

## **APPENDIX F**

Federal Consultation Correspondence



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

Laura H. Thielen  
Chairperson  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
RUSSELL V. TSEJI  
FIRST DEPUTY  
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DEPUTY DIRECTOR - WATER  
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BOATING AND OCEAN RECREATION  
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COMMISSION ON SOLID WASTE MANAGEMENT  
CONSERVATION AND RECREATION LANDS  
PRESERVATION AND RESOURCES ENFORCEMENT  
SCIENCE BUREAU  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

LINDA LINGLE  
GOVERNOR  
THEODORE E. LIU  
DIRECTOR  
MARK K. ANDERSON  
DEPUTY DIRECTOR  
ABBEY SETH MAYER  
DIRECTOR  
OFFICE OF PLANNING

Telephone: (808) 687-2848  
Fax: (808) 587-2824

Ref. No. P-12118

May 12, 2008

May 13, 2008

James Nierman, AICP  
R.M. Towill Corporation  
2024 N. King St., Suite 200  
Honolulu, Hawaii 96819

LOG NO: 2008.1647  
DOC NO: 0805NM15  
Archaeology

Mr. James Niermann  
R.M. Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawaii 96819-3494

Dear Mr. Nierman:

Dear Mr. Niermann:

SUBJECT: National Historic Preservation Act - Section 106 Consultation -  
(County of Kauai) Job No. 20987  
Nawiliwili - Civic Center - Ahukini Pedestrian /Bike Path  
Nawiliwili/Hanamaulu, Lihue District, Island of Kaua'i

Subject: Hawaii Coastal Zone Management (CZM) Program Federal Consistency  
Review for the Nawiliwili-Civic Center-Ahukini Pedestrian/Bike Path,  
Lihue, Kauai

Several historic properties (heiau, Ahukini Landing) were found in the area. Therefore we recommend that the archaeological inventory surveys for this area be updated and include some subsurface testing:

This is in response to your Section 4(f) consultation under the Department of Transportation Act of 1966, for the proposed Nawiliwili-Civic Center-Ahukini Pedestrian/Bike Path in Lihue, Kauai. Independent of the Section 4(f) consultation, the use of funds from the Federal Highway Administration (FHWA) requires Hawaii CZM Program federal consistency review. CZM consistency concurrence is pre-requisite to the awarding of the FHWA funds. The CZM federal consistency application should be submitted to the Office of Planning when the draft environmental assessment for the project is published. If any portion of the project should require a Department of the Army Permit from the Corps of Engineers, additional CZM federal consistency review may be necessary.

- 1. An archaeological inventory survey work shall be conducted by a qualified archaeologist to ensure significant historic sites have been properly identified and treated in the project area. The archaeological inventory survey must meet our standards today and approved by SHPD. If historic properties are found, appropriate mitigations plans must be developed in consultation with our office.

If you have any questions, please call Nancy McMahon, our Kauai Archaeologist, at 652-1510.

If you have any questions, please call John Nakagawa of our CZM Program at 587-2878.

Aloha,

Laura H. Thielen,  
State Historic Preservation Officer

Sincerely,  
  
Abbey Seth Mayer  
Director

NM:

c: U.S. Army Corps of Engineers, Regulatory Branch  
Department of Planning, County of Kauai



LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

May 15, 2008

James Niermann, AICP  
Senior Planner  
R.M. Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, HI 96819-3494

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
EMD / CWB

05062PDCL.08

May 19, 2008

Mr. James Niermann, AICP  
Project Planner  
R. M. Towill Corporation  
2024 North King Street, Suite 200  
Honolulu, Hawaii 96819

Dear Mr. Niermann:

**Subject: Section 4(f) Consultation Notification, Department of Transportation  
Act of 1966 (United States Code – 49 U.S.C. 303)  
Nawiliwili-Civic Center-Ahukini Pedestrian/Bike Path, Job No. 20987  
Lihue, Kauai, Hawaii**

The Department of Health, Clean Water Branch (CWB), acknowledges receipt of your letter, dated May 6, 2008, requesting comments on the proposed project in accordance with 49 U.S.C. Section 303, Section 4(f). The CWB does not have jurisdiction over the use of public parks, recreation areas, wildlife and waterfowl refuges, or historic properties. It is recommended that you contact the following agencies: the State Department of Land and Natural Resources, the State Department of Agriculture, the U.S. Fish and Wildlife Service, and the U.S. Department of Housing and Urban Development.

The CWB has been given the responsibility of water pollution control in the State of Hawaii under the authorization of CWA; Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules (HAR), Chapters 11-54 (titled Water Quality Standards) and 11-55 (titled Water Pollution Control). Based on the limited information provided in your letter, the CWB offers these general comments on your project. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at <http://www.hawaii.gov/health/environmental/env-planning/landuse/CWB-standardcomment.pdf>.

1. Any project and its potential impacts to State waters must meet the following criteria:
  - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.

RE: Nawiliwili-Civic Center-Ahukini Pedestrian/bike Path, Job. No. 20987  
Lihue, Kauai, Hawaii


Dear Mr. Niermann:

Thank you for referring the above-referenced project to Historic Hawaii Foundation for consultation under Section 106 of the National Historic Preservation Act.

Since 1974, Historic Hawaii Foundation (HHF) has been a statewide leader for historic preservation. HHF's mission is to preserve and encourage the preservation of Hawaii's historic buildings, places, objects and communities.

HHF is currently unaware of any historic resources that would be affected by the proposal. If additional research determines that historic or cultural resources are present and would be affected, HHF would like to be informed and may have additional input at that time.

Very truly yours,

  
Kiersten Faulkner, AICP  
Executive Director



680 Iwilei Road, Suite 690 / Honolulu, Hawaii 96817 / Tel (808) 523-2900 / Fax (808) 523-0600  
Email [preservation@historichawaii.org](mailto:preservation@historichawaii.org) / Web [www.historichawaii.org](http://www.historichawaii.org)

b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.

c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).

2. You may be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55). For the following types of discharges into Class A or Class 2 State waters, you may apply for NPDES general permit coverage by submitting a Notice of Intent (NOI) form:

a. Storm water associated with construction activities, including excavation, grading, clearing, demolition, uprooting of vegetation, equipment staging, and storage areas that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the start of the construction activities.

b. Hydrotesting waters.

c. Construction dewatering effluent.

You must submit a separate NOI form for each type of discharge at least 30 calendar days prior to the start of the discharge activity, except when applying for coverage for discharges of storm water associated with construction activity. For this type of discharge, the NOI must be submitted 30 calendar days before to the start of construction activities. The NOI forms may be picked up at our office or downloaded from our website at:

<http://www.hawaii.gov/legal/environmental/water/cleanwater/forms/geni-index.html>

3. For types of wastewater not listed in Item No. 2 above or wastewater discharging into Class I or Class AA waters, you must obtain an NPDES individual permit. An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. The NPDES application forms may be picked up at our office or downloaded from our website at

<http://www.hawaii.gov/legal/environmental/water/cleanwater/forms/indiv-index.html>.

DCL:mp

ALBEC WONG, P. E., CHIEF  
Clean Water Branch

Sincerely,

Engineering Section, CWB, at 586-4309.

If you have any questions, please visit our website at <http://www.hawaii.gov/legal/environmental/water/cleanwater/index.html>, or contact the

6. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2; and HAR, Chapter 11-54.

5. If this project involves work in a water body, including wetlands, the Honolulu Engineer District of the U.S. Army Corps of Engineers should be consulted with respect to the Department of Army permitting requirements.

4. You must also submit a copy of the NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the CWB that SHPD has or is in the process of evaluating your project. Please submit a copy of your request for review by SHPD or SHPD's determination letter for the project along with your NOI or NPDES permit application, as applicable.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES



May 21, 2008  
TEL (808) 587-0166 FAX (808) 587-0160  
1151 PUNCHBOWL ST., ROOM 325  
HONOLULU, HAWAII 96813

CLARA H. THIELER  
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HESSIE L. Y. TSUI  
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KEN C. KAWAHARA  
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OFFICE OF WATER RESOURCE MANAGEMENT  
OFFICE OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
COMMISSION ON NATURAL LANDS  
CONSERVATION AND RESOURCE DEVELOPMENT  
FORESTRY AND WILDLIFE  
HAWAIIAN PARKS  
LAND

Mr. James Niemann, AICP  
Senior Planner  
R.M. Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawaii 96819-3494  
Dear Mr. Niemann:

Subject: ESA Section 7 Interagency Consultation  
Lihue, Kauai, Hawaii  
Nawiliwili-Civic Center-Ahukini Pedestrian/Bike Path, Job No. 20987

Your letter dated May 6, 2008 to Laura Thielen, Chairperson of the Department of Land and Natural Resources was referred to DLNR, Division of Forestry and Wildlife. We provide the following comments for your consideration regarding the subject proposed bike path project:

1. Federally listed T-B waterfowl species such as the Hawaiian goose (*Nesochen sandvicensis*), Hawaiian coot (*Fulica alai*), Hawaiian gallinule (*Gallinula chloropus*), Hawaiian stilt (*Himantopus mexicanus*) and Hawaiian duck (*Anas wyvilliana*) are known to use the golf course and ponds at the Kauai Lagoons Golf Club for feeding and nesting. In particular, the Hawaiian goose is also known to feed and possibly nest along the Nawiliwili stream and wetlands west of the Harbor Mall and south of the proposed bike path. However, the proposed bike path(s) using existing paved and unpaved roads are not likely to pose a negative impact on list species.
2. Federally listed T-E seabirds species are not known to exist in the proposed project area, however, the threatened Newell's shearwater (*Puffinus newelli*), the endangered rumped storm petrel (*Oceanodroma castro*) are known to transit these areas at night to and from their mountain nesting areas and the sea. Because of their nocturnal habit, and their known attraction to man-made lights, it is recommended that seabird safe lights be installed where lighting may be needed.
3. The federally endangered Hawaiian hoary bat (*Lasiurus cinereus*) may transit the area at night, but are not likely to be impacted by the proposed project.

