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7. Unresolved Issues and Unresolvable/Unavoidable Effects

This chapter summarizes the unresolvable or unavoidable adverse effects associated with the Honoapi'ilani Highway Improvements Project (the Project). As described in the previous chapters and throughout this Draft Environmental Impact Statement (EIS), mitigation would be developed to avoid or minimize adverse effects to the extent practicable. However, even with mitigation, some adverse effects cannot be fully avoided. Unavoidable adverse effects occur if a resource would be lost or if the effects could only be partially mitigated.

7.1 UNRESOLVED ISSUES

The Preferred Alternative may incorporate design refinements during the development of the Final EIS. Any design refinements and potential effects from those refinements would be documented in the Final EIS and ROD.

The Project has coordinated with the County of Maui on its *Pali to Puamana Parkway Master Plan* (2005), which proposes to develop areas makai of the realigned Honoapi'ilani Highway as open resources land. Because the County is awaiting the completion of this Draft EIS before further developing this plan, it cannot be fully known what facilities would be on open resources land. As described in Appendix 2, Summary of Related Governmental Plans and Policies, the project area is located within Subarea 4 of the *West Maui Community Plan* (2022). This plan reiterates the objectives of the *Pali to Puamana Parkway Master Plan* and indicates that the land makai of the realigned highway would be used for open space and park to buffer against the effects of sea level rise and climate change while providing recreational opportunities.

As noted in Section 3.5, Parklands and Recreational Facilities/Beach Access, the State of Hawai'i Department of Land and Natural Resources has jurisdiction over three large parcels in the surrounding area (TMK 48003008 in Olowalu and TMK 48002008 and TMK 48002002 in Ukumehame) that are conditionally approved by the Board of Land and Natural Resources to be designated as forest reserves and which would be finalized by a governor of Hawai'i Executive Order. Board approval was made in coordination with planning for the Project, which would cover a small portion of these parcels along their makai edge. Based on the joint planning effort for the long-standing planning objectives of the highway relocation and conservation land management, the board affirmed that formal designation by Executive Order would proceed after HDOT defines and acquires the land needed for the proposed new highway alignment and that this road right-of-way would be excluded from the newly designated reserve area.

As described in Chapter 2, Alternatives, the existing Honoapi'ilani Highway in the project area is proposed to be relinquished from the State to the County of Maui. This process would involve coordination with the County of Maui, and the Department of Land and Natural Resources would finalize the relinquishment, which would not occur until completion of the Project.



With regard to the portion of the existing highway that would be transferred to the County of Maui, the HDOT will continue to coordinate with Maui County Police Department regarding the future management of the roadway to minimize potential public safety concerns, including those related to criminal activity and disaster management. In addition, the County of Maui Department of Public Works, Engineering Division, recommended further coordination related to inspection, improvements, and/or needed repairs prior to the jurisdictional changeover.

As described in Section 3.17, Infrastructure and Utilities, the Project would be anticipated to result in the displacement of the Olowalu Recycling and Refuse Convenience Center. However, Maui County has long considered relocation options for this facility to move it closer to the Lāhainā urban center, where most users originate. Because a new location for the Olowalu Recycling and Refuse Convenience Center has not been identified, this remains an unresolved project issue.

As described in Section 3.4, Land Acquisition, Displacement, and Relocation, Build Alternatives 2, 3, and 4 would require land that is currently in private property easements dedicated to the Olowalu Subdivision greenway, an approximately 60-acre set-aside providing for multiuse trails and natural area buffers. The greenway was included as a condition of the 2000 Special Management Area permit issued by Maui County. The extent of the adverse effect and the mitigation associated with the relocation, realignment, or elimination of portions of the greenway and its trail is an unresolved issue for this Draft EIS. This issue would require developing appropriate mitigation, which would be included as an amendment to the existing subdivision Special Management Area or be part of a new Special Management Area specific to the Project.

