# United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai‘i 96850

In Reply Refer To:
2022-0015817-S7

March 04, 2022

Environmental Engineer
Federal Highway Administration
Hawai‘i Federal-Aid Division
300 Ala Moana Blvd, Rm 3-229
Box 50206
Honolulu, Hawai‘i, 96850

Subject: Emergency Repairs of Hanalei Hills and Waikoko, Kaua‘i, Federal-Aid Project No. ER-24(003)

Dear Meesa Otani:

The U.S. Fish and Wildlife Service (Service) received your February 7, 2022 letter request for consultation. The Federal Highways Administration (FHWA) intends to fund the proposed emergency repairs of Hanalei Hills and Waikoko project, and the work will be completed by the Hawai‘i Department of Transporation (HDOT). The HDOT is the designated non-federal representative for the FHWA. You requested our concurrence with your “may affect, but not likely to adversely affect” determination for the emergency repairs at Hanalei Hills and Waikoko, on the island of Kaua‘i, Hawai‘i. Specifically, you requested consultation for the following species:

- Sea turtles
  - Hawksbill sea turtle or ‘ea (*Eretmochelys imbricata*)
  - Central North Pacific distinct population segment of the green sea turtle or honu (*Chelonia mydas*)
- Hawaiian hoary bat or ‘ōpe‘ape‘a (*Lasiurus cinereus semotus*)
- Hawaiian goose or nēnē (*Branta sandvicensis*)
- Hawaiian waterbirds
  - Hawaiian stilt or ae‘o (*Himantopus mexicanus knudseni*)
  - Hawaiian coot or ‘alae ke‘o ke‘o (*Fulica americana alai*),
  - Hawaiian gallinule or ‘alae ‘ula (*Gallinula galeata sandvicensis*)
  - Hawaiian duck or koloa (*Anas wyvilliana*)

- Hawaiian seabirds
    - Hawaiian petrel or ʻuaʻu (*Pterodroma sandwichensis*)
    - Newell's shearwater or ʻaʻo (*Puffinus auricularis newelli*)
    - Hawaiʻi distinct population segment (DPS) of band-rumped storm petrel or ʻakē ʻakē (*Oceanodroma castro*)
- Newcomb's tree snail (*Erinna newcombi*)

We based our analysis and decisions on the Biological Assessment for this project and other pertinent data. A complete consultation record is on file at our office. Our response is in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq*.).

**Project Description**

A storm occurred in March 2021 resulting in landslides at two sites along Kūhiō Highway at Milepost 1 near Hanalei Bridge and Milepost 4.5 near Waikoko. The proposed project would install soil nail retaining structures and anchored wire mesh to repair landslide damages at the Hanalei and Waikoko sites. Slope stabilization at the Hanalei site includes lining a historic tunnel that was exposed after the landslide. A drainage system would be added to capture and re-direct water away from the tunnel and hillside. Drainage pipes may be placed along Kūhiō Highway to the Hanalei River Bridge area. All soil and debris removed from these landslide sites would be deposited at stockpile locations in Princeville, and no vegetation clearing will be necessary within existing cleared pastureland.

<u>Conservation Measures</u>

The following conservation measures will be implemented to avoid and minimize impacts to listed species and their habitats:

*General measures*

- Good housekeeping practices and erosion-control device(s) shall be employed at the job site to prevent debris and soil from leaving the site.
- Invasive species controls shall be maintained to ensure that all materials transported from off-site are free of such species

*Sea Turtles*

- To avoid and minimize project impacts to sea turtles from lighting, the project will minimize the use of lighting on or near beaches and shield project related lights, so the light is not visible from any beach. If lights cannot be fully shielded or if headlights must be used, the light source will be fully enclosed with light filtering tape or filters.

*Hawaiian Hoary Bat*

- Site clearing, including trimming and removal of woody plants taller than 15 ft (4.6 m) would not be trimmed or removed during the bat pupping season (June 1 through

September 15), during their vulnerable life stages where they are unable to fly and may be roosting in trees.

*Hawaiian Goose*

- Do not approach, feed, or disturb the Hawaiian goose.
- If Hawaiian goose are loafing, foraging, or otherwise present within the project area during the breeding season, which extends from September through April, have a trained biologist survey the area near the project prior to work each day. Survey biologists should be familiar with the nesting behavior of the Hawaiian goose, nest identification, and identification of young.
    - Surveys should be repeated if there is a delay in work of three days or more (during which the birds may attempt to nest).
    - If nests or vulnerable young are observed within 150 feet of the project work, immediately cease all work and contact the Service for further guidance.
- If during the biologist's survey, the Hawaiian geese are loafing, foraging, or otherwise present within the project area, the USFWS will be contacted for further guidance to consider implementing reduced speed limits when the work is near the active roadway, and inform project personnel and contractors about the presence of this threatened species on-site. Speed limits will be reduced during work in active construction areas.