C: Alvin Kyono, DOFAW Kauai Branch Manager  
Thomas Ka'akapu, DOFAW Kauai Wildlife Manager

Sincerely yours,  
Paul J. Conry  
Administrator

4. At Ninini Point Lighthouse, south of the Lihue Airport runway contains a known wedge-tailed shearwater (*Puffinus pacificus*) nesting colony. The species is not listed as threatened or endangered; however, the proposed project indicates a path to the lighthouse area. Rana Productions recently conducted a seabird survey for the proposed Lihue Airport Expansion project indicated a population up to three hundred birds. For this area, we recommend that human activity be limited due to the close proximity of the seabird-nesting colony. Seabird mortalities caused by neighborhood dogs have been reported in the past.
5. We recommend strategically placing educational signage to inform the general public of native wildlife in the area and Kauai's pet leash laws.
6. We recommend that night time construction activities using overhead construction lights be avoided as much as possible during the period of mid-September to mid-December due to the Kauai seabird light attraction problem. For more information on seabird friendly lights, please call Ms. Andrea Erichsen, Kauai Seabird Habitat Conservation Plan Coordinator at (808) 245-9160.
7. To our knowledge, the proposed project area is not within a proposed or designated critical habitat, however, please check with the U.S. Fish and Wildlife Service as this falls under their jurisdiction. If you have any questions, please contact Mr. Thomas Ka'akapu, Kauai Wildlife Manager at (808) 274-3433. Thank you for the opportunity to comment on your subject request.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 21, 2008

Mr. James Niemann, Senior Planner  
R.M. Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawaii 96819-3494

Dear Mr. Niemann,

SUBJECT: 6(f) and 4(f) Review of Proposed Nawiliwili-Olivia Center-Ahukini Pedestrian/Bike Path, Kana'i

Thank you for the opportunity to review the County of Kaua'i's proposal to extend the pedestrian/bike path from Ahukini Pier to Nawiliwili Harbor. We are taking this opportunity to comment on the project in regards to both 6(f) and 4(f) because the project has the potential to affect parks and recreation areas that have received federal funding assistance through the Land and Water Conservation Fund (LWCF) Program. The proposed route for the pedestrian/bike path is along the coastline of the Lihua area and we believe this project will enhance existing parks and outdoor recreation. It also meets one of the recreation priority needs identified in the 2003 Hawai'i Statewide Comprehensive Outdoor Recreation Plan (SCORP) which is the need for more linear paths to accommodate bicycles and pedestrians.

Project Area and 6(f) Recreation Sites

Both Nawiliwili Ramp and Nawiliwili Small Boat Harbor have received LWCF assistance, but the path alignment will not directly affect either site. The 10-foot wide concrete path appears to run alongside Wa'apa Road and does not enter the Nawiliwili Small Boat Harbor. If the path stays within the road right-of-way, there will be no taking of recreational land.

The path will have a more direct affect on the Vidinha Stadium property where the path runs along Ho'olaka Street on the west side of the park and Nimni Road on the north side. A bike depot will be established in the park at the northwest corner of the Stadium. The parkland proposed for the path and depot will not impact existing recreational uses of the property and will actually provide additional recreational opportunities.

Preliminary Assessment

It does not appear that this project will have any negative impact to any of the LWCF protected parks. The construction of a bike depot will affect an area outside the Vidinha Stadium facility, but

- The path and bike depot at Vidinha Stadium will be retained as part of the park for recreational purposes.
- The bike depot will not impact or replace any other recreational facility. From the maps, it appears that the depot is located in an undeveloped portion of the park.
- The path at Nawiliwili Small Boat Harbor will be constructed within the existing road right-of-way.
- If any of the Vidinha Stadium or the Nawiliwili Small Boat Harbor property is used during construction, a temporary non-conforming use permit will be obtained from NPS. This use of the park is not to exceed 180 days.
- We note that funds from FHWA will be used for this project. Is there a Federal Aid Number or any other federal designation that should be cited on correspondence to NPS?

Ahukini State Recreation Pier

We commented on this portion of the project area when we reviewed the Hanama'ulu to Ahukini Pier section of the pedestrian/bike path. Proposed in this area is a new comfort station and use of opportunities at the park, but requested that State Parks be consulted during the planning of the path and facilities in the area of the park. It was also pointed out that the pier structure is over 50 years old and needs to be assessed for its historical significance. The State Historical Preservation Division should be consulted on this matter.

If we can be of further assistance, please contact Martha Yent, Hawai'i LWCF Coordinator, at 587-0287 or [Martha.E.Yent@hawaii.gov](mailto:Martha.E.Yent@hawaii.gov). You may provide your response to our 6(f) questions by e-mail. With this information we will initiate correspondence with NPS on this project.

Very truly yours,

DANIEL S. QUINN  
State Parks Administrator

appears to keep the parkland in recreation use. Therefore, the project is expected to benefit outdoor recreation for this area of Kana'i.

Prior to submitting our assessment to National Park Service (NPS) for their concurrence, we request confirmation of the following:

Mr. James Niemann  
May 21, 2008  
Page 2



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Pacific Islands Fish and Wildlife Office  
300 Ala Moana Boulevard, Room 3-122, Box 50088  
Honolulu, Hawaii 96850



Mr. James Neirmann

2

- Shield existing lights in the project footprint.
- Use downward-facing, shielded lights for night work throughout the construction period.
- Cease night work during the seabird fledging season from Oct. 1 through Dec. 15.
- Provide information about seabird fallout to all staff working on site prior to the initiation of work.
- Keep a cat kennel on site to temporarily hold downed seabirds.
- Contact the U.S. Fish and Wildlife Service (Megan Laut 808-792-9400) within 24 hours of finding a downed seabird. If alive, place the bird in the cat kennel and contact the Save Our Shearwaters program immediately (Heather Young, 808-246-4348) for further instruction on where to bring the bird.

To avoid impacts to listed waterbirds, we suggest the following:


- Have a biologist familiar with nesting behavior of Hawaiian waterbirds and Hawaiian goose conduct surveys no more than three days before work begins and after any delay in work of three or more days (during which water birds may attempt nesting).
- If a nest is discovered, cease work within a minimum radius of 100 feet of the nest for a minimum of 60 days; if a nest with chicks is discovered, cease work for 30 days. These standard guidelines are intended to protect chicks, and may be shortened if monitoring is conducted often enough to note when chicks have fledged (usually five to six weeks after hatching).
- If a previously undiscovered nest is found after work begins, cease work within a minimum radius of 100 feet of the nest and the contact the Service with in 24 hours.

Hawaiian hoary bats may be attracted to lights because of the concentration of insect prey around lights, exposing the bat to increased threats from collision or predation. However, shielding lights as described for seabirds should also reduce attraction of the Hawaiian hoary bat to the project area.

To minimize potential effects on the Hawaiian monk seal, we suggest you coordinate with the National Marine Fisheries Service. Additionally, we realize this project is part of a larger project being implemented by the County of Kauai. We suggest you coordinate with the County to work with other companies that have been contracted for other segments of the pedestrian bike path to ensure there are no cumulative impacts to protected species.

We appreciate your efforts to conserve endangered species. If you have questions, please contact Megan Laut, Fish and Wildlife Biologist, Consultation and Technical Assistance Program (phone: 808-792-9400; fax: 808-792-9581).

Sincerely,

  
Patrick Leonard  
Field Supervisor

cc: Chris Yates, National Marine Fisheries Service

In Reply Refer To:  
2008-TA-0205

MAY 22 2008

Mr. James Neirmann  
R.M. Towill Corporation  
2024 North King Street, Suite 200  
Honolulu, Hawaii 96819

Subject: Technical Assistance for Nawiliwili-Civic Center-Ahukini Pedestrian and Bike Path, Lihue, Hawaii

Dear Mr. Neirmann:

Thank you for your two letters dated May 6, 2008, both received May 8, 2008, in which you requested 1) a list of species and critical habitat in the project footprint, and 2) information regarding the proposed Nawiliwili-Civic Center-Ahukini pedestrian and bike path, and its potential effects on listed species (listed under the Endangered Species Act (ESA) of 1973 [16 U.S.C. 1531-1544], as amended), and their critical habitat.