As described in Section 3.9, Water Resources, the intent is to pursue a series of Nationwide Permits for anticipated effects to Waters of the U.S. as part of Section 404 of the Clean Water Act (CWA) permitting. However, coordination is ongoing with the U.S. Army Corps of Engineers regarding permitting pathways for the Project including delineation review of the sedimentation basin. Results of coordination on Section 404 of the CWA and delineation review will be confirmed in the Final EIS, and a clear permitting pathway outlined in the ROD.

As described in Section 3.10, Flora and Fauna, Endangered Species, coordination with the U.S. Fish and Wildlife Service on Section 7 of the Endangered Species Act is ongoing at the time of Draft EIS publication. Results of coordination will be confirmed in the Final EIS, and a clear consultation pathway outlined in the ROD. Avoidance and minimization measures proposed in the Draft EIS may also be modified and finalized in the Final EIS and ROD.

7.2 UNRESOLVABLE/UNAVOIDABLE EFFECTS

7.2.1 Land Acquisition

As presented in Section 3.4, Land Acquisition, Displacement, and Relocation, property that is affected by one or more Build Alternatives would require acquisition that could involve the purchase of a full parcel, acquisition of a portion of a parcel, or the use of temporary and permanent easements on a portion of a parcel. These final determinations would be based on the final design of the Preferred Alternative and would follow the Uniform Relocation Act process and the standards established by



HDOT's Right-of-Way Manual. Potential property acquisition would continue to be assessed through the Final EIS and it would be determined during final design and the right-of-way negotiation process if parcels would be a full acquisition or a partial acquisition.

In Olowalu, it is anticipated that the Build Alternatives would affect and require some level of property acquisition for between 15 to 16 private parcels and between three and eight kuleana parcels.

In Ukumehame, Build Alternatives 2 and 3 require only one private parcel acquisition and six kuleana parcels. Build Alternative 1 would require three private parcels and five kuleana parcels. Build Alternative 4 would be the most extensive alignment in terms of property acquisition and would require some level of property acquisition for 20 private parcels and seven kuleana parcels.

The Preferred Alternative would require 15 private parcels and five kuleana parcels in Olowalu and three private parcels and five kuleana parcels in Ukumehame for a total of 18 private parcels and 10 kuleana parcels.

7.2.2 Archaeological and Historic Resources

As described in Section 3.6, Archaeological and Historic Properties, the FHWA and HDOT would develop a Programmatic Agreement in consultation with the State of Hawai'i Historic Preservation Division, the Advisory Council on Historic Preservation, and other Consulting Parties to resolve the Project's potential adverse effects.

In addition, The Hawaii HRS § 6E requirements are an equivalent, but not identical, compliance process to Section 106. Significant historic properties are defined as any historic property that meets the criteria of the Hawaii Register of Historic Places or the criteria enumerated in subsections 13-275-6(b) or 13-284-6(b). The regulations require the State agency, in consultation with the State Historic Preservation Division (SHPD), to identify resources, determine eligibility, and mitigate adverse effects.

There are both archaeological and architectural resources in the Project's Area of Potential Effect, and one or more of the Build Alternatives could have an adverse effect on these resources. The Preferred Alternative has been refined to provide additional avoidance options for affected resources. Surveys and analysis would be updated as needed in the Final EIS for any design refinements made for the Preferred Alternative. Overall, the final determination of eligibility, the identification of adverse effects, and the opportunities to avoid and mitigate adverse effects would be memorialized in the Programmatic Agreement and 6E compliance. As detailed in Section 3.6, Archaeological and Architectural Historic Properties, the Section 106 Programmatic Agreement (presented in Appendix 3.6) will govern Section 106 compliance for the Project after environmental review is completed and into final design—including the identification of potential archaeological historic properties within the limits of disturbance for the Preferred Alternative.

7.2.3 Water Resources

Following Draft EIS completion, the full scope of potential adverse effects to water resources would remain unresolved until final design.



