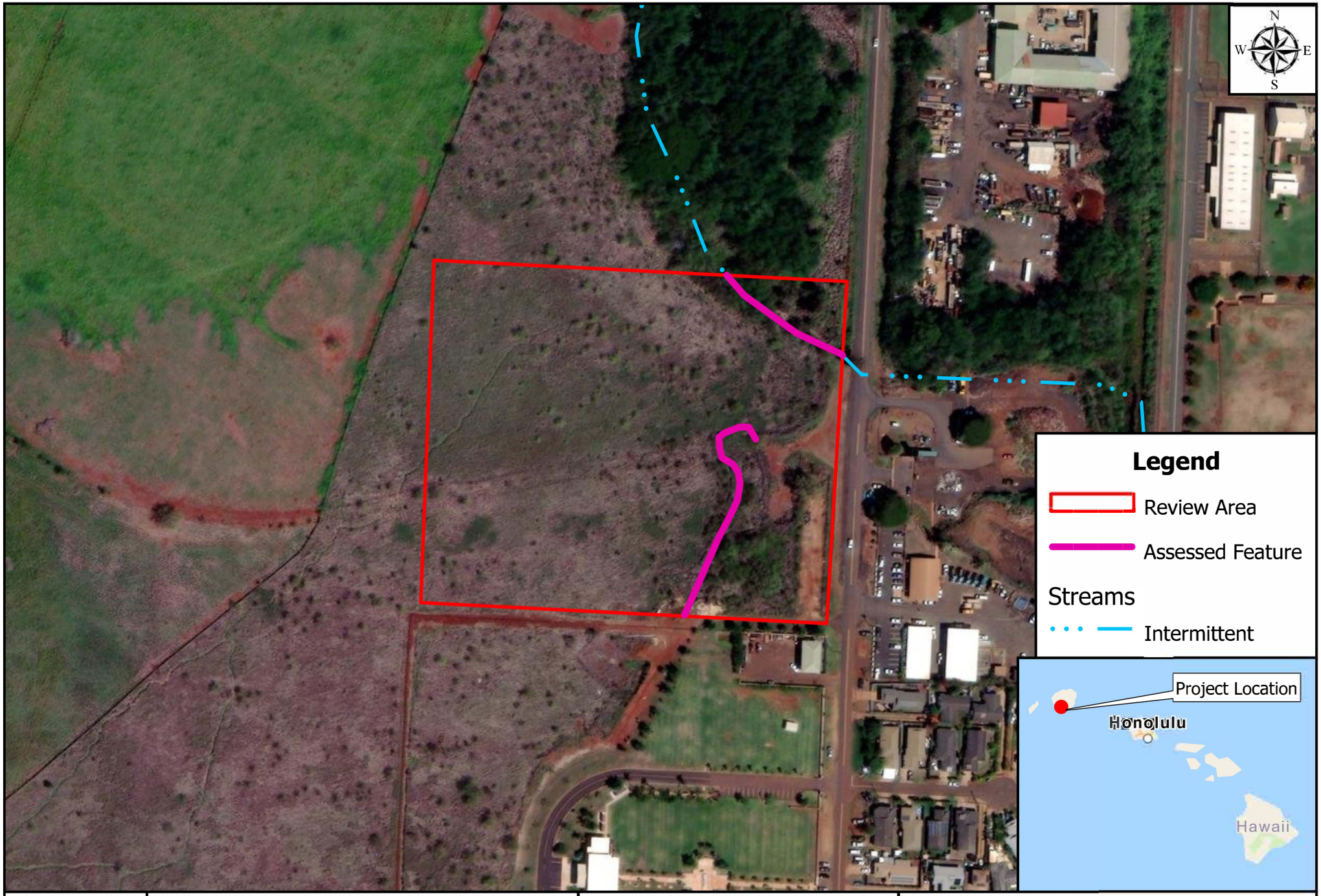
e. Google Maps – Satellite Imagery and Street View – December 12, 2025.

f. U.S. Department of Agriculture – Web Soil Survey Mapper – December 12, 2025.

g. Photographs provided by the applicant showing the northeastern corner of the review area.

