



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

January 30, 2024
Honolulu, Hawai'i

Modification of Stream Channel Alteration Permit (SCAP.6026.3)
Scaffolding for Reconstruction of Pedestrian Bridges Mauka of Kamehameha Highway and
Installation of Temporary Pedestrian Bridges Makai of Kamehameha Highway; and
Revised Recommendation from State Historic Preservation Division
Hawai'i Department of Transportation (DOT)
Kamehameha Highway Resurfacing, Laiewai to Waipuhi Bridge
Hau'ula and Maakua Streams, O'ahu, Tax Map Key(s): DOT Right-of-Way

APPLICANT

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LANDOWNER

Hawai'i Department of Transportation

SUMMARY OF REQUEST

Modify Stream Channel Alteration Permit (SCAP.6026.3) previously approved by the Commission on Water Resource Management (Commission) on September 19, 2023 to the Hawai'i Department of Transportation (DOT). The original permit was for the temporary use of scaffolding on the mauka side of Kamehameha Highway so that the DOT could install and reconstruct pedestrian bridges across the Hau'ula and Maakua Streams. The proposed modification is to move the location of the temporary pedestrian bridges to the makai side of the highway. Scaffolding may be used for both the reconstruction of the pedestrian bridges on the mauka side of the highway and installation of temporary pedestrian bridges on the makai side of the highway. The September 19, 2023 staff submittal did not provide for delegations to the Chair to modify conditions of the permit nor does the permit provide for these types of situations. In addition, the State Historic Preservation Division (SHPD) revised their recommendation to include consultation with Native Hawaiian Organizations and requests archaeological monitoring under a SHPD-approved archaeological monitoring plan.

BACKGROUND

On May 3, 2023, DOT filed a complete stream channel alteration permit application that is available online at https://files.hawaii.gov/dlnr/cwrm/swreview/SCAP_6026_3.pdf.

On September 19, 2023, the Commission approved Stream Channel Alteration Permit (SCAP.6026.3) by Hawai‘i Department of Transportation (DOT). The project proposed the reconstruction of existing pedestrian bridges at Hau‘ula and Maakua Streams on the mauka side of Kamehameha Highway.

On November 14, 2023, the State Historic Preservation Division (SHPD) sent the Commission a revised letter regarding its earlier concurrence with DOT’s determination of “No historic properties affected” (See **Exhibit 4**). The revised letter noted that “SHPD is amending its determination”, that “SHPD does not concur with the effect determination of ‘No historic properties affected’ due to insufficient information to determine sub-surface properties will not be affected and therefore requests archaeological monitoring is carried out under a SHPD approved archaeological monitoring plan during all ground disturbance required during this project” and recommended consultation with Native Hawaiian Organizations, including the Office of Hawaiian Affairs, be completed prior to the start of the project and that documentation is provided to SHPD.

On November 28, 2023, Emma Kawamoto, with DOT Highways Division, emailed Rebecca Alakai, of the Commission staff, requesting that the location of the construction for the temporary pedestrian bridges be moved from the mauka side to the makai side of Kamehameha Highway bridges to stay within their right-of-way.

LOCATION: Hau‘ula and Maakua Streams, O‘ahu. See **Figure 1**.

Figure 1: Location, Hau‘ula and Maakua Streams, O‘ahu.



STREAM DESCRIPTION

Both the National Hydrography Dataset and the Division of Aquatic Resources classified the Hau‘ula Stream as perennial. The total drainage area is 0.55 square miles with a maximum basin elevation of 1,960 feet. The mean annual precipitation is 99 inches and the longest flow path is less than two (2) miles. The mouth of the stream (muliwai) does not have a constant connection to the ocean.

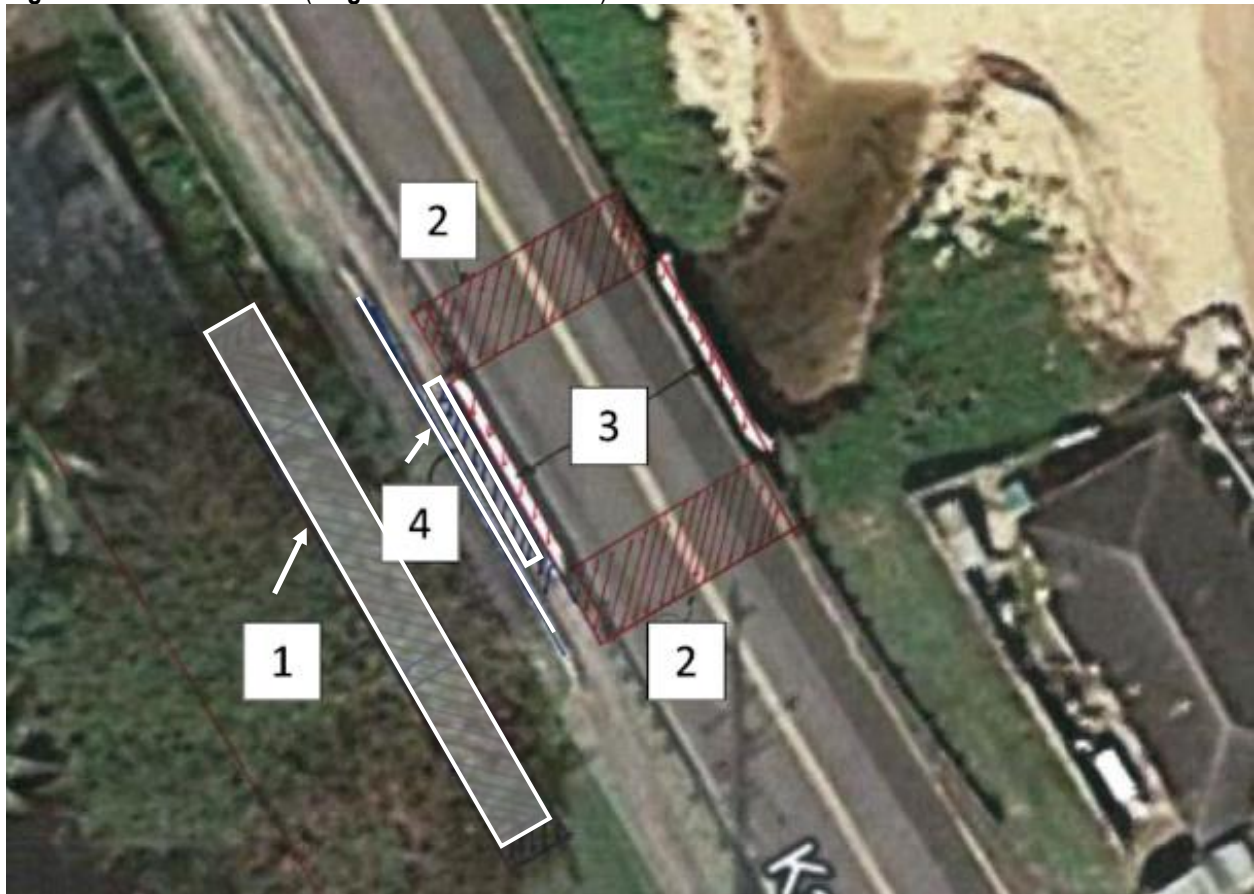
Both the National Hydrography Dataset and the Division of Aquatic Resources classified the Maakua Stream as perennial. The total drainage area is over 1.5 square miles with a maximum basin elevation of 2,740 feet. The mean annual precipitation is 150 inches and the longest flow path is less than four (4) miles. The mouth of the stream (muliwai) does not have a constant connection to the ocean. The stream is partially channelized on the upstream mauka side where the pedestrian bridge will be constructed.

