

1 Make the following Section a part of the Standard Specifications:

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3 **“SECTION 671 – PROTECTION OF THREATENED AND ENDANGERED**  
4 **SPECIES**

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6 **671.01 Description.** The endangered Hawaiian hoary bat or ‘ōpe‘ape‘a  
7 (*Lasiurus cinereus semotus*) may roost, forage, and rear young in the general  
8 vicinity of the proposed project. The project site is located in a known flight corridor  
9 for the endangered Hawaiian petrel or ‘ua‘u (*Pterodroma sandwichensis*), the  
10 endangered Hawai‘i distinct population segment (DPS) of the band-rumped storm-  
11 petrel or ‘ake‘ake (*Oceanodroma castro*), and the threatened Newell’s shearwater  
12 or ‘a‘o (*Puffinus auricularis newelli*), hereinafter referred to as Hawaiian seabirds.  
13 Endangered Hawaiian waterbirds, including the Hawaiian stilt or ae‘o (*Himantopus*  
14 *mexicanus knudseni*), the Hawaiian coot or ‘alae ke‘oke‘o (*Fulica americana alai*),  
15 the Hawaiian gallinule or ‘alae ‘ula (*Gallinula galeata sandvicensis*), and the  
16 Hawaiian duck or koloa (*Anas wyvilliana*) are known to be in the general vicinity of  
17 the project and may be attracted to the project staging areas even in sub-optimal  
18 locations if water is present. Also, to be considered is the threatened Hawaiian  
19 goose or nēnē (*Branta [=Nesochen] sandvicensis*) which may use the construction  
20 staging areas or areas adjacent to the roadway.

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22 The Contractor shall protect these threatened and endangered species  
23 throughout the construction duration.

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25 **671.02 Materials.** None

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27 **671.03 Construction.**

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29 **(A) Pre-Construction and Construction Requirements.** Comply with  
30 the following conditions and the notes in the Contract Plans:

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32 **(1) Hawaiian Hoary Bat.** Hawaiian hoary bats nest in both  
33 native and non-native woody vegetation.

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35 The Contractor shall incorporate these measures to avoid and  
36 minimize project-related adverse effects to the Hawaiian hoary bat:

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38 **(a)** There shall be no disturbance, removal, or trimming of  
39 woody plants greater than 15 feet (4.6 meters) tall  
40 during the bat birthing and pup rearing season (June 1  
41 through September 15).

42  
43 **(b)** Barbed wire shall not be used for fencing.

44  
45 **(2) Hawaiian Seabirds.** Hawaiian seabirds may traverse the  
46 project area at night during breeding, nesting and fledgling season,  
47 which extends from March 1 through December 15. Permanent  
48 lighting poses a very high risk of seabird attraction so new highway  
49 lighting should not be installed to protect seabird flyways and  
50 preserve the night sky. Additional or increased lighting exacerbates  
51 the problem of Newell’s shearwater fallout.

Fallout shall be defined as the occurrence of seabirds being harmed, injured or killed and falling to the ground due to: 1) collision with structures such as wires, poles, or other objects; 2) light attraction and the resulting collision with structure associated with or near the light sources; or, 3) the exhaustion from circling the light source.

If nighttime work will be required in conjunction with the development of the project, the Contractor shall incorporate these measures to avoid and minimize project-related adverse effects to Hawaiian seabirds:

**(a)** Before beginning any work at the project site, the Contractor shall:

- i. Collect information regarding the protection of seabirds and seabird fallout.
- ii. Submit to the Engineer for acceptance a protection of seabirds training plan including a detailed description of information and materials the Contractor intends to use in the training classes. The training plan shall be submitted to the Engineer for acceptance at least fifteen (15) days in advance of the class. If the Engineer rejects the training plan, the Contractor shall revise and promptly propose another training plan.
- iii. Disseminate information regarding the protection of seabirds and seabird fallout by conducting training classes for all employees, subcontractors, suppliers and other personnel working on the project, including HDOT personnel, on such topics as the Save Our Shearwater (SOS) program, proper use of temporary lighting, procedures to store and report downed seabirds, and the consequences of non-compliance with the laws regarding threatened and endangered seabirds. The Engineer may request for additional topics related to seabirds to be included in the training classes.