We have reviewed the information you provided and pertinent information in our files, including data compiled by the Hawaii Biodiversity and Mapping Program and the Hawaii GAP Program. The federally endangered Hawaiian coot (*Fulca alai*), Hawaiian duck (*Anas wyvilliana*), Hawaiian common moorhen (*Gallinula chloropus sandvicensis*), Hawaiian stilt (*Himantopus mexicanus knudseni*), and Hawaiian goose (*Branta sandvicensis*) (collectively referred to as waterbirds), and Hawaiian hoary bat (*Lasiurus cinereus semotus*), have been observed in the vicinity of the proposed project. The Hawaiian monk seal (*Monachus schauinslandi*) has used the coastal regions along the proposed project as a birthing and pup-rearing site. The federally threatened Newell's shearwater (*Puffinus auricularis newelli*) and the federally endangered Hawaiian petrel (*Pterodroma phaeopygia sandwichensis*) (collectively referred to as seabirds) have been observed flying in and around the vicinity of the proposed project. We have determined that there is no federally designated critical habitat in the project vicinity.

To assist you developing a project that will minimize impacts to listed species, we offer the following information. One of the greatest impacts to seabirds is artificial night lighting. Seabirds are attracted to artificial lights and they fly around the light source until they either collide with a tall object such as an adjacent building, light pole, wire, or fall to the ground from exhaustion. Once grounded, they are vulnerable to predators or often struck by vehicles along roadways. If work is planned for night time, we suggest the following minimization activities:

TAKE PRIDE  
IN AMERICA 

BRYAN J. BAPTISTE  
MAYOR



DONALD M. FUJIMOTO  
COUNTY ENGINEER  
TELEPHONE 241-8600

EDMOND P.K. RENAUD  
DEPUTY COUNTY ENGINEER  
TELEPHONE 241-8640

GARY K. HEU  
ADMINISTRATIVE ASSISTANT

AN EQUAL OPPORTUNITY EMPLOYER  
COUNTY OF KAUAI  
DEPARTMENT OF PUBLIC WORKS  
4444 RICE STREET  
MO'IKEHA BUILDING, SUITE 275  
LIHU'E, KAUAI, HAWAII 96768-1340

May 30, 2008

RM Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, HI 96819-3494  
Attention: Mr. James Niermann

SUBJECT: SECTION 4(f) CONSULTATION NOTIFICATION, DEPARTMENT OF  
TRANSPORTATION ACT OF 1966 (UNITED STATES CODE -49 U.S.C. 303)  
FOR NAWILIWILI-CIVIC CENTER -AHUKINI PEDESTRIAN/BIKE PATH  
JOB NO. 20987 LIHU'E, KAUAI HAWAII PW 5.08.072

Gentlemen,

We reviewed the proposed activities for the subject Ahukini Pedestrian/Bike Path. We offer the following comments in regard to the public resources that will be affected by the proposed project:

A. AHUKINI RECREATIONAL PIER STATE PARK:

1. Ahukini Road leading to the Ahukini Recreational Pier is a state road way under the jurisdiction of the Airports Division. We recommend comments be solicited from the State DOT, Airports Division and State Parks.

B. KAUAI MUSEUM:

1. It states that the proposed improvements are all within the County road right of way and do not affect the facility. If the bike and pedestrian facilities are located within the road right of way, we disagree that the facility is not affected. We wish to know how the new facility is being accommodated within the limited road right of way and not affect current traffic operations and level of service.

C. KAUAI WAR MEMORIAL CONVENTION HALL:

1. It states that the proposed improvements are all within the County road right of way and do not affect the facility. If the bike and pedestrian facilities are located within the road right of way, we disagree that the facility is not affected. We wish to know how the new facility is being accommodated within the limited road right of way and not affect current traffic operations and level of service.

RM Towill Corp  
May 30, 2008  
Page (2)

2. We wish to point out that the Vidinha Stadium property is **not adjacent** to the Kauai War Memorial Convention Hall. The Kauai War Memorial Convention Hall and the Vidinha Stadium are both separate properties. The Vidinha Stadium Property is shown at Exhibit "C". The soccer field; Veterans Center and Judiciary; and the Police and Emergency Operating Center are all separate properties for which the bike and pedestrian path will be encroaching onto.
    - The street name labeling for Ninini Road between the soccer field and the stadium is incorrect. There is no official street name labeling for this driveway.
    - Additionally, the street name labeling for Ahukini Road is incorrect. Ahukini Road is the roadway that leads to the Airport. The correct street name labeling is Kaana Street. Kaana Street is not a County roadway. The roadway has not been dedicated to the County. This portion of Kaana Street from Kapule Highway to the Police Headquarters is a private roadway for which the County has a right of entry agreement with Visionary LLC doing business as Lihu'e Land Company for use of the roadway for public traffic.
    - The street name labeling for Kapule Highways needs to be amended to Kapule Highway.
    - The roadway across the Kapule Highway in the vicinity of the Stadium Access Road is called **Ninini Point Street**. Ninini Point Street is a private roadway and is not under the County jurisdiction. Plans are being developed by Kauai Lagoons Resort to improve the intersection. The County's TIAR which was completed more than ten years ago for the Vidinha Stadium expansion is outdated and needs to be updated as requested by the State DOT Highways Division. Kauai Lagoons TIAR that was accomplished recently did not include the County's expansion of the Vidinha Stadium Complex. As such, Kauai Lagoons is assisting the County by updating its TIAR to include the expansion of the Vidinha Stadium Complex Expansion. We recommend that comments be solicited from the State DOT on the proposed coastal bike and pedestrian path connection with the inland urban areas, especially at crossings with the State DOT highway facilities.
- D. EXHIBIT "B" NAWILIWILI PARK IMPROVEMENTS:
1. Waapa Road is incorrectly labeled. Waapa Road begins at Rice Street and Lala Road vicinity of Anchor Cove and terminates at Niunalu Rd in the vicinity of the Coral Fill. Waapa Road is under the jurisdiction of the State Department of Transportation, Harbors Division. Comments should be solicited from the Harbor Division.
  2. The street name labeling for Kaiiikea Street is incorrect and needs to be amended to "Ka'ilikea Street". Also the location of the street is incorrectly labeled. Ka'ilikea Street begins at its intersection with Nawiliwili Road and terminates at its intersection with Wilcox Road.
- E. NIUMALU PARK:
1. There is a one lane bridge at Niunalu Road that across Puali Stream. Again the right of way is narrow and limited in accommodating a bike and pedestrian



facility within the road right of way.

F. VIDINHA STADIUM:  
1. The County has an ongoing consultant contract to expand the 10 acre soccer field with a tennis court complex, pavilion, gymnasium and associated parking. The 10 foot wide foot path along the north side of the stadium access road is not accounted for in our master plan of the Vidinha Stadium Complex expansion. We question how the bike and pedestrian facilities will be accommodated within a narrow and limited right of way that has not been planned for with the Vidinha Stadium Expansion.

2. Wilson Okamoto has prepared a TIA/R for the Kana'i Lagoons Resort Project. The bike and pedestrian crossing is not included in their TIA/R. Coordination is requested with the Kana'i Lagoons Resort Project. The TIA/R recommends a traffic signal at the Nimitz Point Road, Stadium Access Road and Kapule Highway.

3. See above comments at Kana'i Convention Hall.

G. ADA Compliance:  
• The proposed project needs to address the American Disability Act, HRS 103-50 states all agencies of the State and Counties shall seek the "advice and recommendations" from the Disability and Communication Access Board (DCAB) on all plans and specifications to ensure conformance with the ADAAG, as well as any supplemental design specifications established by the Disability and Communication Access Board. Plans shall be submitted to DCAB and a copy of the final document review shall be submitted for our files and to the County's ADA Coordinator. We also recommend comments be solicited from the County's ADA Coordinator, Department of Parks and Recreation, and our Planning Department.

Thank you for this opportunity to provide our comments. Should you have any questions, please feel free to contact us.

Very truly yours,

*Prosser King*  
Wallace Kudo, P.E.  
Chief, Engineering Division

*Donald M. Fujimoto, P.E.*  
County Engineer

CONCUR:

Planning Department  
County of Kauai ADA Coordinator  
Department of Parks and Recreation  
Doug Haigh  
Akinaka & Associates, Ltd.



LINDA TINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 2, 2008

Mr. James Niemann, AICP  
R.M. T'will Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawaii 96819-3494

Dear Mr. Niemann:

SUBJECT: Section 106 (NHPA) Consultation  
Nawiliwili-Civic Center-Abukini Pedestrian/Bike Path  
Job. No. 20987  
Lihue, Island of Kauai  
T.M.K.: (4) various

This letter acknowledges receipt of your transmittal of May 6, received in our Kapolei office on May 9, 2008.

The proposed undertaking is for the development of a bike/pedestrian path to connect Nawiliwili Harbor, the Lihue Civic Center, and Abukini Point.

The project involves the demolition of an existing comfort station at Nawiliwili Park. Should this structure be over fifty years old the State Historic Preservation Division (SHPD) would like to have the opportunity to review the structure for eligibility for listing on the register. You informed SHPD via telephone that the structure was likely constructed in the late 1960s or early 1970s. If the structure is less than fifty years old, SHPD has no further concerns regarding its demolition.

SHPD does not have any concerns regarding any other aspects of this project.