PROJECT DESCRIPTION

The modification of the SCAP requires the reconstruction of the pedestrian bridges at Hau‘ula and Maakua Streams from the mauka side to the makai side of the Kamehameha Highway. There will be no new structures built in the streams. The work may require the contractor to use scaffolding on both the mauka and makai sides of the highway to install the reconstructed pedestrian bridges and for the installation of temporary pedestrian bridges. The scaffolding is temporary and will not interfere with stream flow. After the reconstructed pedestrian bridges are in place, the contractor will remove the scaffolding. There is no excavation or fill. See **Figure 2A Hau‘ula Stream (Original Plan Mauka Side)** and **Figure 2B Hau‘ula Stream (Modification Makai Side)**. See **Figure 3A Maakua Stream (Original Plan Mauka Side)** and **Figure 3B Maakua Stream (Modification Makai Side)**.

The overall proposed project, and outside the scope of the State Water Code, includes cold planing; resurfacing; reconstructing weakened pavement areas; adjusting existing utility manhole frames and covers; upgrading existing guardrail, end treatments, bridge railings and end posts; installing milled centerline and shoulder rumble strips, safety edge, shoulder dressing, reflector markers, milepost reference markers, pavement markings, and striping; and replacing signage.

Figure 2A: Hau'ula Stream (Original Plan Mauka Side).



1. Temporary pedestrian bridge (single span) 4ft to 8ft in width with abutment footings at both ends of bridge and set beyond the banks (above high-water mark) of the stream. The temporary pedestrian bridge and its foundation shall be removed upon completion of the project and the area restored to its original setting.
4. The existing timber pedestrian walkway shall be removed and replaced with stainless steel supports attached to the exterior girder on the upstream side of the bridge. Timber decking will be used on the entire length of the pedestrian walkway.



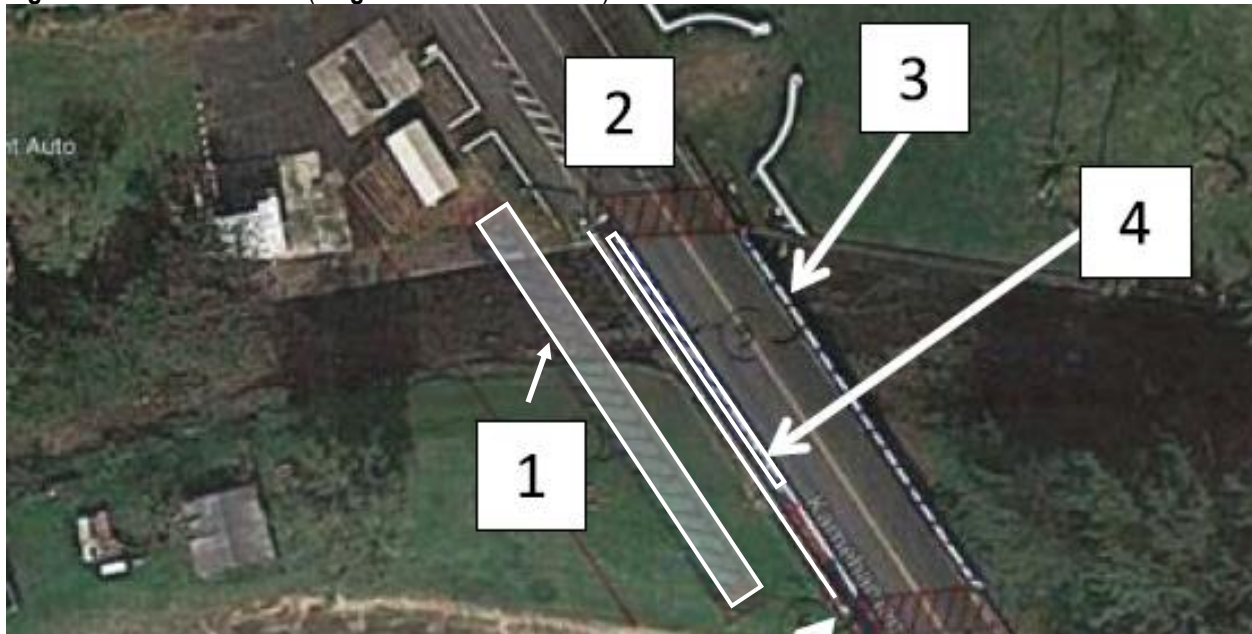
Existing pedestrian bridge on **mauka side** of Hau'ula Stream bridge.

Figure 2B: Hau‘ula Stream (Modification Makai Side).



Temporary pedestrian bridge (same as **Figure 2A**) but on the **makai side** of the highway.

Figure 3A: Maakua Stream (Original Plan Mauka Side).



1. Temporary pedestrian bridge (single span) 4ft to 8ft in width with abutment footings at both ends of bridge and set beyond the banks (above high-water mark) of the stream. The temporary pedestrian bridge and its foundation shall be removed upon completion of the project and the area restored to its original setting.
4. The existing timber pedestrian walkway shall be removed and replaced with stainless steel supports attached to the exterior girder on the upstream side of the bridge. Timber decking will be used on the entire length of the pedestrian walkway.



Mauka side of Maakua Stream and location of temporary scaffolding.

Figure 3B: Maakua Stream (Modification Makai Side).



Temporary pedestrian bridge (same as **Figure 3A**) but on the **makai side** of the highway.

AGENCY REVIEW COMMENTS

City and County of Honolulu, Department of Planning and Permitting: No comments received.

Department of Hawaiian Home Lands (DHHL): The Department of Transportation (DOT) stated, with categorical assurance, that “No traditional and customary Native Hawaiian rights would be affected by temporary scaffolding in the streams while the pedestrian bridges are built.” However, we do not see any evidence supporting that statement. Minimally, the applicant should demonstrate that adequate research and community outreach was recently conducted to reach that conclusion. In that regard, DHHL recommends if a proposed SCAP

project is located on O‘ahu, the applicant should seek to brief the applicable Neighborhood Board for the area the proposed SCAP is located, to address general concerns and to assist in the process of identifying any impacts on practices. See **Exhibit 1**.

CWRM Staff Response: Added as a special condition by reference.

Department of Land and Natural Resources (DLNR), Aha Moku: No comments received.

DLNR, Aquatic Resources: No comments received.

DLNR, Engineering: The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high-risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR, Chapter 1, Subchapter B, part 60 reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards. The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA’s Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA’s Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiinfip.org/FHAT>) could also be used to research flood hazard information.

CWRM staff response: The mauka side of Hau‘ula Stream is in Zone AE. The mauka side of Maakua Stream is in Zone AEF. The 1% annual chance Flood (100-year), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year.

DLNR, Forestry and Wildlife (DOFAW): The State listed ‘ope‘ape‘a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor

and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW’s recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/#response>.

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai‘i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>. State-listed waterbirds such as the ae‘o or Hawaiian stilt (*Himantopus mexicanus knudseni*), ‘alaie ke‘oke‘o or Hawaiian coot (*Fulica alai*), and ‘alaie ‘ula or Hawaiian gallinule (*Gallinula chloropus sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the O‘ahu Branch DOFAW Office at (808) 973-9778 and establish a buffer zone around the nest.

The State endangered Pueo or Hawaiian Short-eared Owl (*Asio flammeus sandwichensis*) could potentially occur in the project vicinity. Pueo are most active during dawn and dusk twilights. Remove and exclude non-native mammals such as mongoose, cats, dogs, and ungulates from the nesting area. Minimize habitat alterations and disturbance during Pueo breeding season. Before any potentially disturbing activity like clearing vegetation, especially ground-based disturbance, conduct surveys during crepuscular hours and walk line transects through the area to detect any active Pueo nests. If a Pueo nest is discovered, notify DOFAW staff, minimize time spent at the nest, and establish a minimum buffer distance of 200 meters from the nest until chicks are capable of flight, approximately 2 months after nest is discovered.