Training classes shall be taught by authorized representatives of the U.S. Fish and Wildlife Service (USFWS), the Department of Land and Natural Resources, the SOS program or other qualified personnel accepted by the Engineer.

- 100                   iv.   Furnish the Engineer with evidence that the  
101                   Contractor has held training classes, including the  
102                   dates of the classes, identify who conducted the  
103                   training, and the content and nature of the training.  
104

105           **(b)**   The Contractor shall comply to the following  
106           construction requirements:  
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- 108                   i.   As directed by the Engineer, the Contractor shall  
109                   conduct additional training classes during the  
110                   project to update all employees, subcontractors,  
111                   suppliers, HDOT personnel and other personnel on  
112                   new and/or updated information regarding the  
113                   protection of seabirds and seabird fallout.  
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- 115                   ii.   No permanent streetlights shall be installed as part  
116                   of the project.  
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- 118                   iii.   All temporary lights used for night work (between  
119                   sunset and sunrise) shall contain less than 2%  
120                   wavelengths less than 550 nm, and shall be  
121                   downward-facing and shielded so the bulb can only  
122                   be seen from below. Temporary lights shall include  
123                   but are not limited to flood lights, light towers, lights  
124                   for construction equipment and other lights as  
125                   determined by the Engineer. All traffic control  
126                   devices, including warning lights, arrow boards,  
127                   portable changeable message signs and other  
128                   lighting device as determined by the Engineer shall  
129                   be shielded.  
130

- 131                   iv.   Nighttime construction and the use of all temporary  
132                   lights shall cease during the peak seabird fledgling  
133                   period (September 15 through December 15).  
134

- 135                   v.   The Contractor shall furnish and maintain a small  
136                   (approximately 10" x 12" x 19"), portable cat kennel  
137                   on site to temporarily hold a downed seabird. The  
138                   Contractor shall obtain acceptance of the cat  
139                   kennel from the Engineer prior to use.  
140

- 141                   vi.   If a downed dead seabird is found, the Contractor  
142                   shall contact the Division of Forestry and Wildlife  
143                   (DOFAW) at (808) 274-3433 or SOS at (808) 635-  
144                   5117 within 24 hours.  
145

- 146                   vii.   If the downed seabird is alive, the Contractor shall:

I. Pick up the seabird from behind as soon as possible using a clean towel, t-shirt or cloth by gently wrapping it around its back and wings.

II. Place the seabird in the cat kennel and immediately contact the SOS Program Coordinator at 808-635-5117 for further instructions on where to deliver the seabird.

III. Deliver the seabird to the location determined by the coordinator of the SOS program and as directed by the Engineer.

IV. Keep the seabird in a cool, quiet location and out of direct sunlight with adequate ventilation.

V. The Contractor and any personnel on-site shall not feed, provide water, handle or release the seabird.

viii. The Contractor shall maintain records of all downed seabirds for the duration of the project. The records shall include the date, time, location and condition (dead or alive) the seabird was found and delivered. Submit a copy of the records to the Engineer after finding each and every downed seabird.

**(3) Hawaiian Waterbirds.** Hawaiian waterbirds occupy fresh and brackish water marshes, coastal estuaries and natural or manmade ponds. Hawaiian stilts also occupy areas with ephemeral or persistent standing water, conditions of which can be found in culverts and drainage structures. Because this project occurs near water, threats to these species from this project may include predation, reduced reproductive success, disturbance from human activity and injury or mortality from vehicle strikes.

The Contractor shall incorporate these measures to avoid and minimize project-related adverse effects to Hawaiian waterbirds:

**(a)** In areas where known presence of Hawaiian waterbirds occurs, post, implement and enforce reduced speed limits, and inform project personnel and Contractors of the presence of these endangered species on-site.

**(b)** If water resources are located within or adjacent to the project site, incorporate the applicable best management

practices (BMPs) regarding work in aquatic environments to the project design.

**(c)** Where appropriate habitat occurs within the vicinity of the project area, survey for Hawaiian waterbirds and nests prior to initiation of project work using survey biologists familiar with the species' biology. Survey biologists should be trained and capable of identifying adults and juveniles of each species, nesting behaviors, and nests. Repeat surveys again within three (3) days of project initiation during which the birds may attempt to nest.