SHPD feels that the finding for the proposed project is of no historic properties affected. Thank you for the opportunity to consult on this project. Should you have any additional questions or concerns, please do not hesitate to contact Katie Kastner in our O'ahu office at (808) 692-8023 or Katie.J.Kastner@hawaii.gov.

Sincerely,

*Nancy A. McMahon*  
Nancy A. McMahon

Deputy State Historic Preservation Office and Archaeology and Historic Preservation Manager

LARBA H. THAYER  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
RUSSELL V. YEUNG  
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CONSULTATION AND PROJECT DEVELOPMENT  
DIVISION  
LAND AND NATURAL RESOURCES  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII  
MAIL ROOM  
STATE WORKS

LOG NO: 2008.1978  
DOC NO: 0806KK10  
Architecture

Mr. James Niermann, Senior Planner  
City and County of Honolulu  
Page 2 of 2

LOG NO: 2008.1858  
DOC NO:0806KK10  
Architecture

JUN 04 2008



U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Pacific Islands Regional Office  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, Hawaii 96814-4700  
(808) 944-2200 • Fax (808) 973-2941

c:

U.S. Department of the Interior, National Park Service  
Frank Hays, Director, Pacific West Region-Honolulu, West Regional Office, 300 Ala Moana,  
Blvd., Room 6-226, Honolulu, Hawaii 96850  
Dr. Elaine Jackson-Retondo, National Historic Landmarks Program, 1111 Jackson Street, Suite  
700, Oakland, California 94607-4807

Mr. James Niermann, AICP  
Senior Planner  
R.M. Towill Corporation  
2024 N. King Street.  
Suite 200  
Honolulu, HI 96819-3494

Dear Mr. Niermann:

This responds to your May 6, 2008 letter regarding the County of Kauai, Department of Public Works proposed development of a bike/pedestrian path to connect Nawiliwili Harbor, the Lihue Civic Center, and Ahukini Point, Kauai (Job No. 20987), received by the National Marine Fisheries Service (NMFS) on May 8. In your letter, you requested information on marine listed species and their designated critical habitats, as well as proposed and candidate species and critical habitat for listing that may occur near any portion of the proposed path. Under our statutory authorities under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. §1531 *et seq.*), we provide the following ESA-listed marine protected species information.

Your letter stated that the project is a key segment of the 16-mile Nawiliwili to Anahola Bike and Pedestrian Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii. The project, funded through the Federal Highways Administration, will consist of a 10-foot wide concrete shared-use coastal path and extend along portions of southeastern Kauai.

Based on the map that you provided, the coastal areas of Lihue are known to have Hawaiian monk seals hauled out at multiple locations, either to rest on the beach, give birth to pups, or nurse/rear pups. Please be aware that the presence of the bike/pedestrian path near known monk seal haul outs could increase the likelihood of interactions between monk seals and people. Please also be aware that if monk seals are hauled out near the proposed path, it could become necessary to temporarily block sections of the shoreline or path in order to ensure that monk seals are not disturbed.

In addition to Hawaiian monk seals, green and hawksbill sea turtles may also be found hauled out onshore and basking on the beaches near the proposed path. A complete list of Hawaii's marine protected species under NMFS's jurisdiction is enclosed for your review. No additional marine species are proposed or are candidates for listing under the ESA at this time, and no critical habitat has been designated or proposed for any marine protected species around Kauai.

As for the next steps of the ESA Section 7 consultation process, we are happy to guide you through the process and have attached our recently developed "action agency consultation package". Please find attached the following documents:



**MARINE PROTECTED SPECIES of the HAWAIIAN ISLANDS**  
National Marine Fisheries Service, Pacific Islands Regional Office

**MARINE MAMMALS**

All marine mammals are protected under the Marine Mammal Protection Act. Those identified under the ESA Listing are also protected under the Endangered Species Act.

<u>Common Name</u>	<u>Scientific Name</u>	<u>ESA Listing</u>
Blue Whale	<i>Balaenoptera musculus</i>	Endangered
Blainville's Beaked Whale	<i>Mesoplodon densirostris</i>	
Bryde's Whale	<i>Balaenoptera edeni</i>	
Cuvier's Beaked Whale	<i>Ziphius cavirostris</i>	
Dwarf Sperm Whale	<i>Kogia simus</i>	
False Killer Whale	<i>Pseudorca crassidens</i>	
Fin Whale	<i>Balaenoptera physalus</i>	Endangered
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered
Killer Whale	<i>Orcinus orca</i>	
Longman's Beaked Whale	<i>Indopacetus pacificus</i>	
Melon-headed Whale	<i>Peponocephala electra</i>	
Mink Whale	<i>Balaenoptera acutorostrata</i>	
North Pacific Right Whale	<i>Eubalaena japonica</i>	Endangered
Pygmy Killer Whale	<i>Feresa attenuata</i>	
Pygmy Sperm Whale	<i>Kogia breviceps</i>	
Sei Whale	<i>Balaenoptera borealis</i>	Endangered
Short-finned Pilot Whale	<i>Globicephala macrorhynchus</i>	
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered
Bottlenose Dolphin	<i>Tursiops truncatus</i>	
Common Dolphin	<i>Delphinus delphis</i>	
Fraser's Dolphin	<i>Lagenodelphis hosei</i>	
Pantropical Spotted Dolphin	<i>Stenella attenuata</i>	
Risso's Dolphin	<i>Grampus griseus</i>	
Rough-toothed Dolphin	<i>Steno bredanensis</i>	
Spinner Dolphin	<i>Stenella longirostris</i>	
Striped Dolphin	<i>Stenella coeruleoalba</i>	
Hawaiian Monk Seal	<i>Monachus schauinslandi</i>	Endangered
Northern Elephant Seal	<i>Mirounga angustirostris</i>	

**SEA TURTLES**

All sea turtles are protected under the Endangered Species Act.

<u>Common Name</u>	<u>Scientific Name</u>	<u>ESA Listing</u>
Green Turtle	<i>Chelonia mydas</i>	Threatened
Hawksbill Turtle	<i>Eretmochelys imbricata</i>	Endangered
Leatherback Turtle	<i>Dermochelys coriacea</i>	Endangered
Loggerhead Turtle	<i>Caretta caretta</i>	Threatened
Olive Ridley Turtle	<i>Lepidochelys olivacea</i>	Threatened

Last updated April 2008

1. "Action Agency Guide to ESA Consultation with NMFS" – This document will help determine the effects of the proposed action on each ESA-listed marine species in the action area (either "no effect", "may affect, but not likely to adversely affect", or "may affect, and is likely to adversely affect");
2. "Effects Determination Guidance" – This document further explains each of three possible effects determination;
3. "ESA Effects Determination Record" – This document helps the action agency document which ESA-listed species may occur in the action area under either NMFS's or the United States Fish & Wildlife Service's jurisdiction;
4. "Template for Consultation Request Cover Letter" – This document is intended to serve as a template for letters from Federal action agencies (or their non-Federal representatives) requesting consultation under Section 7 of the ESA on actions that may affect ESA-listed species;
5. "Template for Biological Assessments (BA) & Biological Evaluations (BE)" – This document is intended to serve as a template for a BA or BE submitted by Federal action agencies or their non-Federal representatives to NMFS for consultation as required by Section 7 of the ESA. The purpose of the BA-BE is to describe proposed actions and their effects on ESA-listed species; and
6. "Endangered Species Act (ESA) Consultation" – This document is from our website and provides a link to each of the aforementioned consultation documents.

Please note that these documents are in the process of being uploaded to our website. All documents should be online by June 18 and can be found at:  
[http://www.fpir.noaa.gov/PRD/prd\\_index.html](http://www.fpir.noaa.gov/PRD/prd_index.html).

Thank you for working with NMFS to protect our nation's living marine resources. Should you have any other questions regarding this project or the consultation process, please contact Krista Graham on my staff at (808) 944-2238, or at the e-mail address [Krista.Graham@noaa.gov](mailto:Krista.Graham@noaa.gov). Please refer to consultation #: I-PI-08-685-CY.