The State endangered ‘Ilio holo i ka uaua or Hawaiian Monk Seal (*Monachus schauinslandi*), Honu or Green Sea Turtle (*Chelonia mydas*), and Honu‘ea or Hawksbill Sea Turtle (*Eretmochelys imbricata*) could potentially occur or haul out onshore within the vicinity of the proposed project site. If any of these species are detected within 100 meters of the project area all nearby construction operations should cease and not continue until the focal animal has departed the area on its own accord.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project. DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid ‘Ōhi‘a Death), vertebrate and invertebrate pests (e.g., Little Fire Ants, Coconut Rhinoceros Beetles, etc.), or invasive plant parts (e.g., Miconia, Pampas Grass, etc.) that could harm our native species and ecosystems. We recommend consulting the O‘ahu Invasive Species Committee (OISC) at (808) 266-7994 to help plan, design, and construct the project, learn of any high-risk invasive species

in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* is known to occur on the island of O‘ahu. On July 1, 2022, the Hawai‘i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O‘ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes a) entire dead trees, b) mulch, compost, trimmings, fruit and vegetative scraps, and c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. See **Exhibit 2**.

CWRM Staff Response: Added as a special condition by reference.

DLNR, Historic Preservation (SHPD): On April 17, 2023, Historic Preservation determined that no historic properties affected provided that the agreed upon conditions are completed as shown below. HDOT identified 14 historic properties within the project area as described by HDOT below. HDOT asserts these properties are significant historic properties and meet the criteria of the Hawai‘i Register of Historic Places.

State Inventory of Historic Places (SIHP) Site 50-80-06-4794 consists of a buried cultural deposit with an associated human burial beneath Kamehameha Highway. The cultural layer extends approximately 1,800 linear feet (width unknown) along the makai side of the highway surrounding Maakua and Hau‘ula Streams and adjacent to the beach park in the Hau‘ula Ahupua‘a. The associated human burial was removed and the historic artifacts were collected. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4795 consists of a buried cultural deposit with an associated human burial beneath Kamehameha Highway. The cultural layer extends approximately 300 linear feet (width unknown) along the makai side of the highway on both sides of Waipilopilo Stream on the

boundary between Hau‘ula and Kaipapau Ahupua‘a. The human burial was removed and the historic artifacts were collected. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4796 consists of a human burial located on the makai side of Kamehameha Highway just north of Kaipapau Stream in the Kaipapau Ahupua‘a at a depth of 80 centimeters (31.5 inches) below the surface. The burial was left in place when encountered. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e.

SIHP Site 50-80-06-4797 consists of a buried cultural deposit with 4 associated human burials beneath Kamehameha Highway. The cultural layer extends over 1,900 linear feet (width unknown) along the makai side of the highway along Kokololio Beach Park in Laie. Three of the burials were removed and one remains in place. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4798 consists of a buried cultural deposit with 3 associated human burials beneath Kamehameha Highway. The cultural layer extends approximately 300 linear feet (width unknown) along the mauka side of the highway between Kokololio Stream and Akakii Stream in the Laie Ahupua‘a. The deposit was heavily disturbed and truncated in many places due to previous utility excavations. The burials were removed. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e.

SIHP Site 50-80-06-5457 consists of a buried cultural deposit beneath Kamehameha Highway. The cultural layer extends approximately 800 linear feet (width unknown) along the mauka side of the highway along Laie Beach Park. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-5458 consists of a buried cultural deposit with 2 associated human burials beneath Kamehameha Highway. The cultural layer extends over 600 linear feet (width unknown) along the mauka side of the highway north of Koloa Stream in the Laie Ahupua‘a. One of the burials was removed and the other left in place. The data recovery at this site included the removal of 1 human burial and a soil sample. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

The 2013 Hawaii State Historic Bridge Inventory and Evaluation determined the bridges itemized below are eligible for listing in the Hawai‘i Register of Historic Places under criterion c, for their association with early developments in concrete bridge construction in Hawai‘i. These bridges have been described as a good example of a 1930’s reinforced concrete bridge that is typical of the period and its use of materials, method of construction, craftsmanship, and design.

SIHP Site 50-80-02-08061, the Laiewai Bridge, is a concrete slab bridge crossing Kahawainui Stream, constructed in 1933. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1986, as part of a resurfacing project, metal guardrails were connected to the four original curved end posts at the ends of the bridge. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1991. Thrie beams were bolted to the end posts.

SIHP Site 50-80-020-08079, the Laieloa Stream Bridge, is a concrete tee beam bridge crossing Laieloa Stream, constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved wide end posts. The single span concrete deck is supported by concrete abutments. The parapet cap and end post panels have been painted white. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1964. Thrie beams were bolted to the one end of the posts.

SIHP Site 50-80-020-08077, the Laiemaloo Bridge, is a concrete slab bridge crossing Koloa Stream constructed in 1933. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1986, a wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge and thrie beams were bolted to the end posts of the railings.

SIHP Site 50-80-05-08062, the Kaipapau Stream Bridge, is a concrete tee beam bridge crossing Kaipapau Stream that was constructed in 1932. The bridge has concrete open arch parapets with tapered caps and curved wide end posts. The concrete desk is supported by concrete abutments. The parapet caps and end posts have been painted white. A wood pedestrian walkway with wood horizontal railings was added to one side of the bridge in 1964. Thrie beams were bolted to the end posts but the simple design of the parapet retains its integrity.

SIHP Site 50-80-05-08112, the Waipilopilo Bridge, is a concrete tee beam bridge crossing Waipilopilo Stream constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved wide end posts. The single span concrete deck is supported by concrete abutments. The parapet cap and end post panels have been painted white. A wood pedestrian walkway with wood horizontal railings was added to one side of the bridge in 1964. Thrie beams were bolted to the end posts.

SIHP Site 50-80-05-08081, the Muliwai Bridge, is a concrete slab bridge crossing Maakua Stream constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1990, as part of a guardrail and shoulder improvements project, metal guardrails were connected to the four original curved end posts. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1997.

SIHP Site 50-80-05-08056, the Hau‘ula Bridge is a concrete tee beam bridge crossing Hau‘ula Stream that was constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. As part of a guardrail and shoulder improvements project in 1990, three beams were bolted to the four original end posts. In 1997, a wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge. See **Exhibit 3**.

Revised SHPD letter (Exhibit 4). In a letter dated April 17, 2023 (SHPD Doc. No. 2304SH05) the State Historic Preservation Division (SHPD) responded to a letter dated March 10, 2023 received from the State of Hawai‘i Department of Transportation (HDOT) to initiate the Chapter 6E-8 historic preservation review and to request the SHPD’s concurrence with HDOT’s determination of “No historic properties affected” for the Kamehameha Highway Resurfacing project from Laiewai Bridge to Waipahi Bridge on the island of O‘ahu (HICRIS Submission No. 2020PR33593.003). At that time, the SHPD concurred with the effect determination. Due to the archaeological sensitivity in the project area, **the SHPD is amending its determination** to request archaeological monitoring during the project.

Additionally, on June 27, 2023, the SHPD received a letter dated June 7, 2023 from the Department of Land and Natural Resources, Commission on Water Resource Management (CWRM) to initiate the Chapter 6E-42 historic preservation review for the subject project and to request the SHPD’s concurrence with CWRM’s determination of “No historic properties affected” (HICRIS Submission No. 2020PR33593.006).

The proposed HDOT project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y); the project is subject to compliance with Section 106 of the National Historic Preservation Act.

The proposed project is located along Kamehameha Highway, State Route 83, on the north shore of O‘ahu between Laiewai Bridge (mile post 17.66) and Waipuhi Bridge (mile post 21.65). HDOT states that the proposed work will be conducted entirely within the existing HDOT right-of-way (ROW). The project area is roughly 25 acres, comprised of the 3.99 mile long and approximately 50 feet wide ROW, and will include ground disturbance to a depth of 18 inches (46 centimeters).

HDOT identified 14 historic properties within the project area. The previous Chapter 6E correspondence provides summarized descriptions of the historic properties, therefore they will not be detailed in this letter. Archaeological sites identified within the project area include State Inventory of Historic Places (SIHP) 50-80-06-4794, SIHP 50-80-06-4795, SIHP 50-80-06-4796, SIHP 50-80-06-4797, SIHP 50-80-06-4798, SIHP 50-80-06-5457, and SIHP 50-80-06-5458.

Architectural sites identified within the project area include: The Laiewai Bridge, the Laieloa Bridge, the Laiemaloo Bridge, the Kaipapau Bridge, the Waipilopilo Bridge, the Muliwai Bridge, and the Hauula Bridge.