- i. Surveys for species and nests should be repeated when a delay of work occurs that is three (3) days or more (during which the birds may attempt to nest).
- ii. If a nest or active brood is found, contact the Kauai Branch DOFAW Office at (808) 274-3433 within 24 hours for further guidance.
- iii. Establish and maintain a 100-ft buffer around all active nests and/or broods until the chicks/ducklings have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer.
- iv. A biological monitor that is familiar with the species' biology shall be present on the project site during all construction or earth moving activities until the chicks/ducklings fledge to ensure that Hawaiian waterbirds and nests are not adversely affected.
- v. Additionally for projects that include cleaning of existing culverts, a biological monitor that is familiar with the Hawaiian stilt's biology is required during Hawaiian stilt nesting season from February through August 31.
  - I. A biological monitor that is familiar with the species' biology will conduct Hawaiian stilt nest surveys where appropriate habitat occurs within the proposed maintenance site prior to cleaning of culverts and drainage structures.

241 II. Surveys will take place within three (3) days  
242 of project initiation and after any subsequent  
243 delay of work of three (3) or more days  
244 (during which time the birds may attempt to  
245 nest).

246  
247 **(4) Hawaiian Goose.** Hawaiian goose or nēnē uses various  
248 habitat types. Threats to the species from this project include  
249 disturbance from human presence, and injury and mortality from  
250 vehicle strikes. An increased human presence at the project site  
251 could disturb nēnē nesting, foraging, or loafing in the area.  
252

253 The Contractor shall incorporate these measures to avoid and  
254 minimize project-related adverse effects to the nēnē:  
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- 256 **(a)** Nēnē in or near the project area shall not be  
257 approached, fed, or disturbed in any way.
- 258
- 259 **(b)** All food and or beverage waste shall be disposed of in  
260 appropriate, covered trash receptacles.
- 261
- 262 **(c)** If nēnē are observed loafing, foraging, or otherwise  
263 present within the project area during the breeding  
264 season (September 1 through April 30), a trained  
265 biologist familiar with nēnē nesting behavior will survey  
266 the area in and around the project area for nests prior  
267 to work each day. Surveys will be repeated after any  
268 subsequent delay of work of three (3) or more days  
269 (during which the birds may attempt to nest).
- 270
- 271 **(d)** If a nest is identified within a radius of 150 feet of the  
272 project area, or a previously undiscovered nest is found  
273 within the 150-foot radius after work begins, all work  
274 shall cease and the Kauai Branch DOFAW Office will  
275 be contacted immediately at (808) 274-3433 for further  
276 guidance.
- 277
- 278 **(e)** Reduced speed limits shall be posted and  
279 implemented in areas where nēnē are known to be  
280 present, and project personnel and Contractors will be  
281 informed of the presence of endangered species on-  
282 site.
- 283
- 284 **(f)** There shall be no feeding of birds or dogs on the  
285 project site.
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287 **(B) Compliance Requirements.** The Contractor shall protect all  
288 species noted above for the duration of construction. Failure to  
289 comply with the construction requirements, harm or a taking of an  
290 individual during the construction duration shall be enforceable by

the USFWS as set forth by the Endangered Species Act. Resultant penalties and/or fines shall be at the Contractor's expense without cost or liability to the State.

**671.03 Measurement.** The Engineer will measure the work required for the protection of threatened and endangered species on a force account basis in accordance with Subsection 109.06 – Force Account Provisions and Compensation and as ordered by the Engineer.

**671.04 Payment.** The Engineer will pay for the accepted protection of threatened and endangered species on a force account basis in accordance with Subsection 109.06 – Force Account Provisions and Compensation. Payment will be full compensation for the work prescribed in this section, by the Engineer, and in the contract documents.

The Engineer will pay for the following pay item when included in the proposal schedule:

Pay Item	Pay Unit
Protection of Threatened and Endangered Species	Force Account

An estimated amount may be allocated in the proposal schedule under "Protection of Threatened and Endangered Species", but the actual amount to be paid will be the sum shown on the accepted force account records, whether this sum be more or less than the estimated amount allocated in the proposal schedule."

**END OF SECTION 671**