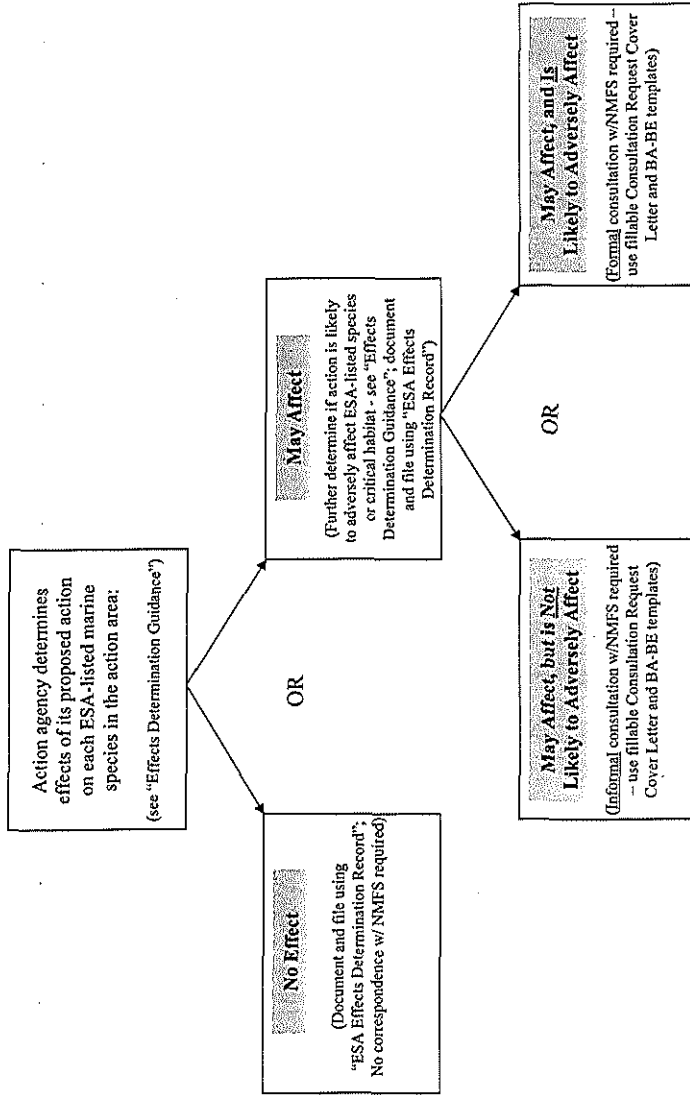
Sincerely,



Chris E. Yates  
Assistant Regional Administrator  
For Protected Resources

Enclosures

# Action Agency Guide to ESA Consultation with NMFS



May 2008, NMFS PIRO Protected Resources Division  
See <http://www.fpiir.noaa.gov/> "ESA Consultation"



## Effects Determination Guidance



1601 Kapiolani Boulevard, Suite 1110 | Honolulu, Hawaii 96814 | (808) 944-2200 | [www.fpiir.noaa.gov](http://www.fpiir.noaa.gov)

ESA-listed Species Under NMFS<sup>1</sup> Jurisdiction That May Occur in Our Waters or Shorelines:

HAWAIIAN MONK SEAL ( <i>Monachus schauinslandi</i> )	HUMPBACK WHALE ( <i>Megaptera novaeangliae</i> )
SPERM WHALE ( <i>Physeter macrocephalus</i> )	BLUE WHALE ( <i>Balaenoptera musculus</i> )
FIN WHALE ( <i>Balaenoptera physalus</i> )	SEI WHALE ( <i>Balaenoptera borealis</i> )
NORTH PACIFIC RIGHT WHALE ( <i>Eubalaena japonica</i> )	LEATHERBACK TURTLE ( <i>Dermochelys coriacea</i> )
HAWKSBILL TURTLE ( <i>Eretmochelys imbricata</i> )	GREEN TURTLE ( <i>Chelonia mydas</i> )
OLIVE RIDLEY TURTLE ( <i>Lepidochelys olivacea</i> )	LOGGERHEAD TURTLE ( <i>Caretta caretta</i> )

### Determination of Effects:

Under the ESA<sup>2</sup> Section 7(a)(2), each Federal agency shall ensure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "action agency") is not likely to jeopardize the continued existence of any endangered or threatened species, or destroy/adversely modify designated critical habitat, and as such is responsible for making one of the following effects determinations, as described in the ESA Section 7 Consultation Handbook<sup>3</sup>:

- No Effect (see Notes on Pages 3-4):
  - The appropriate determination when the proposed action will have no effect on listed species or designated critical habitat. For this determination, the effects of the action should be temporally or spatially separated from the listed species.
  - This determination is made by the action agency and does not require concurrence from NMFS; however, NMFS can provide technical assistance to agencies in reaching this determination.
- May Affect, but Not Likely to Adversely Affect (see Notes on Pages 3-4):
  - The appropriate determination when the effects of the action on listed species or critical habitat will be discountable, insignificant, or wholly beneficial (see Informal Consultation, next page).
  - In order to receive concurrence with this determination, the action agency must initiate informal Section 7 consultation. When the information indicates that the action has no likelihood of adverse effect, NMFS will provide a letter of concurrence, which completes informal consultation.
- Likely to Adversely Affect (see Notes on Pages 3-4):
  - The appropriate determination if any adverse effects on listed species or designated critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not; discountable, insignificant, or beneficial. Also the appropriate determination if any "take" of listed species will occur.
  - Initiation of formal Section 7 consultation is required and NMFS is responsible for completing a biological opinion on the proposed action (and may issue an incidental take statement).

<sup>1</sup> 'NOAA Fisheries Service' = 'National Marine Fisheries Service' = 'NMFS'

<sup>2</sup> The Endangered Species Act of 1973: [www.nmfs.noaa.gov/pr/pdfs/laws/esa.pdf](http://www.nmfs.noaa.gov/pr/pdfs/laws/esa.pdf)

<sup>3</sup> The ESA Section 7 Consultation Handbook: [www.nmfs.noaa.gov/pr/pdfs/laws/esa\\_section7\\_handbook.pdf](http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section7_handbook.pdf)



## Effects Determination Guidance

### Informal Consultation:

NMFS's justification for its concurrence with a "May Affect, but Not Likely to Adversely Affect" determination is based on three determinations of effects, as stated in the ESA Section 7 Consultation Handbook:

- Insignificant effects – relate to the magnitude of the impact: the effects cannot be meaningfully detected, measured, or evaluated, and should never reach the scale where a "take" occurs.
- Discountable effects – relate to the likelihood of the impact: the effects are extremely unlikely to occur.
- Beneficial effects – positive effects without any adverse effects.

### Formal Consultation:

NMFS considers any action that is likely to result in the incidental take of a listed species, or in adverse effects on designated critical habitat, to be "Likely to Adversely Affect" the species, thereby requiring formal consultation and a biological opinion:

- Take is defined in the ESA Statute (section 3(19)) as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct".
- Adverse effects on designated critical habitat are not defined in the ESA Statute, the ESA Section 7 implementing regulations, or the ESA Section 7 Handbook. See "Notes on ESA Section 7 Effects Determinations" on Pages 3-4 for guidance with this determination.

For any consultation, implementation of monitoring, conservation measures, and best management practices are an important component in ensuring that impacts are minimized. For example:

1. A survey of the project area should be performed just prior to commencement or resumption of activity to ensure that no listed species are in the project area. If a listed species is detected, activities with potential to affect the animals should be postponed until the animals voluntarily leave the area. If a listed species enters the area during the conduct of activities, all activities with potential to affect the animals should cease until the animals voluntarily depart.
2. Project-specific conservation measures should be identified and implemented where applicable. For example, if a particular component of the action has the potential to disturb or harm a listed species, then specific measures to reduce or eliminate those impacts must be in place and described in detail.
3. All project personnel that may potentially interact with listed species in the action area must be informed of the species' status, the protections afforded under Federal laws, and of project specific measures to be taken to reduce impacts on those species. An overview of the laws and guidelines for listed species in Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam may be downloaded at [www.nmfs.noaa.gov/pr/education/hawaii/](http://www.nmfs.noaa.gov/pr/education/hawaii/).

Please send consultation initiation and concurrence requests to: Chris Yates or Lance Smith, Protected Resources, NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. If you have any questions regarding the ESA Section 7 consultation process, please contact the following Protected Resources staff: Lance Smith, ESA Section 7 Coordinator, at 808-944-2258 or [Lance.Smith@noaa.gov](mailto:Lance.Smith@noaa.gov), Krista Graham, Resource Management Coordinator, at 808-944-2238 or [Krista.Graham@noaa.gov](mailto:Krista.Graham@noaa.gov), or Don Hubner, Resource Management Specialist, at 808-944-2233 or [Donald.Hubner@noaa.gov](mailto:Donald.Hubner@noaa.gov).



## Effects Determination Guidance

### Notes on ESA Section 7 Effects Determinations:

"No Effect"

"May Affect, But Not Likely to Adversely Affect"

"May Affect, And Likely to Adversely Affect"

Craig Johnson, National ESA Coordinator, National Marine Fisheries Service

### Introduction

1. To defensibly conclude that an action has "no effect" or "may affect, but is not likely to adversely affect" an ESA-listed marine species, an agency would have to build an argument based on the following four propositions:
  - A. The Action *is not likely* to produce potential stressors or subsidies that would reasonably be expected to act directly on individual organisms or to have direct or indirect consequences (positive or negative) on the environment;
  - B. If **not A** [that is, *the Action is likely to produce those potential stressors...*], endangered or threatened individuals *are not likely to be exposed* to one or more of those potential stressors or subsidies or one or more of the Action's direct or indirect consequences on the environment;
  - C. If **not B** [that is, *listed individuals are likely to be exposed...*], those listed individuals *are not likely to respond*, positively or negatively, to that exposure;
  - D. If **not C** [that is, *listed individuals are likely to respond...*], those responses *are not likely to be sufficient to reduce their individual performance*.
2. Two outcomes would justify a "no effect" determination:
  - 2.1. If an agency accepts Proposition A as true (more likely to be true than false, based on the evidence available) and can defend that acceptance as based on all of the relevant evidence available and the appropriate background, the agency is justified in a "no effect" determination.
  - 2.2. If an agency rejects Proposition A as false (more likely to be false than true, based on the evidence available), but concludes that Proposition B is true because listed resources have no possibility of being exposed to stressors or subsidies produced by the action (a 0.0 probability of listed individuals being exposed) and can defend that conclusion based on all of the relevant evidence available and the appropriate background, the agency is also justified in a "no effect" determination.