*Hawaiian Waterbirds*

- All regular on-site construction staff would be trained to identify waterbirds and take appropriate conservation measures when the waterbirds are present, including within equipment staging areas.
- If waterbird nests are found within the construction area, work within 100 ft of nests or active broods would cease until the young have fledged and left the area.
- Waterbird nests, chicks, or broods found before or during construction would be reported to the USFWS within 48 hours of discovery for further guidance.

*Hawaiian Seabirds*

- All construction activity shall be restricted to daylight hours during the seabird peak fallout period (September 15–December 15) to avoid the use of nighttime lighting.
- Lighting used during construction as well as any lighting installed as part of the project will be downward facing and shielded.

*Newcomb's snail*

- In the event that ʻōhiʻa is found in the project area where clearing will occur, a trained biologist will survey the area for tree snails using USFWS methodology described in *Interim Guidelines for Conducting Tree Snail Surveys in the Mariana Islands* (methods also apply throughout the Hawaiian Archipelago for other listed tree snail species).

**Effects of the Proposed Action**

*Sea turtles*

Sea turtles nest on sandy beaches in the Pacific Islands. Nesting occurs on beaches from May through September, peaking in June and July, with hatchlings emerging through November and December. Construction on, or in the vicinity of, the beach can compact and erode sand and sediments, destroy sea turtle nests, erode beaches, create runoff of contaminants, and create light that disorients hatchlings and deters nesting. Nesting turtles may be deterred from approaching or laying successful nests on lighted or disturbed beaches. They may become disoriented by artificial lighting, leading to exhaustion and placement of a nest in an inappropriate location (such as at or below the high tide line). Hatchlings that emerge from nests may also be disoriented by artificial lighting. Off-road vehicle traffic on beaches, including construction equipment, directly affecting sea turtles and their nests by crushing individuals and degrading habitat with erosion and compacting sand and sediment.

All project related lighting, at the Waikoko site in particular, should be turned off at night or shielded so that no lights are visible from the beach. Due to the implementation of conservation measures outlined above and no work directly on the beach, disturbance associated with the construction activities are considered insignificant and discountable.

*Hawaiian hoary bat*

Repairing the two sites along Kūhiō Highway and removing trees and vegetative debris may occur near areas where Hawaiian hoary bats roost, forage, and rear young. The Hawaiian hoary bat roosts in both native and non-native woody vegetation across all major Hawaiian Islands and will leave young unattended in trees and shrubs when they forage. Human presence and construction activities may cause temporary disruptions to the normal behaviors of bats nearby the project area. When trees or shrubs, 15 ft or taller, are cleared during the pupping season, there is a risk that young bats could inadvertently be harmed or killed since they are too young to move away from their roost tree. By employing the conservation measures listed above, adverse effects to bats from vegetation removal are extremely unlikely to occur. All stockpile areas are cleared pasturelands and no additional tree or vegetation clearing is needed. Therefore, effects to the bats from vegetation removal associated with the construction activities are considered discountable.

Bats disturbed by the installation of soil nail retaining structures may flush, alter feeding habits, and experience other disruptions to their normal behaviors. We expect the disturbances will be short term and intermittent and would not result in measurable disruptions of their normal behaviors, nor would there be reductions in the reproductive success and physical fitness of the bats. Therefore, effects to bats from disturbance associated with the construction activities are considered insignificant.

*Hawaiian goose*

The Hawaiian goose uses various habitat types, but prefer open areas, such as pastures, golf courses, wetlands, natural grasslands and shrublands, and lava flows. Threats to the species from

this project include disturbance from human presence, and injury and mortality from vehicle strikes. Birds are unlikely to be found on the coastal habitat at the Waikoko site as most of the vegetation has been washed away or removed as a result of the landslide. An increased human presence at the debris stockpile sites situated in pasturelands could disturb Hawaiian goose nesting, foraging, or loafing in the area. We expect the disturbances will be short term and intermittent and would not result in measurable disruptions of their normal behaviors, nor would there be reductions in the reproductive success and physical fitness of the Hawaiian goose. We would expect discountable effects to the Hawaiian goose due to the degraded habitat as well as a biologist onsite that would cease construction work should they come within 150 ft of the project area or work stoppage of three days or more.

