



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

CEPOH-RO

18 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),¹ POH-2025-00178²

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.

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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). There are no aquatic features in the review area. Based on the information in the delineation report provided by the applicant, the NRCS Web Soil Survey, and confirmed by the Corps site visit the review area does not meet the wetland criteria. Based on this the Corps has determined that the entire review area is 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 0.33 acres of the 12,996.766 acre property known as Tax Map Key (4) 1-2-002:001, centered on the coordinates 21.977498°, -159.735013°. See attached JD Map for a diagram of the review area. This area is depicted as wetlands on the U.S. Fish and Wildlife Service's (USFWS) National Wetland Inventory (NWI) Mapper lists the site as palustrine emergent, persistent, flooded, diked/impounded habitat (PEM1Fd). While the National Resources Conservation Service (NRCS) Web Soils Survey lists the soil as Fill Land (Fd) over top of Jaucas loamy fine sand, 0 to 8 percent slopes (JfB). Neither of these soils are considered to be hydric by the NRCS. Based on the information in the JD report provided by the applicant, the soils encountered did not meet the criteria for hydric soils. The site visit confirmed the soil color in the first few inches of the hole; however, the soil was so hard packed that digging with a sharpshooter was impossible. The JD crew had used a backhoe to dig their holes. Based on what was observed on site the Corps concurs with the JD information provided by the applicant. The review area consists entirely of uplands.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest Territorial Sea is the Pacific Ocean which is located approximately 1,610 feet from the site.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water running off the site would run to the southeast for approximately 155 feet where it would enter an entrenched stream coming down from the mountains. From here it runs approximately 1,370 feet to the Pacific Ocean. The stream is outside the review area.
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 are no aquatic resources in the review area.
 - 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.

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.

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.

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- 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).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).
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.

- a. Delineation Report provided by the applicant. Dated August 2025
- b. Site Visit conducted on August 27, 2025.
- c. Google Earth accessed August 19, 2025.
- d. National Wetlands Inventory accessed August 19, 2025.
<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>
- e. NRCS Web Soil Survey, accessed on August 19, 2025.
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>
- f. Digital Globe, satellite imagery, accessed August 19, 2025.

⁹ 88 FR 3004 (January 18, 2023)

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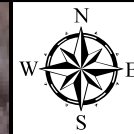
- g. Site Visit August 27, 2025.
- h. Personal conversation with the Biologist at USFWS's Kalauea Point National Wildlife Refuge on August 28, 2025. She noted that there had been a lot of water wells installed around the island that had resulted in drawdown on the natural systems. She said that the area along the mountainside above the site had a lot of these wells. She also noted that when the original NWI data had been compiled there was a practice of going broad and that the area might not have all been wetlands in the first place.

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.

Legend

 Review Boundaries



**Jurisdictional Determination request
for Corteva Agricultural Science HI,
Corteva Warehouse Wastewater
System.**

0 25 50 100



Feet

Map Center: 159.735206°W 21.977412°N

Josh Moffi

Date: February 17, 2026

Coordinate System: NAD 1983 HARN StatePlane Hawaii
5 FIPS 5105 Feet