## Effects Determination Guidance

3. Four outcomes would justify a “may affect, but not likely to adversely affect” determination:
- 3.1. If an agency rejects Proposition A as false and accepts Proposition B as true (the action produces stressor or subsidies, but the probability of exposing listed individuals to those stressors is so small that it would not be reasonable to expect them to occur) and can defend that acceptance based on all of the relevant evidence available and the appropriate background, the agency is justified in a “may affect, but not likely to adversely affect” determination (because the probability of effects would be discountable).
  - 3.2. If an agency rejects Proposition A and B as false but accepts Proposition C as true (the action produces stressors or subsidies, listed individuals are likely to be exposed to those stressors or subsidies, but there is no possibility or only a small probability of those individuals responding to the exposure) and can defend that conclusion based on all of the relevant evidence available and the appropriate background, the agency is also justified in a “may affect, but not likely to adversely affect” determination (because the effects would be insignificant).
  - 3.3. If an agency rejects Proposition A, B, and C as false (the action produces stressors or subsidies, listed individuals are likely to be exposed to those stressors or subsidies, and listed individuals are likely to respond to that exposure), but concludes that listed resources have (a) no possibility of negative responses and (b) are likely to respond positively to the exposure and can defend that conclusion based on all of the relevant evidence available and the appropriate background, the agency is justified in a “may affect, but not likely to adversely affect” determination (because the effects would be entirely beneficial).
  - 3.4. If an agency rejects Proposition A, B, and C as false but accepts Proposition D as true (the action produces stressors or subsidies, listed individuals are likely to be exposed to and respond to those stressors or subsidies, but there is no possibility or only a small probability of those individuals experiencing a reduction in fitness as a result) and can defend that conclusion based on all of the relevant evidence available and the appropriate background, the agency is also justified in a “may affect, but not likely to adversely affect” determination (because the effects would be insignificant).
4. If an agency rejects Proposition A, B, C, and D as false (or cannot accept them as true) given all of the relevant evidence available and the appropriate background, the agency is justified in a “may affect, and likely to adversely affect” determination.

May 2008; NMFS PIRO Protected Resources Division  
See <http://www.fpir.noaa.gov/> \*ESA Consultation\*

4



## ESA<sup>1</sup> Effects Determination Record, Pacific Islands Region/Area

Project Name/Tracking #:  
Project Location & Dates:  
Agency & Office:  
Contact Person:

### Effects Determinations

(check off each category, or list species in each category, as appropriate):

Effects Category	NMFS-listed species (turtles in sea, Hawaiian monk seal, whales <sup>2</sup> )	USFWS-listed species (turtles on land, birds, invertebrates, plants <sup>3</sup> )
No effect (NE) <sup>4</sup>		
May affect, but not likely to adversely affect (NLAA) <sup>5</sup>		
May affect, and likely to adversely affect (LAA) <sup>5</sup>		

Notes:

Questions?: Call Lance Smith (944-2258), Krista Graham (944-2238), or Don Hubner (944-2233), PRD ESA Team

#### <sup>1</sup> Acronyms:

ESA: Endangered Species Act  
NMFS: National Marine Fisheries Service  
PIRO: Pacific Islands Regional Office (in NMFS)  
PRD: Protected Resources Division (in PIRO)  
USFWS: U.S. Fish & Wildlife Service  
NE: No effect

NLAA: Not likely to adversely affect  
LAA: Likely to adversely affect

<sup>2</sup> NMFS has ESA jurisdiction over marine species, the following of which are listed under the ESA and occur in the Pacific Islands region/area: Green, Olive Ridley, Loggerhead, Leatherback, and Hawksbill Sea Turtles, Hawaiian Monk Seal, and Humpback, Sperm, Blue, Fin, Sei and Right Whales – see <http://www.fpir.noaa.gov/>

<sup>3</sup> USFWS has ESA jurisdiction over terrestrial species, including the terrestrial life history stages of sea turtles. A list of species protected under the ESA that occur in the Pacific Islands region/area is provided at <http://www.fws.gov/pacificislands/wesa/endspindex.html>

<sup>4</sup> If NE, no further action is required – concurrence from NMFS and/or USFWS is not required.

<sup>5</sup> If “may affect” (NLAA or LAA), consultation is required with appropriate regulatory agency and office (NMFS PIRO PRD, or USFWS Ecological Services); note if the proposed project is already covered by an existing programmatic or other consultation. If not, then note when & how consultation was initiated.

May 2008; NMFS PIRO Protected Resources Division  
See <http://www.fpir.noaa.gov/> \*ESA Consultation\*

## Template for Consultation Request Cover Letter

Provided by NMFS Pacific Island Regional Office, Protected Resources Division  
Revision Date: May 2008

### INSTRUCTIONS

The following document is intended to serve as a template for letters from Federal action agencies (or their representatives) requesting consultation under Section 7 of the Endangered Species Act (ESA) on actions that may affect ESA-listed species.

### COLOR KEY

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (places to insert information)

As you finalize sections you should delete blue and red text.

[Letterhead for Federal action agency OR non-Federal representative]

[date]

Chris Yates, Protected Resources  
NMFS Pacific Islands Regional Office  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, HI 96814

Re: Request for Consultation under Section 7 of the Endangered Species Act

Dear Mr. Yates:

The [Federal action agency/non-Federal representative] proposes to [authorize/permit/fund/carry out] the [name, location and date of proposed project]. [*Non-Federal representatives must be designated as such in writing by the Federal action agency.*] Enclosed is a [Biological Assessment(BA)/Biological Evaluation(BE)/other document as explained in template for BAs-BEs] to initiate [formal/informal] consultation under Section 7(a)(2) of the Endangered Species Act (ESA).

As described in the enclosed [BA/BE/other document], [the proposed action will have no effect on the following ESA-listed marine species: list each species] [*no concurrence or other consultation with NMFS is required for 'no effect' actions.*] The proposed action may affect, but is not likely to adversely affect, the following ESA-listed marine species: [list each species]. [There is no designated critical habitat in the project area/Designated critical habitat for the Hawaiian monk seal occurs within the project area]. [The proposed action may affect, but is not likely to adversely affect, monk seal critical habitat.] We request your concurrence with our 'not likely to adversely affect' determinations, and hereby request informal consultation under Section 7 of the ESA.

[As described in the enclosed BA/BE/other document, the proposed action may affect, and is likely to adversely affect (list species) (monk seal critical habitat). Therefore, we request initiation of formal consultation under Section 7 of the ESA.]

[*If the consultation request is for multiple projects, an entire program, or is otherwise more than a single discrete project, edit the above accordingly. E.g., provide more detail or attach tables showing the different projects and ESA determination for each, if applicable*]

Please contact [person's name and contact info] of my staff regarding this consultation request.

Enclosure: [BA/BE/other document]  
[action agency project tracking number]

## Template for Biological Assessments & Biological Evaluations

Provided by NMFS Pacific Island Regional Office, Protected Resources Division  
Revision Date: May 2008

### INSTRUCTIONS

The following document is intended to serve as a template for Biological Assessments (BA) and Biological Evaluations (BE) submitted by Federal action agencies or their non-Federal representatives to the National Marine Fisheries Service (NMFS) for consultation as required by Section 7 of the Endangered Species Act (ESA). The purpose of the BA-BE is to describe proposed actions and their effects on ESA-listed species.

### COLOR KEY

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (places to insert information)

As you finalize sections you should delete *blue* and red text.

[BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION]

[use one term or the other, as explained below]

[Project Name]

[ACTION AGENCY TRACKING NUMBER, IF APPROPRIATE]

*[A Biological Assessment (BA) is prepared for "major construction activities" considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA). A BA is required if listed species or critical habitat may be present in the action area, and the contents for a BA are described in 50 CFR 402.12(f). "Biological Evaluation" (BE) is a generic term for all other types of analyses. Although agencies are not required to prepare a BA for non-construction activities, if a listed species or critical habitat is likely to be affected, the agency must provide NMFS with an evaluation on the likely effects of the action. Often this information is referred to as a BE. NMFS uses this documentation along with any other available information to decide if concurrence with the agency's determination is warranted. Recommended contents are the same as for a BA, as referenced above. The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS) which may be required for NEPA projects. These EAs and EISs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards. However, if an EA or EIS contains the information otherwise found in a BE or BA regarding the project and the potential impacts to listed species, it may be used in lieu of a BE or BA.]*

Prepared for:  
[Federal action agency]  
[Address of above agency]

Prepared by:  
[insert your name and title]  
[insert date]



## 1.0 BACKGROUND/HISTORY

The purpose of this [Biological Assessment/Biological Evaluation (BA/BE)] is to address the effect of the [insert project name] Project on ESA-listed species, listed as endangered or threatened under the Endangered Species Act (ESA), or their designated critical habitat. [name the Federal action agency, the Federal nexus for the proposed action, and the governing statute – i.e. Federal action agency X intends to authorize, permit, fund, or carry out the action described above, under section X of the Governing Act].

