



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

CEPOH-RO

20 February 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) ,<sup>1</sup> POH-2025-00110.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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-2025-00110

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

## 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 U.S. Fish and Wildlife Service's National Wetlands Inventory (NWI) Mapper shows a palustrine emergent wetland in the northern section of the review area. The area of this wetland which is located to the properties west of TMK (4) 4-8-022:089 was covered under a JD for POH-2019-00137 and was found to be non-jurisdictional. The portion of the wetlands reviewed under POH-2019-00137 have since been filled. The original request for JD covering an area of 2.5 acres was expanded to 3.89 acres to include the entire wetland which was identified in the NWI as entering the review area and is the only remaining area of this wetland complex. There have been no aquatic features identified connecting this wetland to make it potentially jurisdictional. The National Resources Conservation Service's Web Soil Survey Mapper shows the entire area as Lihue silty clay soil which has a high runoff rate and is listed as a non-hydric soil. Additionally, the Natural Resources Assessment submitted by the applicant contains photo and wetland delineations point data to document that the review area is an upland area. Based on the Natural Resources Assessment and information in the POH-2019-00137 Administrative Record the Corps has determined the review area consists entirely of uplands and was possibly miss mapped in the NWI.

## 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 includes 3.89 acres of the 25.18 acre parcel known as 4333 Kukuihale Road TMK (4) 4-8-022:089, in Anahola, on the Island of Kauai, Hawaii. See POH-2025-00110\_JDMap in the AR for a map of the location and review area.

CEPOH-RO

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), POH-2025-00110

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. <sup>6</sup> The closest Territorial Sea is the Pacific Ocean which is located approximately 2,150 feet east of the site.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. From the site water would flow off to the southwest into a small gulch running just off the western edge of the site which runs approximately 410 feet southeast to larger ravine. From there it runs approximately 2,265 feet to the Pacific Ocean.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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-2025-00110

- 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

#### 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).<sup>9</sup>

There are no aquatic features in the review area. The closest aquatic feature is a drainage running just off the western edge of the review area. There has been no jurisdictional determination made for this feature.

- 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).

N/A

- 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.

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<sup>9</sup> 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-2025-00110

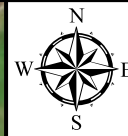
- a. A natural resources assessment for Kanuikapono Public Charter School Pre-K Facility in Anahola, Kaua'i. Submitted by the applicant and produced by AECOS Inc. Dated December 15, 2025.
- b. Google Earth Pro, Accessed December 18, 2025.
- c. Google Maps, Accessed December 18, 2025.
- d. Digital Globe, Accessed December 18, 2025.
- e. National Resources Conservation Service's Web Soil Survey Mapper, Accessed December 18, 2025. Available at:  
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- f. U.S. Fish and Wildlife Service's National Wetlands Inventory Mapper, Accessed September 16, 2025. Available at:  
<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>
- g. U.S. Geological Survey's National Hydrography Dataset Plus Mapper, Accessed September 16, 2025. Available at:  
<https://usgs.maps.arcgis.com/apps/MapTools/index.html?appid=41a5c2ca49bd4a83b239450e61022d53>

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 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.

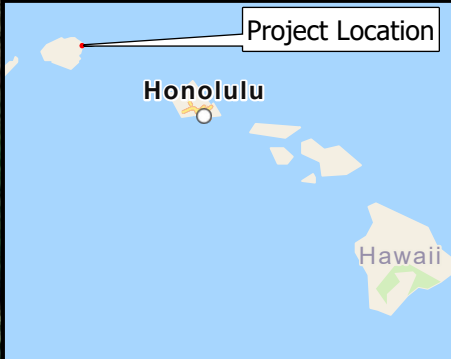


**POH-2025-00110, HI Department of Hawaiian Home Lands,  
Kanuikapono Public Charter School, Pacific Ocean,  
Anahola, Island of Kauai, Hawaii**

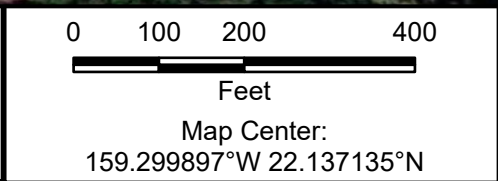


**Legend**

 Review Boundaries



**Description:**  
Jurisdictional Determination review area of 3.89 acres  
for the construction of a new public charter school.



Produced By: Joshua Moffi  
 Date: February 20, 2026  
 Page: 1 of 1