HDOT determined in its March 2023 letter that these properties are significant historic properties and meet the criteria for listing in the Hawai‘i Register of Historic Places. In the letter dated April 17, 2023, the SHPD determined all seven archaeological sites in the project area also meet criterion e, as defined in HAR §13-275- 6(b)(5). **Please note** that historic properties that meet criterion e require consultation per HAR §13-275-6(c).

HDOT’s letter states the project area was previously disturbed from the original construction of the roadway, utility installations, and subsequent repaving. All proposed subsurface activity will occur entirely within previously disturbed soil within the existing State ROW and therefore should not affect any potential subsurface cultural deposits that might be below the road prism.

No work will occur on Laieloa Bridge, Kaipapau Bridge, and Waipilopilo Bridge during this project. Bridge work to Laiewai Bridge, Laiemaloo Bridge, Muliwai Bridge, and Hau‘ula Bridge consists of removing the existing railings, end posts, and metal guardrails down to the top of the existing concrete deck. A new railing will be doweled into the existing structure with a vertical face in the same plane as the existing and have recessed rectangular panels to mimic the existing panels. New transition walls, end posts and approach slabs will be added behind the existing abutments at both ends of the bridge. HDOT determined the proposed work will have no effect on these historic bridges because the character-defining feature of the bridges – the recessed rectangular panels – will not be altered. No changes will be made to the deck or substructure.

SHPD has reviewed the proposed project, pursuant to HRS §6E-8 and has found that it is unlikely that architectural historic properties will be affected by the proposed project provided that the agreed upon conditions identified above are completed. However, the SHPD raises concerns that the project has potential to impact subsurface archaeological historic properties as well as human burials. Therefore, the SHPD withdraws its previous concurrence with the determination of “No historic properties affected” and request archaeological monitoring is carried out during the proposed project to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s) and archaeological remains present in the project area (project area referred to in Section 106 as the Area of Potential Effects [APE]). Via the Section 106 historic review process, the FHWA, HDOT, and SHPD agreed archaeological monitoring would be carried out during ground disturbance required during this project.

Under the Section 106 historic review process, a SHPD letter to the FHWA dated June 27, 2022 requested the actions below are completed in order to reach the FHWA’s Section 106 effect determination of no adverse effect:

1. The written and photographic documentation proposed for the mitigation of effects to the Laiewai Bridge, Laiemaloo Bridge, Muliwai Bridge, and Hauula Stream Bridge be prepared in accordance with the National Register Photograph Policy and by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. SHPD also requested that the written documentation include updated information provided for the Statewide Bridge Inventory Survey and that FHWA please include State Inventory of Historic Places numbers in the documentation.

2. Archaeological monitoring is conducted by a qualified archaeologist at each ground disturbing activity within the APE reaching below the base course to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s) and archaeological remains present in the APE. The SHPD requested a draft archaeological monitoring plan meeting the requirements of HAR §13-279-4, which includes a section on how avoidance measures will be carried out [see #3 below], for the SHPD’s review and acceptance.
3. Where human remains have been previously identified and remain in the APE, avoidance measures are implemented with a 5-foot-buffer radius of the locale. These avoidance measures should include noting the location of the burial on project construction maps with instructions to avoid.

Based on these commitments being completed prior to the start of the project, the SHPD concurred with the FHWA’s determination of *no adverse effect*.

The SHPD withdraws its previous statement that SHPD agrees with HDOT’s Chapter 6E-8 effect determination of “No historic properties affected” for the subject project and has determined archaeological monitoring is warranted to detect historic properties should they be encountered and to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s), archaeological remains, and human remains present in the project area.

The SHPD recommends consultation with Native Hawaiian Organizations, including the Office of Hawaiian Affairs, is completed prior to the start of the project and documentation, as required in HAR §13-275- 6(d)(1)(C)/HAR §13-284-6(d)(1)(C), is provided to the SHPD.

In response to CWRM’s submission in compliance with Chapter 6E-42, **the SHPD does not concur** with the effect determination of “No historic properties affected” due to insufficient information to determine sub-surface historic properties will not be affected and therefore requests archaeological monitoring is carried out under a SHPD approved archaeological monitoring plan during all ground disturbance required during this project to detect historic properties should they be encountered and to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s), archaeological remains, and human remains present in the project area.

Please submit all forthcoming information and correspondence related to the subject project to SHPD via HICRIS to Project No. 2020PR33593 using the Project Supplement option, including a draft archaeological monitoring plan for SHPD’s review and approval prior to the start of the project.

The HDOT, the CWRM, and the FHWA are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Jessica Puff, Architecture Branch Chief, at Jessica.Puff@hawaii.gov or at (808) 462-3083 for matters regarding architectural resources, and contact Stephanie Hacker, Historic

Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

CWRM Staff Response: Added as a special condition by reference.

DLNR, Land Division: Any work and/or use of State land shall require a disposition from the Board of Land and Natural Resources. See **Exhibit 5**.

CWRM Staff Response: The temporary bridges may be on state land outside of the right-of-way and would therefore require a disposition from the Board of Land and Natural Resources, unless DOT has determined it is within their right-of-way. Added as a special condition by reference.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on the DOH website at: <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

CWRM staff response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State’s water quality control program.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): No objections.

Public Comments: No comments received.

TRADITIONAL AND CUSTOMARY PRACTICES

- 1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

The Applicant stated “DOT has consulted with the State Historic Preservation Division, National Marine Fisheries and the Fish and Wildlife Service and these consultations are part of the application. Fishing is not common in either Hau‘ula Stream or Maakua Stream as they are short streams that do not have significant reaches mauka or makai.

Neither has a constant connection to the ocean”

CWRM Staff Response: No comments were received by DLNR Aha Moku. DHHL recommended that the DOT present their proposed project to the appropriate neighborhood board for comments. No comments were received from the public. No impacts to traditional and customary native Hawaiian rights which may be exercised in the area are anticipated.

- 2) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

The Applicant stated, “No traditional and customary Native Hawaiian rights would be affected by temporary scaffolding in the streams while the pedestrian bridges are built.”

CWRM Staff Response: There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna.

- 3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

The Applicant stated, “By approving the SCAP, the CWRM could make the construction of the pedestrian bridges more efficient if the contractor decides to use scaffolding. These new bridges will preserve the ability for pedestrians to walk safely along Kamehameha Highway in Hauula.”

CWRM Staff Response: The project BMPs are feasible actions that will be employed during the project period to ensure water and stream resources mauka and makai of the project area are not impacted to the detriment of traditional and customary practices of Native Hawaiians.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), an EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a

- shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

CWRM Staff Response: The project triggers an EA because it proposes (1) the use of state or county lands or the use of state or county funds. According to the Comprehensive Exemption List for the State of Hawaii, Amended, February 1, 2022, the DOT deemed the actions of the project stated above as de minimis and exempted it from the preparation of an exemption notice in accordance with HAR, Section 11-200.1-16(b).

STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 7**.

HAR §13-169-52(b) Based upon the findings of fact concerning an application for a stream channel alteration permit, the Commission shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.

CWRM Staff Response: Upon approval of the construction plans as proposed, the quantity and quality of stream water should not be adversely affected.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

CWRM Staff Response: HRS §174C-71, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The identified instream uses include fish habitat and streamflow contribution to the nearshore waters, among others. The project is not anticipated to impact the status quo interim instream flow standard which was established on May 4, 1992, pursuant to HAR §13-169-49.1.

- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

CWRM Staff Response: The proposed work plan is limited to the project area and should not interfere with instream or non-instream uses, including existing diversions.

Commission records indicate that there is one (1) registered diversion on Hau‘ula and Maakua Stream, and located upstream of the project area. Their status is unknown. No adverse impacts are anticipated.