*If there are multiple federal action agencies involved, list each and identify which is the lead federal action agency for the consultation.*

The project involves [insert project primary function] in [location]. Because work will occur [adjacent to, or in, the ocean], it has the potential to impact the following ESA-listed marine species that occur in the area: [insert common and scientific names of each species] and/or its/their habitat. [If the project area encompasses monk seal critical habitat (NWHI only), mention that the project also has the potential to affect that].

Early coordination and pre-consultation with NMFS was conducted during a series of site visits, meetings, and phone conversation including: [Insert list of pre-consultation coordination and dates here].

This [BA/BE], prepared by the [Federal action agency, non-fed rep, or consultant], addresses the proposed action in compliance with Section 7(c) of the ESA of 1973, as amended. Section 7 of the ESA assures that, through consultation (or conferencing for proposed species) with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS), federal actions do not jeopardize the continued existence of any threatened, endangered or proposed species, or result in the destruction or adverse modification of critical habitat.

The purpose of the proposed action is to [insert purpose and need].

*The project purpose and need statement should provide a clear purpose for the proposed project, as well as a brief description of proposed actions in relation to the needs discussed.*

## 2.0 DESCRIPTION OF THE ACTION & ACTION AREA

The proposed action includes [list project components here in a logical order].

*Include a detailed description of what work will be done, and how it will be accomplished, particularly for components that are reasonably likely to have impacts on protected species and/or their habitats. Also include measures to be taken to reduce or eliminate potential impacts from the action, as well as any proposed beneficial components of the project intended as offsetting actions for unavoidable potential adverse effects or as enhancement opportunities: e.g, habitat protection, wetland creation, restoration or enhancements, etc.*

The action area includes [describe the action area in terms of the geographic extent of all the project's potential effects – see definition below, and refer to attached maps or figures as appropriate].

*Definitions from 50 CFR §402-02:*

*Action Area: All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.*

*Direct Effects: Direct or immediate effects of the project on the species or its habitat. Direct effects include those resulting from interdependent or interrelated actions.*

*Indirect Effects: Those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur.*

## 3.0 LISTED SPECIES & CRITICAL HABITAT IN THE ACTION AREA

*A large number of ESA-listed species occur in the Pacific Islands Region (Hawaii, Guam, Northern Marianas, American Samoa, and Pacific Remote Island Area), including many widely-distributed marine species. NMFS has ESA jurisdiction over marine species - see <http://www.fpir.noaa.gov/> and click on 'ESA Consultation' for a list of marine species protected under the ESA in the Pacific Islands Region. USFWS has ESA jurisdiction over terrestrial and freshwater species, including the terrestrial life history stages of sea turtles - see <http://www.fws.gov/pacificislands/wesa/endspindex.html> for a list of terrestrial and freshwater species protected under the ESA in the Pacific Islands.*

*Species lists of ESA-listed marine species occurring in each archipelago in the Pacific Region (Hawaii, Marianas, American Samoa) may be obtained from the NMFS website above, or species lists requests for proposed project areas may be submitted to NMFS. However, because all ESA-listed marine species in the Pacific Region are widely distributed, a species list for a project area is the same a species list for an archipelago, thus it is much quicker to obtain the species list from the NMFS website.*

*ESA consultation is only necessary if ESA-listed species may be affected by the proposed project. However, the "not known to occur here" approach is a common but flawed way of arguing that a proposed project will not affect ESA-listed species. The operative word here is "known." Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions "Has anyone looked?" and "How did they look?". Remember that your evaluation of potential project effects does not end if ESA-listed are not found in the project area. You must still evaluate the effects of the proposed action on potential habitat for the species, even if it is not known to be occupied.*

*Once the listed species/critical habitat occurring in the action area have been identified, then this section should describe human activities and natural events that have led to the current status of the listed species/critical habitat. This section can rely extensively on cross-referencing existing documents, such as recent status reviews, recovery plans, biological*

options, federal register notices, NEPA documents, etc. This section presents the biological or ecological information relevant to completing the biological assessment. Appropriate information on the species' life history, its habitat and distribution, and other data on factors necessary to its survival should be included to provide background for analysis in later sections. When designated critical habitat is affected, a companion analysis should be done for that habitat.

The following ESA-listed marine species occur within the action area, or may be affected by the proposed action: [insert species names]. [also describe any designated critical habitat that may be affected by the proposed action].

#### 4.0 ENVIRONMENTAL BASELINE CONDITIONS

This section identifies and describes all known human-induced sources of impact to the listed species in the Action Area, except those caused by the proposed action. The purpose of the environmental baseline is to provide the context for the impacts of the proposed action with regard to the impacts of all the other human activities that are also affecting the listed species. Although the impacts described in this section are limited to those in the Action Area, it should be noted that additional impacts outside the Action Area often affect the same individuals and populations that are affected in the Action Area. E.g., for sea turtles, additional sources of impacts outside the action area may include pelagic fisheries, nearshore fisheries, directed harvest (of turtles and eggs) and various sources of nesting beach degradation.

#### 5.0 EFFECTS OF THE ACTION

This section includes an analysis of the direct and indirect effects (defined above) of the proposed action, and any interrelated and interdependent actions (see definition below), on the species and/or critical habitat. Factors to be considered in the analysis include: proximity of the action, distribution, timing, nature of the effect, duration, disturbance frequency, disturbance intensity, and disturbance severity. A succinctly detailed description of the proposed action should be provided in the Proposed Action and Action Area Section above so that the scope of the action and the subsequent analysis of its potential effects are clear.

**Definition: Interrelated or Interdependent Activity:** An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation.

#### 6.0 CUMULATIVE EFFECTS (Formal consultation only)

Describe all "non-Federal" actions reasonably certain to occur in the foreseeable future. Includes state, local, private, and tribal actions (e.g. residential developments, watershed

#### 7.0 CONCLUSIONS

enhancement, etc.). Section 7 regulations require the Federal action agency to provide an analysis of cumulative effects, along with other information, when requesting initiation of formal consultation. Note that 'cumulative effects' under the ESA is defined more narrowly than under NEPA.

An effects determination should be made for the proposed action with regard to each listed species and designated critical habitat. Effects determinations by the action agency are summarized in the May 2008 "Action Agency Guide to ESA Consultation w/ NMFS" and <http://www.ftr.noaa.gov> (click on "ESA Consultation"). As described in those documents, the 3 possible effects determinations for each species are: 1) No Effect (NE); 2) May Affect, but Not Likely to Adversely Affect (NLAA); and 3) May Affect, and Likely to Adversely Affect (LAA).

In conclusion, we have determined that the proposed action [will have no effect on/may affect, but is not likely to adversely affect/may affect, and is likely to adversely affect] [each listed species/designated critical habitat].

As described in the May 2008 "Action Agency Guide to ESA Consultation w/ NMFS" and <http://www.ftr.noaa.gov> (click on "ESA Consultation"):

#### 8.0 LITERATURE CITED

Include all scientific papers, agency reports, other literature, and personal communications.

"Cumulative impacts", as defined by NEPA [40 C.F.R. §1508.7], are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts are distinct from "cumulative effects", as defined by the ESA [50 C.F.R. § 402.02], which are those effects of future state or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.

## Endangered Species Act (ESA) Consultation

PHONE (808) 594-1888

FAX (808) 594-1885

Section 7 of the Endangered Species Act (ESA) requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the existence of any species listed under the ESA (or destroy or adversely modify designated critical habitat for any listed species). Thus, Section 7 requires consultation by the Federal 'action agency' (the agency authorizing, funding, or carrying out the action) with the appropriate regulatory agency, either the National Marine Fisheries Service (NMFS) for marine species, or the U.S. Fish & Wildlife Service (USFWS) for terrestrial and freshwater species.

The purpose of this webpage is to provide Federal action agencies or their representatives with information and materials needed to consult with NMFS on Federal actions affecting ESA-listed marine species in the Pacific Islands region. The region includes the Hawaiian Archipelago including the Northwestern Hawaiian Islands, the Marianas Archipelago including Guam and the Northern Marianas, American Samoa, and the Pacific Remote Island Area (seven Central Pacific Islands/Atolls/Reefs: Wake, Baker, Howland, Jarvis, Johnston, Kingman, and Palmyra).

First, action agencies need to know what ESA-listed species or designated critical habitat occur in their project areas. The 'Species Lists' links below provides lists of ESA-listed marine species occurring in the Hawaiian Archipelago, the Marianas Archipelago (the Territory of Guam and the Commonwealth of the Northern Marianas), and the Territory of American Samoa. The only designated critical habitat for any of these species in the Pacific Islands region is for the Hawaiian monk seal in the Northwestern Hawaiian Islands.

Second, when a Federal action occurs within the range of ESA-listed species, action agencies need to determine if ESA consultation is required. In other words, if 'no effect' to listed species is expected, then consultation is not required. If listed species may be affected, then consultation is required. If consultation is required, action agencies need to provide the appropriate documentation. The 'Action Agency Consultation Package' links below provide the information to help action agencies determine if ESA consultation is necessary (Flow Chart: ESA Consultation for Action Agencies, Effects Determination Guidance), as well as Word templates that action agencies can use to assemble the appropriate documentation.