As described in Section 3.9, Water Resources, Wetlands, and Floodplains, stream crossings would be designed to preserve water flow and the biological processes of the fauna living in them. Hardening the stream crossings would be avoided, and bridge design would consider keeping the stream cool, shaded, and oxygenated.

Construction BMPs that have been either preapproved or coordinated with regulatory agencies—which are included in *An Integrated Storm Water Management Approach and a Summary of Clear Water Diversion and Isolation Best Management Practices for Use in the State of Hawaii*—would be used to minimize the potential for water quality effects to the streams.

Section 404 permit requirements of the CWA that are associated with the stream crossings and other unavoidable effects to Waters of the U.S. would be coordinated with the U.S. Army Corps of Engineers. The intent is to pursue a series of Nationwide Permits for unavoidable effects to assumed Waters of the U.S. When work would require a Section 404 permit, a CWA Section 401 certification would also be required to regulate discharges into Waters of the U.S. Section 401 certification would be coordinated with the State of Hawaiʻi Department of Health, Clean Water Branch. A CWA Section 402 National Pollutant Discharge Elimination System General Permit with an associated Stormwater Pollution Prevention Plan would be coordinated with the Clean Water Branch to prevent and reduce pollution associated with stormwater discharges resulting from construction and project activities. A Stream Channel Alteration Permit may be required, but only to document that no alterations are anticipated. This action would follow final design. These permits and plans would be required and implemented by the design-build contractors in addition to monitoring and addressing the effectiveness of BMPs and control devices.

The final design would include strategies to achieve a no-rise scenario in the regulatory floodway as required by the Federal Emergency Management Agency (FEMA). This would include obtaining a floodplain development permit from the Maui County Planning Department. If a no-rise is not attainable, the FEMA process to revise National Flood Insurance Program Maps and show changes to floodplains, regulatory floodways, or flood elevations would be followed. Reference CFR Title 44 Parts 60, 65, and 72.

In Olowalu, all Build Alternatives cross portions of water resources, though none are wetlands. Build Alternative 1 crosses over the greatest amount of water resources identified within the Olowalu area. Build Alternative 2 crosses over the least amount of water resources identified within the Olowalu area.

In Ukumehame, all Build Alternatives cross portions of water resources including streams, ditches, gulches, and wetlands. Build Alternatives 2 and 3 cross over the greatest amount of water resources identified within the Ukumehame area—and Build Alternative 4 crosses over the least amount.

7.2.4 Flora and Fauna

Adherence to BMPs, conservation measures, and avoidance and minimization measures identified as part of ongoing consultations with resource agencies—including most notably the Endangered Species Act Section 7 and Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act—would prevent, to the extent practicable, adverse effects to biological resources.



Once this Draft EIS is published and on review of the Biological Assessment, the U.S. Fish and Wildlife Service will evaluate the potential for adverse effects resulting from the Preferred Alternative. The results of the ongoing Section 7 process would be incorporated into the final design and would determine specific measures that the design-build contractor must take to avoid and minimize adverse effects to listed species or species of concern and their habitat. These measures also include those to address the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health effects that invasive species cause.

In Olowalu, Build Alternative 1 would likely require the removal of monkeypod trees that the Maui County Arborist Committee designated as Exceptional Trees. Approval for tree removal would be reviewed by the County Arborist Committee and ultimately approved by the Director of Parks and Recreation. Appropriate replacement(s), relocation, or other recommendations would be followed to result in the least adverse effect to Olowalu monkeypod trees.

Other than Hawaiian goose (or nēnē) and Hawaiian stilt (or aeʻo), no federally or State-listed threatened or endangered species were observed in the project area. The Hawaiian hoary bat is assumed to be present. Removing large trees may result in an avoidable affect to the roosting area available to the bat population in this area. However, with adherence to seasonal tree cutting guidance and the prevalence of suitable roosting habitat elsewhere in the Olowalu area, adverse effects to the bat population would be unlikely.