RECOMMENDATION

That the Commission:

1. Approve the modification of Stream Channel Alteration Permit (SCAP.6026.3) Application that proposes the reconstruction of existing pedestrian bridges on the mauka side of Kamehameha Highway and the installation of temporary pedestrian bridges on the makai side of Kamehameha Highway at Hau‘ula and Maakua Streams,. The work may require the temporary use of scaffolding within the stream channel to install the reconstructed and temporary pedestrian bridges subject to the standard conditions in **Exhibit 6** and the special conditions below.
 - a. In conformance with the Department of Hawaiian Home Lands’ recommendations, incorporated by reference as **Exhibit 1**, the permittee should brief the applicable Neighborhood Board where the proposed project is located to address general concerns and assist in the process of identifying any impacts on practices. Applicant shall provide evidence to the Commission of compliance with this condition.
 - b. In conformance with the Division of Forestry and Wildlife’s recommendations, incorporated by reference as **Exhibit 2**, the permittee should employ best management practices when working with soil, be aware of endangered species in the project area, and contact DOFAW if they have any questions.
 - c. In conformance with the Department of Land and Natural Resources’ State Historic Preservation Division, incorporated by reference as **Exhibit 4**, permittee shall consult with Native Hawaiian Organizations and conduct archaeological monitoring under a SHPD-approved archaeological monitoring plan during all ground disturbance required during this project.
 - d. In conformance with the Department of Land and Natural Resources’ Land Division, incorporated by reference as **Exhibit 5**, the temporary bridges may be on state land outside of the right-of-way and would therefore require a disposition from the Board of Land and Natural Resources, unless DOT has determined it is within their right-of-way. Applicant shall consult with the Land Division and provide evidence to the Commission of Land Division’s determination of the disposition in compliance with this condition.

Ola i ka wai,



DEAN D. UYENO
Acting Deputy Director

Exhibits:

1. Department of Hawaiian Home Lands letter, dated June 23, 2023.
2. Division of Forestry and Wildlife letter, dated July 27, 2023.
3. DLNR, Historic Preservation letter, dated April 17, 2023.
4. DLNR, Historic Preservation revised letter, dated November 14, 2023.
5. Department of Land and Natural Resources, Land Division memo, dated June 8, 2023.
6. Standard Stream Channel Alteration Permit Conditions.
7. Legal Authorities.

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to be 'Dawn N. S. Chang', with a stylized, looped initial 'D' and a long horizontal stroke extending to the right.

DAWN N. S. CHANG
Chairperson

January 30, 2024

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ka Ku'ia o ka Mōhaka 'Ole 'o
Hawaii*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Ho'opili o ka Mōhaka 'Ole 'o
Hawaii*



KALI WATSON
CHAIRMAN, HHC
Ka Lani Ho'ohale

KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
*Ka Ho'opili o ka Mōhaka 'Ole 'o
Hawaii*

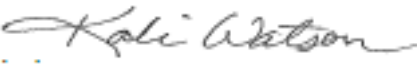
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawai'i
P. O. BOX 1879
HONOLULU, HAWAII 96805

June 23, 2023

ref: PO-23-126

MEMORANDUM

TO: M. Kaleo Manuel, Deputy Director for
Dawn Chang, Chairperson
Commission on Water Resource Management

FROM: Kali Watson, Chairman 
Hawaiian Homes Commission

SUBJECT: Request for Comments, Stream Channel Alteration Permit (SCAP .6026.3)
Application, Kamehameha Highway Resurfacing, Laiewai to Waipuhi Bridge,
Hawai'i department of Transportation (DOT), Hau'ula and Ma'akua Streams,
O'ahu, Tax Map Key(s): DOT Right-of-Way

The Department of Hawaiian Home Lands (DHHL) has reviewed SCAP .6026.3 for the reconstruction of existing pedestrian bridges at Hau'ula and Ma'akua Streams.

We appreciate the opportunity to review this application and offer the following background and comment.

Background

The following points serve as context for our comment on the SCAP application.

The State (and particularly the Commission on Water Resource Management [Commission]) has a duty to protect the rights of DHHL to water resources, as enumerated in the Hawaiian Homes Commission Act (HHCA) §§ 101(4), 220, 221; Hawai'i Constitution, Article XI, §§ 1 and 7 and Article XII, § 7; and Hawaii Revised Statutes (HRS) Chapter 174C, the State Water Code.

DHHL lands on O'ahu comprise approximately 8,154 acres. Although none of its landholdings are located in the immediate vicinity of the project area, native Hawaiian practitioners may exercise traditional and customary practices in the surrounding area of the project.

Comment for the Applicant and Commission

Ms. Dawn Chang, Chairperson
June 23, 2023
Page 2

The Department of Transportation (DOT) stated, with categorical assurance, that “No traditional and customary Native Hawaiian rights would be affected by temporary scaffolding in the streams while the pedestrian bridges are built.” However, we do not see any evidence supporting that statement. Minimally, the applicant should demonstrate that adequate research and community outreach was recently conducted to reach that conclusion.

In that regard, DHHL recommends if a proposed SCAP project is located on O‘ahu, the applicant should seek to brief the applicable Neighborhood Board for the area the proposed SCAP is located, to address general concerns and to assist in the process of identifying any impacts on practices.

Conclusion

Mahalo for the opportunity to comment on these actions. If you have any questions or require additional information please contact Andrew Choy, Planning Program Manager at (808) 620-9481 or by email andrew.h.choy@hawaii.gov.

JOSH GREEN, M.D.
GOVERNOR | KE KAU'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KAU'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'ŌI'HANA KUMUWAIWAI 'ĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

July 27, 2023

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

Log no. 4160

TO: M. KALEO MANUEL, Deputy Director
Commission on Water Resource Management

FROM: LAINIE BERRY, Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Stream Channel Alteration Permit (SCAP.6026.3) Application, Hawai'i Department of Transportation (DOT), Kamehameha Highway Resurfacing, Laiewai to Waipuhi Bridge, Hau'ula and Ma'akua Streams on O'ahu island

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on Stream Channel Alteration Permit (SCAP.6026.3) Application, Hawai'i Department of Transportation (DOT), Kamehameha Highway Resurfacing, Laiewai to Waipuhi Bridge, Hau'ula and Ma'akua Streams, on the island of O'ahu; TMKs (1) 5-4-001:025; (1) 5-4-001:019 and (1) 5-4-001:045. The portion of the project that concerns this SCAP is the reconstruction of the pedestrian bridges at Maakua and Hauula Streams. There will be no new structures built in the streams. The work may require the contractor to use scaffolding to install these reconstructed pedestrian bridges. The scaffolding is temporary and will not interfere with stream flow. After the reconstructed pedestrian bridges are in place, the contractor will remove the scaffolding. Work will occur within the State Right-of-Way and may also include working directly in the stream.

The State listed 'ope'ape'a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of

seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledging season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/#response>.

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai‘i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

State-listed waterbirds such as the ae‘o or Hawaiian stilt (*Himantopus mexicanus knudseni*), ‘alae ke‘oke‘o or Hawaiian coot (*Fulica alai*), and ‘alae ‘ula or Hawaiian gallinule (*Gallinula chloropus sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the O‘ahu Branch DOFAW Office at (808) 973-9778 and establish a buffer zone around the nest.

The State endangered Pueo or Hawaiian Short-eared Owl (*Asio flammeus sandwichensis*) could potentially occur in the project vicinity. Pueo are most active during dawn and dusk twilights. Remove and exclude non-native mammals such as mongoose, cats, dogs, and ungulates from the nesting area. Minimize habitat alterations and disturbance during Pueo breeding season. Before any potentially disturbing activity like clearing vegetation, especially ground-based disturbance, conduct surveys during crepuscular hours and walk line transects through the area to detect any active Pueo nests. If a Pueo nest is discovered, notify DOFAW staff, minimize time spent at the nest, and establish a minimum buffer distance of 200 meters from the nest until chicks are capable of flight, approximately 2 months after nest is discovered.