If you have any questions regarding ESA consultation, please contact the following NMFS Protected Resources staff: Lance Smith, ESA Section 7 Coordinator, at 808-944-2258 or [Lance.Smith@noaa.gov](mailto:Lance.Smith@noaa.gov), Krista Graham, Resource Management Coordinator, at 808-944-2238 or [Krista.Graham@noaa.gov](mailto:Krista.Graham@noaa.gov), or Don Hubner, Resource Management Specialist, at 808-944-2233 or [Donald.Hubner@noaa.gov](mailto:Donald.Hubner@noaa.gov).

### Species Lists (only listed species under NMFS jurisdiction)

Hawaii Species List <[link to pdf file](#)>  
Marianas Species List <[link to pdf file](#)>  
American Samoa Species List <[link to pdf file](#)>

### Action Agency Consultation Package

Flow Chart: ESA Consultation for Action Agencies <[link to pdf file](#)>  
Effects Determination Guidance <[link to pdf file](#)>  
Effects Determination Record <[link to Word file](#)>



STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
711 KAPPOLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

HRD08/3623B

June 10, 2008

James Nicrmann, AICP  
Senior Planner  
R.M Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawai'i 96819-3494

RE: Section 106 Consultation Nāwiliwili-Civic Center-Ahukini Pedestrian/Bike Path,  
Job No. 20987, Līhu'e, Kaua'i, Hawai'i,

Aloha e James Nicrmann,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated May 6, 2008. The County of Kaua'i proposes to develop a bike/pedestrian path to connect Nāwiliwili Harbor, the Līhu'e Civic Center, and Ahukini Point. OHA has reviewed the project and offers the following comments.

Our office is concerned with the level of survey conducted in order to determine the presence of archeological resources within the APE. Although the proposed pedestrian/bike path is clearly outlined on the submission sent to our office, the exact location of the bike path in relation to historic sites is unclear. The 16-mile segment of the proposed path runs near the ocean and in the vicinity of a number of known historic sites.

Numerous historic sites are located along the coast fronting the Kaua'i Lagoons from Kalapaki Beach to Ninini Point. Due to the location of the proposed pathway, the potential to encounter historic resources and human burials may be probable. According to our records, six historic sites are located in the general vicinity of this portion of the segment. Below is a list of these historic sites that are registered with the State Historic Preservation Division:

Site #	Description
50-30-11-00100	Ninini Heiau
50-30-11-00101	Ahuhimi Heiau (Ahukini)
50-30-11-00424	Oval Terrace Alignment
50-30-11-00421	Kalapaki Shell Midden Scatter
50-30-11-00423	Kalapaki Old Wall Remnant
50-30-11-00422	Kalapaki Old Wall Remnant

Near the harbor in Niunalu, the North Niunalu Complex (State Inventory of Historic Places Site 50-30-11-03168 historic site complex), is located at the end of the proposed pathway near the Nāwiliwili Small Boat Harbor.

Site #	Description
50-30-11-03168	North Niunalu Complex
50-30-11-00099	Kuhiau Heiau
50-30-11-06009	Kalapaki Cemetery
50-30-11-00495	Nāwiliwili Burial Site
50-30-11-00491	Nāwiliwili 'Auwai
50-30-11-00494	Nāwiliwili Lava Rock Marker
50-30-11-00934	Peekoa Heiau
50-30-11-09301	Grove Farm Homestead
50-30-11-00824	Nāwiliwili Burial Site

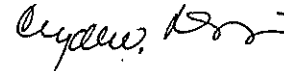
Appropriate efforts shall be made by the applicant in order to assess the presence of known archeological and cultural sites in the APE. These efforts include identification of historic sites. It is unclear from your documents whether any formal archaeological and/or cultural resource surveys have been conducted for the APE of the project.

Furthermore, if in fact an archeological survey has not been conducted for this project area, OHA requests that a comprehensive archaeological inventory survey for the project area be conducted and submitted to the Department of Land and Natural Resources – Historic Preservation Division for review and approval. We ask that this issue be addressed in future consultation regarding this project.

We request the applicant's assurances that should iwi kūpuna or Native Hawaiian cultural or traditional deposits be found during the construction of the project, work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

Thank you for the opportunity to comment. If you have further questions, please contact Jason Jeremiah (808) 594-1816 or e-mail him at [jasonj@oha.org](mailto:jasonj@oha.org).

'O wau iho nō me ka 'ōia'i'ō,



Clyde W. Nāmu'o  
Administrator

C: OHA Kāua'i CRC Office

Laura Thielen  
State Historic Preservation Officer  
Department of Land and Natural Resources  
601 Kamokila Boulevard, Room 555  
Kapolei, Hawai'i 96707



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOKA  
DIRECTOR  
MICHAEL D. FORRIST  
Deputy Director  
FRANCIS PAUL KEENO  
BRANDI H. SCUDLOR  
IN REPLY REFER TO:  
STP 8.2910

June 24, 2008

Mr. James Niemann, AICP  
Senior Planner  
R. M. Towill Corporation  
2024 North King Street, Suite 200  
Honolulu, Hawaii 96819-3494  
Dear Mr. Niemann:

Subject: Preliminary Draft Environmental Assessment (Prelim DEA)  
Nawiliwili-Civic Center-Ahukini Pedestrian & Bike Path

The Department of Transportation (DOT) is supportive of safe bicycle and pedestrian path connectivity as an integrated transportation feature. The DOT submits the following comments on the proposed pedestrian/bike path project for the County of Kauai:

1. The project impacts the facilities of DOT's three divisions (Highways, Harbors and Airports). Planning for the project requires the involvement of each division to ensure that the project is properly coordinated with all appropriate staff.

2. Airport impacts:

a. A Federal Aviation Administration (FAA) navigational aid, the Middle Marker for Line Airport (LHA), is located at the site of the project's proposed comfort station near Nimitz Point Lighthouse. FAA requires an unobstructed setback of 300-feet around the Middle Marker. The County must submit FAA Form 7460-1 (Notice of Proposed Construction or Alteration) to the FAA Hawaii District Office for any pedestrian/bike path project facilities around the Middle Marker.

b. The Transportation Security Administration (TSA) should be afforded an opportunity to review the subject project for any security concerns.

c. Continued coordination between the County of Kauai and the DOT Airports Division as regards routes through the airport or along any airport perimeter is necessary.

a. Recommend that 1) Kapule Highway between Nimitz Street and Rice Street, and 2) Hoalako Street between Heiau Street and Rice Street, be considered in the evaluation of Route Alternatives. The inclusion of these segments would provide additional, low-cost connectivity since the segments are "on street path facilities".

b. Recommend that Kapule Highway and Ahukini Road (between Kapule Highway and Kuliho Highway) be considered for use as "on street path facilities," and that Kaana Street and Hoalako Street be considered as part of the Multi-use Path Alignment. The Multi-use Path may be better suited than DOT's busier highways and roads, and may be consistent with the concepts proposed in Grove Farm's adjacent Waitani Project.

c. While the use of bicycle lockers offers a more secure alternative to bicycle racks, the solid or opaque lockers pictured on page 2-24 create safety and security risks. If lockers are preferred over racks, then security checks and transparent windows that enable viewing of the contents of the lockers are suggested. This is to prevent the lockers from being used inappropriately by the homeless or for storing items not related to bicycling. Placing covers over the lockers or obstructing viewing of the lockers' contents should not be allowed.

4. Highway impacts:

c. If, however the, pedestrian/bike route through Nawiliwili Commercial Harbor, including the use of Waapa Road, is deemed necessary, the DOT may consider the use of the mauka side of Wilcox Road, Kanoa Street and Waapa Road to avoid crossing the cargo terminal entrances. Safety measures (e.g., jersey barriers) must be implemented to reduce state and driver liability.

3. Harbor impacts:

a. Safety and liability issues associated with the proposed pedestrian/bike path alignment through Nawiliwili Commercial Harbor, as reflected in Figure 1 of the Prelim DEA, must be addressed. For example, Corridor IV and segment "O" (Page 2-45) of the pathway runs through Nawiliwili Commercial Harbor affecting DOT-owned roads such as Wilcox Road, Kanoa Street and Waapa Road. The Draft Environmental Assessment should thoroughly address all safety and liability issues posed by the proposed mix of pedestrians and bikes with industrial activity.

b. The DOT Harbors Division does not recommend the pedestrian/bike path's use of Waapa Road. The pathway will compromise the maritime industrial area's high traffic movements of large container trucks, commercial vehicles and other heavy equipment.

Mr. James Niemann  
Page 2  
June 24, 2008

STP 8.2910

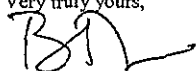
Mr. James Niemann  
Page 3  
June 24, 2008

STP 8.2910

The DOT appreciates the courtesy of your advance consultation and for the opportunity to review the preliminary environmental assessment. The DOT may provide additional comments or suggestions upon receipt of the formal Draft Environmental Assessment (Draft EA).

Request that (7) copies of the Draft EA be sent to DOT, 869 Punchbowl Street, Honolulu, Hawaii 96813, ATTN: STP Office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'BN', with a long horizontal flourish extending to the right.

BRENNON T. MORIOKA, PH.D., P.E.  
Director of Transportation

c: DPQ, Kauai County