10. OTHER SUPPORTING INFORMATION. The U.S. Geological Survey (USGS) National Hydrological Dataset Plus (NHD+) data and U.S. Fish Services' National Wetland Inventory (NWI) data both show that there is a stream, locally called Kukamahu Gulch, crossing the northeast corner of the review area. However, the State of Hawaii's LiDAR data shows that there is no stream channel with the review area. This is confirmed by photographs of the northeastern corner of the review area showing there are no features in that area which might be considered a flow path for a stream. There has been no Jurisdictional Determination made for Kukamahu Gulch as it does not cross the review area, even if it once did.

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.



Jurisdictional Determination for: POH-2025-00049, HDOT, West Kauai Field Operations Facility, Kainahola Stream, Hanapepe, Island of Kauai, HI

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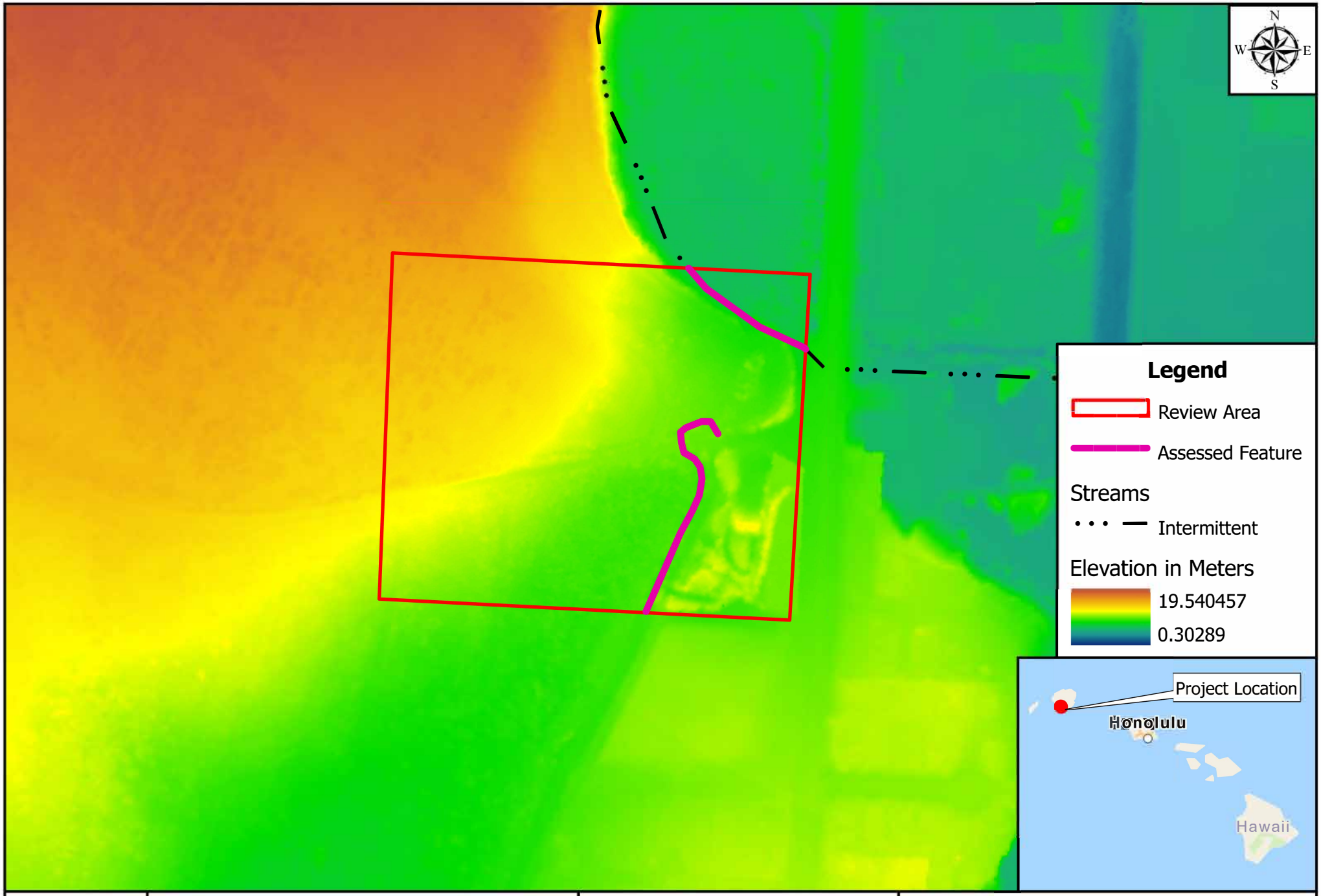
Date: January 12, 2026