The State endangered ‘Ilio holo i ka uaua or Hawaiian Monk Seal (*Monachus schauinslandi*), Honu or Green Sea Turtle (*Chelonia mydas*), and Honu‘ea or Hawksbill Sea Turtle (*Eretmochelys imbricata*) could potentially occur or haul out onshore within the vicinity of the proposed project site. If any of these species are detected within 100 meters of the project area all nearby construction operations should cease and not continue until the focal animal has departed the area on its own accord.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid ‘Ōhi‘a Death), vertebrate and invertebrate pests (e.g., Little Fire Ants, Coconut Rhinoceros Beetles, etc.), or invasive plant parts (e.g., Miconia, Pampas Grass, etc.) that could harm our native species and ecosystems. We recommend consulting the O‘ahu Invasive Species Committee (OISC) at (808) 266-7994 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* is known to occur on the island of O‘ahu. On July 1, 2022, the Hawai‘i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O‘ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes a) entire dead trees, b) mulch, compost, trimmings, fruit and vegetative scraps, and c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Myrna N. Giraldo Pérez, Protected Species Habitat Conservation Planning Coordinator at (808) 265-3276 or myrna.giraldo-perez@hawaii.gov.

Sincerely,



LAINIE BERRY
Wildlife Program Manager

JOSH GREEN, M.D.
GOVERNOR | KE EKA‘AIA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPIE EKA‘AIA



STATE OF HAWAII | KA MOKU‘ĀINA ‘O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE HISTORIC PRESERVATION DIVISION
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOIOLANI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 17, 2023

Henry Kennedy
Engineering Program Manager
Design Branch, Highways Division
State of Hawai‘i Department of Transportation
601 Kamokila Boulevard
Kapolei, Hawai‘i 96707
Email: Henry.Kennedy@hawaii.gov
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2020PR33593
Doc. No.: 2304SH05
Archaeology
Architecture

Dear Henry Kennedy:

**SUBJECT: Hawai‘i Revised Statutes Chapter 6E-8 Historic Preservation Review –
Initiation of Consultation and Request for Concurrence with Effect Determination
Kamehameha Highway Resurfacing Laiewai Bridge to Waipahi Bridge
Ref. No. HWY-DD 2.1102, Federal Aid Project No. NH-083-1(080)
Laie, Kaipapa‘u, Hau‘ula and Mālae Ahupua‘a, Ko‘olaupua District, Island of O‘ahu
TMK: (1) 5-4-000, (1) 5-4-001, (1) 5-5-000, and (1) 5-5-001**

The State Historic Preservation Division (SHPD) received a letter dated March 10, 2023 from the State of Hawai‘i Department of Transportation (HDOT) to initiate the Chapter 6E historic preservation review and to request the SHPD’s concurrence with HDOT’s determination of “no historic properties affected” for the Kamehameha Highway Resurfacing project from Laiewai Bridge to Waipahi Bridge on the island of O‘ahu. The SHPD received this submittal on March 13, 2023 (HICRIS Submission No. 2020PR33593.003).

The proposed project is located along Kamehameha Highway, State Route 83, on the north shore of O‘ahu between Laiewai Bridge (mile post 17.66) and Waipahi Bridge (mile post 21.65). HDOT states that the proposed work will be conducted entirely within the existing HDOT right-of-way (ROW). The project area is roughly 25 acres, comprised of the 3.99 mile long and approximately 50 feet wide ROW, and will include ground disturbance to a depth of 18 inches (46 centimeters).

According to the letter received, the proposed project includes cold planing, resurfacing, reconstructing weakened pavement areas, adjusting existing utility manhole frames and covers, upgrading existing guardrail, end treatments, bridge railings and end posts, installing milled centerline and shoulder rumble strips, safety edge, shoulder dressing, reflector markers, milepost reference markers, pavement markings, and striping, replacing signage, and the reconstruction of the pedestrian bridges at Muliwai Bridge and Hauula Stream Bridge.

HDOT states the existing pedestrian walkways at Muliwai Bridge and Hau‘ula Stream Bridge are in poor condition with visible deterioration and are recommended for replacement. The project scope includes removal of the wooden walkway bridge, including steel supports, timber deck and wood railings. A new wooden pedestrian bridge will be constructed with stainless steel supports, a timber deck, and wooden railings. This new walkway at Muliwai Bridge will be attached to the bridge piers, while the new walkway at Hauula Stream Bridge will be attached to the tee-girders.

Henry Kennedy
April 17, 2023
Page 2

HDOT identified 14 historic properties within the project area as described by HDOT below. HDOT asserts these properties are significant historic properties and meet the criteria of the Hawai‘i Register of Historic Places.

State Inventory of Historic Places (SIHP) Site 50-80-06-4794 consists of a buried cultural deposit with an associated human burial beneath Kamehameha Highway. The cultural layer extends approximately 1,800 linear feet (width unknown) along the makai side of the highway surrounding Maakua and Hau‘ula Streams and adjacent to the beach park in the Hau‘ula Ahupua‘a. The associated human burial was removed and the historic artifacts were collected. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4795 consists of a buried cultural deposit with an associated human burial beneath Kamehameha Highway. The cultural layer extends approximately 300 linear feet (width unknown) along the makai side of the highway on both sides of Waipilopilo Stream on the boundary between Hau‘ula and Kaipapau Ahupua‘a. The human burial was removed and the historic artifacts were collected. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4796 consists of a human burial located on the makai side of Kamehameha Highway just north of Kaipapau Stream in the Kaipapau Ahupua‘a at a depth of 80 centimeters (31.5 inches) below the surface. The burial was left in place when encountered. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e.

SIHP Site 50-80-06-4797 consists of a buried cultural deposit with 4 associated human burials beneath Kamehameha Highway. The cultural layer extends over 1,900 linear feet (width unknown) along the makai side of the highway along Kokololio Beach Park in Laie. Three of the burials were removed and one remains in place. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-4798 consists of a buried cultural deposit with 3 associated human burials beneath Kamehameha Highway. The cultural layer extends approximately 300 linear feet (width unknown) along the mauka side of the highway between Kokololio Stream and Akakii Stream in the Laie Ahupua‘a. The deposit was heavily disturbed and truncated in many places due to previous utility excavations. The burials were removed. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e.

SIHP Site 50-80-06-5457 consists of a buried cultural deposit beneath Kamehameha Highway. The cultural layer extends approximately 800 linear feet (width unknown) along the mauka side of the highway along Laie Beach Park. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

SIHP Site 50-80-06-5458 consists of a buried cultural deposit with 2 associated human burials beneath Kamehameha Highway. The cultural layer extends over 600 linear feet (width unknown) along the mauka side of the highway north of Koloa Stream in the Laie Ahupua‘a. One of the burials was removed and the other left in place. The data recovery at this site included the removal of 1 human burial and a soil sample. This site was previously determined significant under criterion d. SHPD has determined at this time that this site also meets criterion e, as defined in HAR §13-275-6.

The 2013 Hawaii State Historic Bridge Inventory and Evaluation determined the bridges itemized below are eligible for listing in the Hawai‘i Register of Historic Places under criterion c, for their association with early developments in concrete bridge construction in Hawai‘i. These bridges have been described as a good example of a 1930’s reinforced concrete bridge that is typical of the period and its use of materials, method of construction, craftsmanship, and design.

SIHP Site 50-80-02-08061, the Laiewai Bridge, is a concrete slab bridge crossing Kahawainui Stream, constructed in 1933. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1986, as part of a

Henry Kennedy
April 17, 2023
Page 3

resurfacing project, metal guardrails were connected to the four original curved end posts at the ends of the bridge. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1991. Thrie beams were bolted to the end posts.

SIHP Site 50-80-020-08079, the Laieloa Stream Bridge, is a concrete tee beam bridge crossing Laieloa Stream, constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved wide end posts. The single span concrete deck is supported by concrete abutments. The parapet cap and end post panels have been painted white. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1964. Thrie beams were bolted to the one end of the posts.

SIHP Site 50-80-020-08077, the Laiemaloo Bridge, is a concrete slab bridge crossing Koloa Stream constructed in 1933. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1986, a wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge and thrie beams were bolted to the end posts of the railings.

