

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**

5
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. Endangered Hawaiian waterbirds, including the
9 Hawaiian stilt or ae‘o (*Himantopus mexicanus knudseni*), the Hawaiian coot or
10 ‘alae ke‘oke‘o (*Fulica americana alai*), the Hawaiian gallinule or ‘alae ‘ula (*Gallinula*
11 *galeata sandvicensis*), and the Hawaiian duck or koloa (*Anas wyvilliana*) are
12 known to be in the general vicinity of the project and may be attracted to the project
13 staging areas even in sub-optimal locations if water is present. Also to be
14 considered is the threatened Hawaiian goose or nēnē (*Branta [=Nesochen]*
15 *sandvicensis*) which may use the construction staging areas or areas adjacent to
16 the roadway. Additionally, the project site is located in a known flight corridor for
17 the endangered Hawaiian petrel or ‘ua‘u (*Pterodroma sandwichensis*), the
18 endangered Hawai‘i DPS of the band-rumped storm-petrel or ‘ake‘ake
19 (*Oceanodroma castro*), and the threatened Newell’s shearwater or ‘a‘o (*Puffinus*
20 *auricularis newelli*), hereinafter referred to as Hawaiian seabirds.

21
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:

31
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 Waterbirds.** Hawaiian waterbirds occupy fresh
46 and brackish water marshes, coastal estuaries and natural or
47 manmade ponds. Hawaiian stilts also occupy areas with ephemeral
48 or persistent standing water. Because this project occurs near water,
49 threats to these species from this project may include predation,
50 reduced reproductive success, disturbance from human activity and
51 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) Because water resources occur in the project site, employ U.S. Fish and Wildlife Service (USFWS) Best Management Practices for Work in Aquatic Environments.

(c) Survey for Hawaiian waterbirds and nests within the vicinity of the project area 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.

i. Surveys for species and nests should be repeated when a delay of work occurs that is three days or (during which the birds may attempt to nest).

ii. If a nest or active brood is found, contact USFWS 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, biological monitor is required during Hawaiian stilt nesting season from February 15 through August 31.

I. A biological monitor that is familiar with the species' biology and approved by the Federal Highways Administration will conduct Hawaiian stilt nest surveys where appropriate

habitat occurs within the proposed maintenance site prior to cleaning culverts and drainage structures.

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

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

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

- (a)** Nēnē in or near the project area shall not be approached, fed, or disturbed in any way.
- (b)** If nēnē are observed loafing, foraging, or otherwise present within the project area during the breeding season (September 1 through April 30), a trained biologist familiar with nēnē nesting behavior will survey the area in and around the project area for nests prior to work each day. Surveys will be repeated after any subsequent delay of work of three or more days (during which the birds may attempt to nest).
- (c)** If a nest is identified within a radius of 150 feet of the project area, or a previously undiscovered nest is found within the 150-foot radius after work begins, all work shall cease and the USFWS will be contacted immediately for further guidance.
- (d)** Reduced speed limits shall be posted and implemented in areas where nēnē are known to be present, and project personnel and Contractors will be informed of the presence of endangered species on-site. There shall be no feeding of birds or dogs on the project site.

(4) Hawaiian Seabirds. Hawaiian seabirds may traverse the project area at night during breeding, nesting and fledgling season, which extends from March 1 through December 15. Additional or increased lighting exacerbates 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 night-time 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 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 USFWS, the Department of Land and Natural Resources, the SOS program or other qualified personnel accepted by the Engineer.

- iv. Furnish the Engineer with evidence that the Contractor has held training classes, including the

197 dates of the classes, identify who conducted the
198 training, and the content and nature of the training.
199

200 **(b)** The Contractor shall comply to the following
201 construction requirements:
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- 203 i. As directed by the Engineer, the Contractor shall
204 conduct additional training classes during the
205 project to update all employees, subcontractors,
206 suppliers, HDOT personnel and other personnel on
207 new and/or updated information regarding the
208 protection of seabirds and seabird fallout.
209
- 210 ii. All temporary lights used for night work (between
211 sunset and sunrise) shall contain less than 2%
212 wavelengths less than 550 nm, and shall be
213 downward-facing and shielded so the bulb can only
214 be seen from below. Temporary lights shall include
215 but are not limited to flood lights, light towers, lights
216 for construction equipment and other lights as
217 determined by the Engineer. All traffic control
218 devices, including warning lights, arrow boards,
219 portable changeable message signs and other
220 lighting device as determined by the Engineer shall
221 be shielded.
222
- 223 iii. Night time construction and the use of all temporary
224 lights shall cease during the peak seabird fledgling
225 period (September 15 through December 15).
226
- 227 iv. The Contractor shall furnish and maintain a small
228 (approximately 10" x 12" x 19"), portable cat kennel
229 on site to temporarily hold a downed seabird. The
230 Contractor shall obtain acceptance of the cat
231 kennel from the Engineer prior to use.
232
- 233 v. If a downed dead seabird is found, the Contractor
234 shall contact the USFWS (Ms. Megan Laut at 808-
235 792-9400) within 24 hours.
236
- 237 vi. If the downed seabird is alive, the Contractor shall:
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239 I. Pick up the seabird from behind as soon
240 as possible using a clean towel, t-shirt or cloth
241 by gently wrapping it around its back and wings.
242

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

247
248 III. Deliver the seabird to the location
249 determined by the coordinator of the SOS
250 program and as directed by the Engineer.

251
252 IV. Keep the seabird in a cool, quiet location
253 and out of direct sunlight with adequate
254 ventilation.

255
256 V. The Contractor and any personnel on-
257 site shall not feed, provide water, handle or
258 release the seabird.

- 259
260 **vii.** The Contractor shall maintain records of all downed
261 seabirds for the duration of the project. The records
262 shall include the date, time, location and condition
263 (dead or alive) the seabird was found and delivered.
264 Submit a copy of the records to the Engineer after
265 finding each and every downed seabird.

266
267 **(B) Compliance Requirements.** The Contractor shall
268 protect all species noted above for the duration of construction. Failure to
269 comply with the construction requirements, harm or a taking of an individual
270 during the construction duration shall be enforceable by the USFWS as set
271 forth by the Endangered Species Act. Resultant penalties and/or fines shall
272 be at the Contractor's expense without cost or liability to the State.

273
274 **671.03 Measurement.** The Engineer will measure the work required for the
275 protection of threatened and endangered species on a force account basis in
276 accordance with Subsection 109.06 – Force Account Provisions and
277 Compensation and as ordered by the Engineer.

278
279 **671.04 Payment.** The Engineer will pay for the accepted protection of
280 threatened and endangered species on a force account basis in accordance with
281 Subsection 109.06 – Force Account Provisions and Compensation. Payment will
282 be full compensation for the work prescribed in this section, by the Engineer, and
283 in the contract documents.

284
285 The Engineer will pay for the following pay item when included in the
286 proposal schedule:

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

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

297
298
299 **END OF SECTION 671**