Jurisdictional Determination for: POH-2025-00049, HDOT, West Kauai Field Operations Facility, Kainahola Stream, Hanapepe, Island of Kauai, HI

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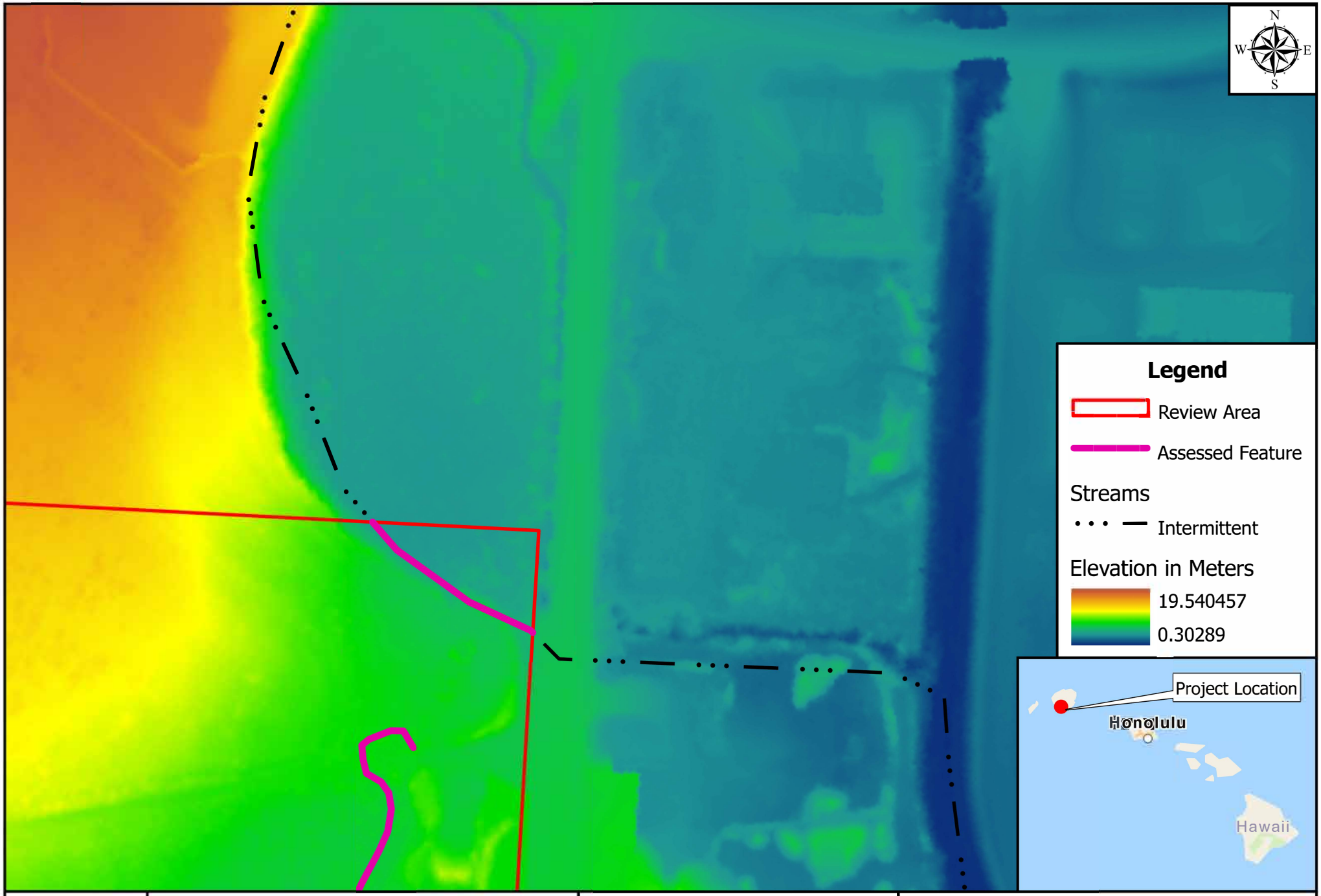