SIHP Site 50-80-05-08062, the Kaipapau Stream Bridge, is a concrete tee beam bridge crossing Kaipapau Stream that was constructed in 1932. The bridge has concrete open arch parapets with tapered caps and curved wide end posts. The concrete desk is supported by concrete abutments. The parapet caps and end posts have been painted white. A wood pedestrian walkway with wood horizontal railings was added to one side of the bridge in 1964. Thrie beams were bolted to the end posts but the simple design of the parapet retains its integrity.

SIHP Site 50-80-05-08112, the Waipilopilo Bridge, is a concrete tee beam bridge crossing Waipilopilo Stream constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved wide end posts. The single span concrete deck is supported by concrete abutments. The parapet cap and end post panels have been painted white. A wood pedestrian walkway with wood horizontal railings was added to one side of the bridge in 1964. Thrie beams were bolted to the end posts.

SIHP Site 50-80-05-08081, the Muliwai Bridge, is a concrete slab bridge crossing Maakua Stream constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. In 1990, as part of a guardrail and shoulder improvements project, metal guardrails were connected to the four original curved end posts. A wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge in 1997.

SIHP Site 50-80-05-08056, the Hau‘ula Bridge is a concrete tee beam bridge crossing Hau‘ula Stream that was constructed in 1932. The bridge has concrete solid panel parapets with flat caps and curved end posts. The concrete deck is supported by concrete abutments. The parapet and end post caps have been painted white. As part of a guardrail and shoulder improvements project in 1990, thrie beams were bolted to the four original end posts. In 1997, a wood pedestrian walkway with wood horizontal railings was added to the mauka side of the bridge.

HDOT states the project area has been previously disturbed from the original construction of the roadway, utility installations, and subsequent repaving. All proposed subsurface activity will occur entirely within previously disturbed soil within the existing State ROW and therefore should not affect any potential subsurface cultural deposits that might be below the road prism.

No work will occur on Laieloa Bridge, Kaipapau Bridge, and Waipilopilo Bridge during this project. Bridge work to Laiwai Bridge, Laiemaloo Bridge, Muliwai Bridge, and Hau‘ula Bridge consists of removing the existing railings, end posts, and metal guardrails down to the top of the existing concrete deck. A new railing will be doweled into the existing structure with a vertical face in the same plane as the existing and have recessed rectangular panels to mimic the existing panels. New transition walls, end posts and approach slabs will be added behind the existing abutments at both ends of the bridge. HDOT has determined the proposed work will have no effect on these historic bridges because the character-defining feature of the bridges – the recessed rectangular panels – will not be altered. No changes will be made to the deck or substructure.

Henry Kennedy
April 17, 2023
Page 4

SHPD has reviewed the proposed project, pursuant to HRS §6E-8 and has found that it is unlikely that historic properties will be affected by the proposed project provided that the agreed upon conditions identified above are completed. Therefore, SHPD agrees with HDOT's determination of **No historic properties affected**.

Please submit all forthcoming information and correspondence related to the subject project to SHPD via HICRIS to Project No. 2020PR33593 using the Project Supplement option.

The HDOT and the FHWA are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Jessica Puff, Architecture Branch Chief, at Jessica.Puff@hawaii.gov or at (808) 462-3083 for matters regarding architectural resources, and contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

Aloha,

Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Meesa Otani, FHWA (meesa.otani@dot.gov)
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STATE OF HAWAII | KA MOKU‘ĀINA ‘O HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ‘OIHANA KUMUWAIWAI ‘ĀINA

STATE HISTORIC PRESERVATION DIVISION
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RECREATION
PRIORITY AND WILDLIFE
HISTORIC PRESERVATION
KARUKOLAIS ISLAND MONUMENT COMMISSION
LAND
STATE PARKS

November 14, 2023

Henry Kennedy
Engineering Program Manager
Design Branch, Highways Division
State of Hawai‘i Department of Transportation
601 Kamokila Boulevard
Kapolei, Hawai‘i 96707
Email: Henry.Kennedy@hawaii.gov
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2020PR33593
Doc No.: 2311SH04
Archaeology
Architecture

Dear Henry Kennedy:

**SUBJECT: Hawai‘i Revised Statutes Chapter 6E-8 Historic Preservation Review – Revised Response
Hawai‘i Revised Statutes Chapter 6E-42 Historic Preservation Review –
Initiation of Consultation and Request for Concurrence with Effect Determination
Kamehameha Highway Resurfacing Laiewai Bridge to Waipahi Bridge
Ref. No. HWY-DD 2.1102, Federal Aid Project No. NH-083-1(080)
Laie, Kaipapa‘u, Hau‘ula and Mākaao Ahupua‘a, Ko‘olaupua District, Island of O‘ahu TMK:
(1) 5-4-000, (1) 5-4-001, (1) 5-5-000, and (1) 5-5-001**

In a letter dated April 17, 2023 (SHPD Doc. No. 2304SH05) the State Historic Preservation Division (SHPD) responded to a letter dated March 10, 2023 received from the State of Hawai‘i Department of Transportation (HDOT) to initiate the Chapter 6E-8 historic preservation review and to request the SHPD’s concurrence with HDOT’s determination of “No historic properties affected” for the Kamehameha Highway Resurfacing project from Laiewai Bridge to Waipahi Bridge on the island of O‘ahu (HICRIS Submission No. 2020PR33593.003). At that time, the SHPD concurred with the effect determination. Due to the archaeological sensitivity in the project area, the SHPD is amending its determination to request archaeological monitoring during the project.

Additionally, on June 27, 2023, the SHPD received a letter dated June 7, 2023 from the Department of Land and Natural Resources, Commission on Water Resource Management (CWRM) to initiate the Chapter 6E-42 historic preservation review for the subject project and to request the SHPD’s concurrence with CWRM’s determination of “No historic properties affected” (HICRIS Submission No. 2020PR33593.006).

The proposed HDOT project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y); the project is subject to compliance with Section 106 of the National Historic Preservation Act.

The proposed project is located along Kamehameha Highway, State Route 83, on the north shore of O‘ahu between Laiewai Bridge (mile post 17.66) and Waipahi Bridge (mile post 21.65). HDOT states that the proposed work will be conducted entirely within the existing HDOT right-of-way (ROW). The project area is roughly 25 acres, comprised of the 3.99 mile long and approximately 50 feet wide ROW, and will include ground disturbance to a depth of 18 inches (46 centimeters).

HDOT identified 14 historic properties within the project area. The previous Chapter 6E correspondence provides summarized descriptions of the historic properties, therefore they will not be detailed in this letter.

Henry Kennedy
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Page 2

Archaeological sites identified within the project area include State Inventory of Historic Places (SIHP) 50-80-06-4794, SIHP 50-80-06-4795, SIHP 50-80-06-4796, SIHP 50-80-06-4797, SIHP 50-80-06-4798, SIHP 50-80-06-5457, and SIHP 50-80-06-5458.

Architectural sites identified within the project area include: The Laiewai Bridge, the Laieloa Bridge, the Laiemaloo Bridge, the Kaipapau Bridge, the Waipilopilo Bridge, the Muliwai Bridge, and the Hauula Bridge

HDOT determined in its March 2023 letter that these properties are significant historic properties and meet the criteria for listing in the Hawai'i Register of Historic Places. In the letter dated April 17, 2023, the SHPD determined all seven archaeological sites in the project area also meet criterion e, as defined in HAR §13-275-6(b)(5). **Please note** that historic properties that meet criterion e require consultation per HAR §13-275-6(c).

HDOT's letter states the project area was previously disturbed from the original construction of the roadway, utility installations, and subsequent repaving. All proposed subsurface activity will occur entirely within previously disturbed soil within the existing State ROW and therefore should not affect any potential subsurface cultural deposits that might be below the road prism.