*Hawaiian Waterbirds*

Hawaiian waterbirds are currently found in a variety of wetland habitats including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, kalo or taro (*Colocasia esculenta*) loʻi or patches, irrigation ditches, sewage treatment ponds, and in the case of the Hawaiian duck, montane streams and marshlands. Hawaiian stilts may use ephemeral or persistent standing water whereever they occur. Based on project information provided, we expect your project may be in close vicinity to standing or open water, thus attracting Hawaiian waterbirds to the site. In particular, the Hawaiian stilt nests in sub-optimal locations (e.g. any ponding water), if water is present. Hawaiian waterbirds attracted to sub-optimal habitat may suffer adverse impacts, such as predation and reduced reproductive success, and thus the project may create an attractive nuisance.

Waterbirds are expected to flush when human activity occurs nearby. If nesting occurs nearby, the birds may be prevented from caring for nests or young. Because the project occurs adjacent to the shoreline and along embankments of the well-travel Kūhiō Highway, we do not expect nesting to occur nearby. Additionally, protective measures will be employed to avoid impacts to nesting birds. The waterbirds may use the aquatic areas for foraging or other purposes. However, any disturbance to their normal behaviors would be short-term and intermittent during the proposed construction activities. We expect the birds are likely to leave the area while the construction activities occur, but would resume their normal behaviors. We do not expect a measurable disruption to their normal behaviors or disruption of nesting and rearing of young, and consequently no reduction in reproductive success or reduced fitness. Therefore, effects to waterbirds are considered insignificant.

*Hawaiian Seabirds*

The Hawaii DPS of band-rumped storm petrel, the Hawaiian petrel, and the Newell's shearwater (collectively known as Hawaiian seabirds) may transit over the project area when flying between the ocean and nesting sites in the mountains during their breeding, nesting, and fledging season (March 1 through December 15). Seabirds fly at night and are attracted to artificially lighted areas resulting in disorientation and subsequent fallout due to exhaustion. Seabirds are susceptible to collision with objects that protrude above the vegetation layer. Additionally, once grounded, they are vulnerable to predators and vehicle strikes along roadways are common. Any increase in the use of nighttime lighting or nightwork, particularly during each year's peak seabird fallout period (September 15 through December 15), could result in additional seabird

injury or mortality. By employing the conservation measures listed above, and avoiding nightwork during the seabird fallout season, adverse effects to Hawaiian seabirds are extremely unlikely to occur. Therefore, effects to Hawaiian seabirds from disturbance associated with the construction activities are considered discountable.

*Newcomb's tree snail*
Hawaiian tree snails are found in montane wet forests, usually dominated by ʻōhiʻa (*Metrosideros polymorpha*). Snails feed on fungi and algae that grow on the leaves of trees. Newcomb's tree snail is found nearly exclusively on ʻōhiʻa. Threats to Newcomb's tree snails include habitat destruction and fragmentation resulting from the impacts of non-native ungulates such as pigs, goats, and deer, habitat modification due to invasive plants, and predation by nonnative mammals, reptiles, flatworms and snails. Based on the disturbed areas within the project sites, and stockpile locations in pasturelands, it's unlikely that suitable ʻōhiʻa habitat is present or will be impacted by the project activities. If no suitable habitat for Newcomb's tree snail is present within the action areas, any effects to the species can be considered discountable.

**Summary**

We have reviewed our data and conducted an effects analysis of your project. By incorporating the conservation measures listed above, adverse effects to listed species are extremely unlikely to occur, and are therefore insignificant and discountable. Because impacts from the proposed project are insignificant and discountable, we concur with your determination that the proposed action may affect, but is not likely to adversely affect the Hawksbill sea turtle, Central North Pacific DPS of the green sea turtle, Hawaiian hoary bat, Hawaii DPS of band-rumped storm petrel, Hawaiian petrel, Newell's shearwater, Hawaiian goose, Hawaiian stilt, Hawaiian coot, Hawaiian gallinule, Hawaiian duck, and Newcomb's snail.

Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this letter; or (3) if a new species is listed or critical habitat designated that may be affected by the identified action.

We appreciate your efforts to conserve endangered species. If you have any questions concerning this consultation, please contact Emma Gosliner, Fish and Wildlife Biologist, at 808-792-9400 or by email at emma_gosliner@fws.gov. When referring to this project, please include this reference number: 2022-0015817-S7.

Sincerely,

DARREN LEBLANC Digitally signed by DARREN LEBLANC Date: 2022.03.04 15:14:29 -10'00'

Darren LeBlanc
Planning and Consultation Team Manager