Jurisdictional Determination for: POH-2025-00049, HDOT, West Kauai Field Operations Facility, Kainahola Stream, Hanapepe, Island of Kauai, HI

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Feet

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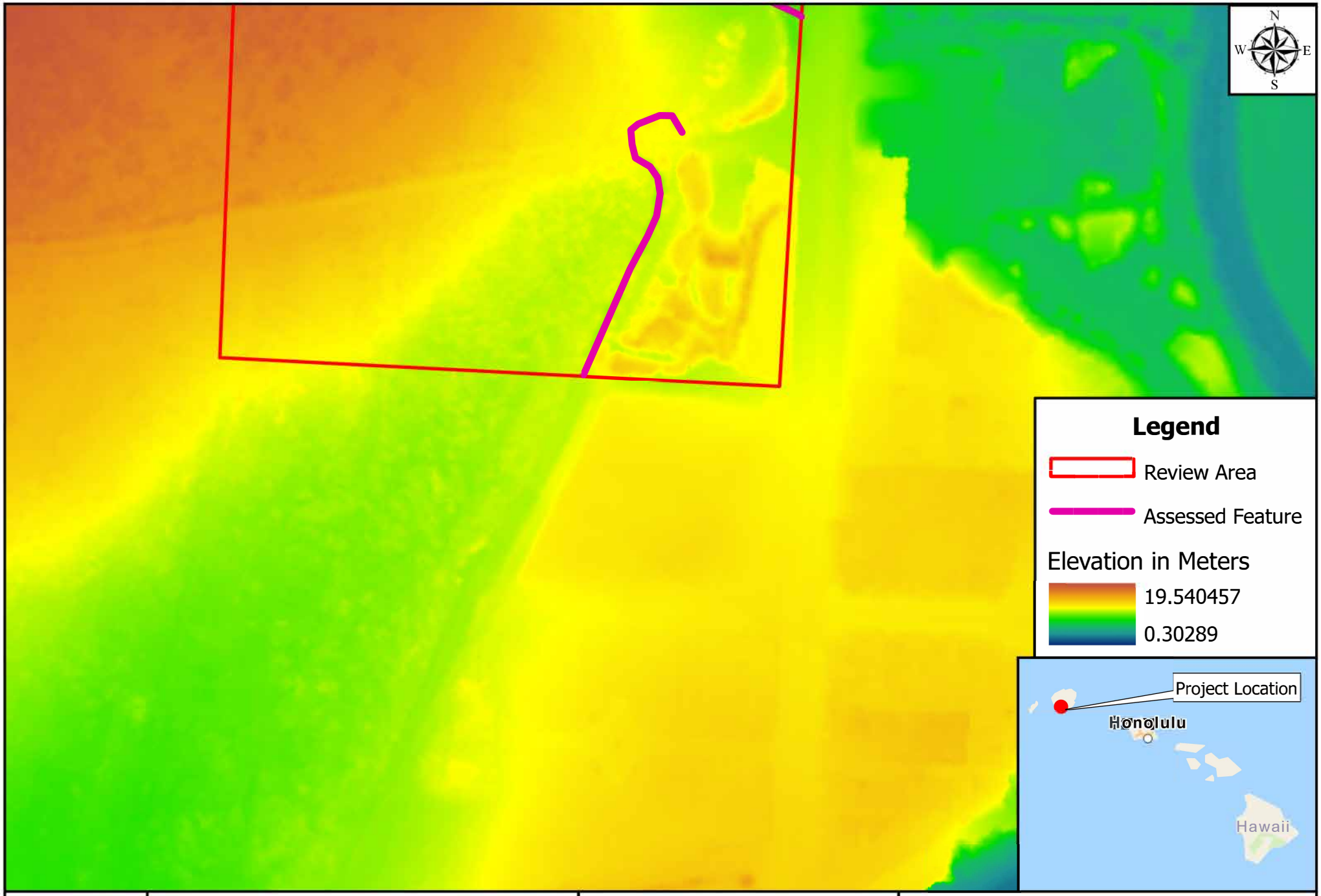