No work will occur on Laieloa Bridge, Kaipapau Bridge, and Waipilopilo Bridge during this project. Bridge work to Laiewai Bridge, Laiemaloo Bridge, Muliwai Bridge, and Hau'ula Bridge consists of removing the existing railings, end posts, and metal guardrails down to the top of the existing concrete deck. A new railing will be doveled into the existing structure with a vertical face in the same plane as the existing and have recessed rectangular panels to mimic the existing panels. New transition walls, end posts and approach slabs will be added behind the existing abutments at both ends of the bridge. HDOT determined the proposed work will have no effect on these historic bridges because the character-defining feature of the bridges – the recessed rectangular panels – will not be altered. No changes will be made to the deck or substructure.

SHPD has reviewed the proposed project, pursuant to HRS §6E-8 and has found that it is unlikely that architectural historic properties will be affected by the proposed project provided that the agreed upon conditions identified above are completed. However, the SHPD raises concerns that the project has potential to impact subsurface archaeological historic properties as well as human burials. Therefore, the SHPD withdraws its previous concurrence with the determination of "No historic properties affected" and request archaeological monitoring is carried out during the proposed project to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s) and archaeological remains present in the project area (project area referred to in Section 106 as the Area of Potential Effects [APE]). Via the Section 106 historic review process, the FHWA, HDOT, and SHPD agreed archaeological monitoring would be carried out during ground disturbance required during this project.

Under the Section 106 historic review process, a SHPD letter to the FHWA dated June 27, 2022 requested the actions below are completed in order to reach the FHWA's Section 106 effect determination of no adverse effect:

1. The written and photographic documentation proposed for the mitigation of effects to the Laiewai Bridge, Laiemaloo Bridge, Muliwai Bridge, and Hauula Stream Bridge be prepared in accordance with the National Register Photograph Policy and by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. SHPD also requested that the written documentation include updated information provided for the Statewide Bridge Inventory Survey and that FHWA please include State Inventory of Historic Places numbers in the documentation.
2. Archaeological monitoring is conducted by a qualified archaeologist at each ground disturbing activity within the APE reaching below the base course to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s) and archaeological remains present in the APE. The SHPD requested a draft archaeological monitoring plan meeting the requirements of HAR §13-279-4, which includes a section on how avoidance measures will be carried out [see #3 below], for the SHPD's review and acceptance.

Henry Kennedy
November 14, 2023
Page 3

3. Where human remains have been previously identified and remain in the APE, avoidance measures are implemented with a 5-foot-buffer radius of the locale. These avoidance measures should include noting the location of the burial on project construction maps with instructions to avoid.

Based on these commitments being completed prior to the start of the project, the SHPO concurred with the FHWA's determination of *no adverse effect*.

The SHPD withdraws its previous statement that SHPD agrees with HDOT's Chapter 6E-8 effect determination of "No historic properties affected" for the subject project and has determined archaeological monitoring is warranted to detect historic properties should they be encountered and to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s), archaeological remains, and human remains present in the project area.

The SHPD recommends consultation with Native Hawaiian Organizations, including the Office of Hawaiian Affairs, is completed prior to the start of the project and documentation, as required in HAR §13-275-6(d)(1)(C)/HAR §13-284-6(d)(1)(C), is provided to the SHPD.

In response to CWRM's submission in compliance with Chapter 6E-42, **the SHPD does not concur** with the effect determination of "No historic properties affected" due to insufficient information to determine sub-surface historic properties will not be affected and therefore requests archaeological monitoring is carried out under a SHPD approved archaeological monitoring plan during all ground disturbance required during this project to detect historic properties should they be encountered and to provide an opportunity to avoid and mitigate impacts to the culturally rich stratigraphic layer(s), archaeological remains, and human remains present in the project area.

Please submit all forthcoming information and correspondence related to the subject project to SHPD via HICRIS to Project No. 2020PR33593 using the Project Supplement option, including a draft archaeological monitoring plan for SHPD's review and approval prior to the start of the project.

The HDOT, the CWRM, and the FHWA are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Jessica Puff, Architecture Branch Chief, at Jessica.Puff@hawaii.gov or at (808) 462-3083 for matters regarding architectural resources, and contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

Aloha,

Susan A. Lebo

Signed For
Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Meesa Otani, FHWA (meesa.otani@dot.gov)
Emma Kawamoto, HDOT (emma.g.kawamoto@hawaii.gov)
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January 30, 2024

JOSH GREEN, M.D.
GOVERNOR | HAWAII



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COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
P.O. BOX 821
HONOLULU, HAWAII 96809

June 7, 2023

Ref: SCAP.6026.3

TO: Aha Moku Forestry and Wildlife
Aquatic Resources Land Division
Engineering Division State Parks

FROM: M. Kaleo Manuel, Deputy Director *M. Manuel*
Commission on Water Resource Management

SUBJECT: Request for Comments, Stream Channel Alteration Permit (SCAP.6026.3)
Application, Hawai'i Department of Transportation (DOT), Kamehameha
Highway Resurfacing, Laiewai to Waipuhi Bridge, Hau'ula and Ma'akua
Streams, O'ahu, Tax Map Key(s): DOT Right-of-Way

We would appreciate your review and comment on the subject permit application within 30 days from the date of this memo. The project proposes the reconstruction of existing pedestrian bridges at Hau'ula and Ma'akua Streams. The work may require the temporary use of scaffolding to install the reconstructed pedestrian bridges. The application is available for review on our website at <https://dlnr.hawaii.gov/cwrm/surfacewater/review/>. If you have any questions, contact Rebecca Alakai at rebecca.r.alakai@hawaii.gov or call (808) 587-0266.

Response:

- | | |
|---|---|
| <input type="checkbox"/> We have no objections | <input type="checkbox"/> Additional information requested |
| <input type="checkbox"/> Not subject to our regulatory authority and permit | <input type="checkbox"/> Extended review period requested |
| <input checked="" type="checkbox"/> Comments below | <input type="checkbox"/> EA / EIS is required |

Contact Person: Patti Miyashiro, Land Agent Date: 06/08/2023

Comments: Any work and/or use of State land shall require a disposition from the Board of Land and Natural Resources.

STREAM CHANNEL ALTERATION PERMIT STANDARD CONDITIONS
(Revised December 15, 2020)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
3. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
5. Before proceeding with any work authorized by the Commission, the permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
7. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
8. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department’s Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

EXHIBIT 6

LEGAL AUTHORITIES

Water as a Public Trust. The four public trust purposes are:

1. Maintenance of waters in their natural state;
2. Domestic water use of the general public, particularly drinking water;
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights. *Waiahole I*, 94 Hawaii 97; 9 P.3d 409 (2000).
4. Reservations of water for use on Hawaiian home lands. *Waiola O Molokai, Inc.*, 103 Hawaii 401; 83 P.3d 664 (2004).

Activities on undeveloped lands. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission (PASH I)*. 79 Hawaii 246 (1993).

HRS §174C-71 Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (2) Establish interim instream flow standards;
 - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes, including the economic impact of restricting such uses;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
 - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

HAR §13-169-2 Definitions.

“Channel alteration” means to obstruct, diminish, destroy, modify, or relocate a stream channel; to change the direction of flow of water in a stream channel; to place any material or structures in a stream channel; or to remove any material or structures from a stream channel.

“Stream channel” means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water.

HAR §13-169-49.1 Interim instream flow standard for Windward Oahu. The Interim Instream Flow Standard for all streams on Leeward Oahu, as adopted by the commission on water resource management on April 19, 1989, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard.

HAR §13-169-50 Permit required. (a) Stream channels shall be protected from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. No stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the commission; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit.

HAR §13-169-52 Criteria for ruling on application. (a) The commission shall act upon an application within ninety calendar days after acceptance of the application.

(b) Based upon the findings of fact concerning an application for a stream channel alteration permit, the commission shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

(c) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the channel alteration and be guided by the following general considerations:

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should be minimized or not be allowed.
- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit shall be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted.

(c) Notwithstanding subparagraph (b) above, the commission may approve a permit pursuant to subparagraph (a) above in those situations where it is clear that the best interest of the public will be served, as determined by the commission.

HAR §13-169-53 Term of permit. (a) Every permit approved and issued by the commission shall be for a specified period, not to exceed two years, unless otherwise specified in the permit.