Jurisdictional Determination for: POH-2025-00049, HDOT, West Kauai Field Operations Facility, Kainahola Stream, Hanapepe, Island of Kauai, HI

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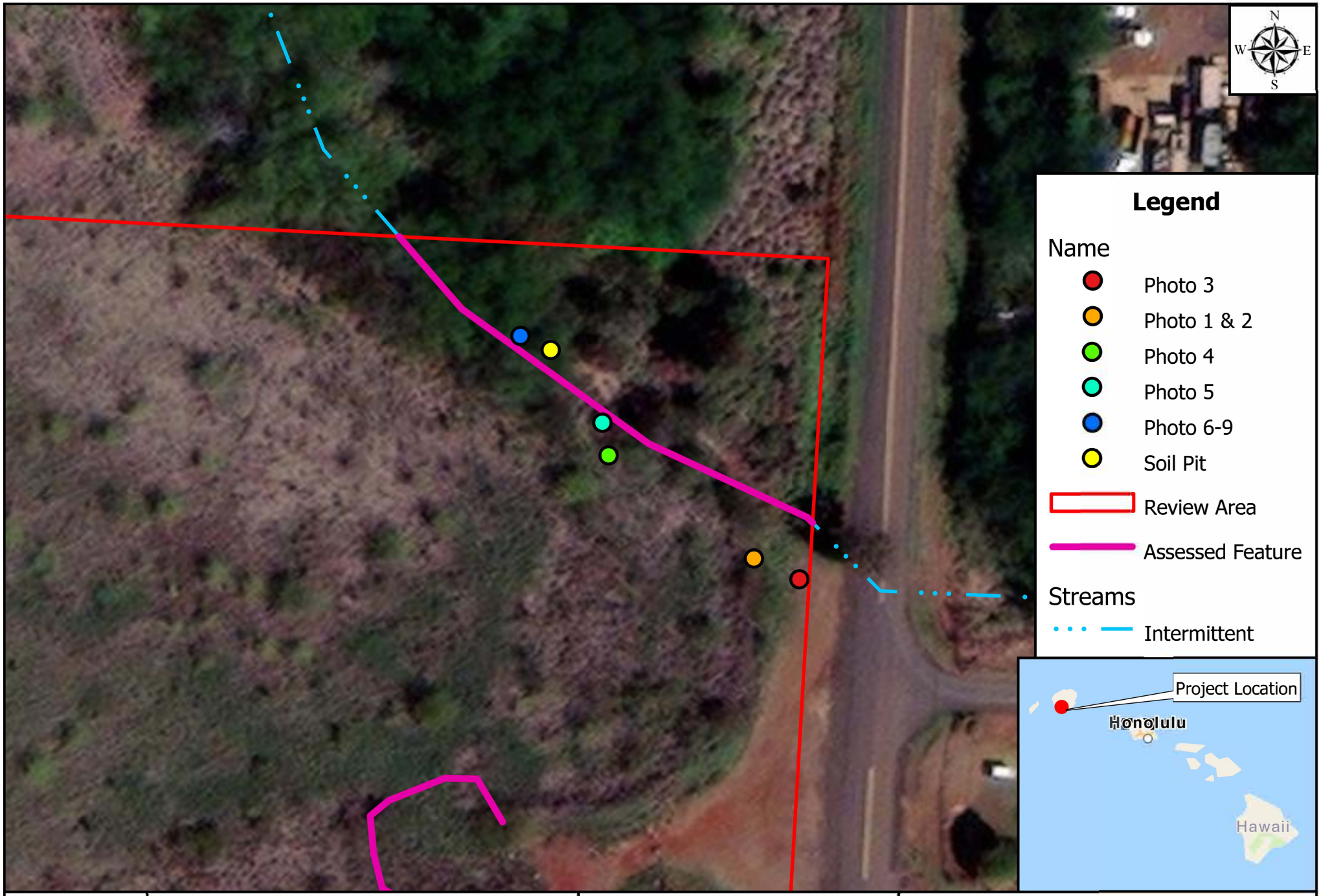

Jurisdictional Determination for:
POH-2025-00186, HDOT, West Kauai Field Operations Facility, Kainahola Stream, Hanapepe, Island of Kauai, HI

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Feet

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Produced By: Joshua Moffi
Date: January 12, 2026