

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*) and the threatened Hawaiian Goose or Nēnē (*Branta*
8 *sandvicensis*) are in the general vicinity of the proposed project and may transit or
9 visit the proposed project. The project site is located in a known flight corridor for
10 the threatened Newell’s shearwater (*Puffinus auricularis newelli*), the endangered
11 Band-Rumped Storm-Petrel (*Oceanodroma castro*), and the endangered
12 Hawaiian petrel (*Pterodroma phaeopygia sandwichensis*), hereinafter referred to
13 as seabirds. Also to be considered are the endangered Hawaiian waterbirds,
14 including the Hawaiian Stilt or Ae’o (*Himantopus mexicanus knudseni*), the
15 Hawaiian Coot or ‘Alae ke’oke’o (*Fulica alai*), the Hawaiian Gallinule or ‘Alae ‘ula
16 (*Gallinula chloropus sandvicensis*), and the Hawaiian Duck or Koloa Maoli (*Anas*
17 *wyvilliana*).
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19 The Contractor shall protect these threatened and endangered species
20 throughout the construction duration.
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22 **671.02 Materials.** None
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24 **671.03 Construction.**
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26 **(A) Pre-Construction and Construction Requirements.** Comply with
27 the following conditions and the notes in the Contract Plans:
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29 **(1) Hawaiian Hoary Bats.** Hawaiian Hoary Bats nest in both
30 exotic and native woody vegetation. There will be no disturbance,
31 removal, or trimming of woody plants greater than 15 feet (4.6
32 meters) tall during the birthing and pup rearing season (June 1
33 through September 15).
34

35 Additionally, barbed wire will not be used for fencing.
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37 **(2) Hawaiian Goose.** Any Hawaiian Goose in or near the
38 project area will not be approached, fed, or disturbed in any way.
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40 If Hawaiian Goose are observed loafing, foraging, or
41 otherwise present within the project area during the breeding season
42 (September 1 through April 30), a trained biologist will survey the
43 area near the project prior to work each day. Also, nest surveys will
44 be conducted in and around the project area by a biologist familiar
45 with the nesting behavior of Hawaiian Goose prior to the resumption
46 of any work. Surveys will be repeated after any delay in work of three
47 or more days. If a nest is identified within 150 feet of the work area,
48 all work will cease and the United States Department of Interior Fish
49 and Wildlife Service (USFWS) will be contacted immediately for
50 further guidance.
51

In areas where Hawaiian Goose are known to be present, reduced speed limits will be posted and implemented and project personnel and Contractors will be informed of the presence of endangered species on-site.

(3) Hawaiian Seabirds. Newell's shearwater, Band-Rumped Storm petrel and the Hawaiian petrel may traverse the project area at night during breeding season, which extends from March 1 through December 15.

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 the Hawaiian seabirds:

(a) Collect information regarding the protection of seabirds and seabird fallout.

(b) 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.

(c) 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 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, the Department of Land and Natural Resources, the Save Our Shearwater program or other qualified personnel accepted by the Engineer.

(d) Furnish the Engineer with evidence that the Contractor has held training classes, including the dates of the classes, identify who conducted the training, and the content and nature of the training.

(e) As directed by the Engineer, the Contractor shall conduct additional training classes during the project to update all employees, subcontractors, suppliers, HDOT

personnel and other personnel on new and/or updated information regarding the protection of seabirds and seabird fallout.

(f) All temporary lights used for night work (between sunset and sunrise) shall contain less than 2% wavelengths less than 550 nm, be downward-facing and shielded. Temporary lights shall include but are not limited to flood lights, light towers, lights for construction equipment and other lights as determined by the Engineer. All traffic control devices, including warning lights, arrow boards, portable changeable message signs and other lighting device as determined by the Engineer shall be shielded.

(g) Night work and the use of all temporary lights shall cease during the peak fallout period from September 15 through December 15.

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

(i) If a downed dead seabird is found, the Contractor shall contact the U.S. Fish and Wildlife Service (Ms. Megan Laut at 808-792-9400) within 24 hours.

(j) 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 Save Our Shearwater Program Coordinator at 808-246-4348) for further instructions on where to deliver the seabird.
- iii. Deliver the seabird to the location determined by the coordinator of the Save Our Shearwater program and as directed by the Engineer.
- iv. Keep the seabird in a cool, quiet location and out of direct sunlight with adequate ventilation.

The Contractor shall not feed, provide water, handle or release the seabird.

(k) 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.

No night-time construction shall occur during the peak seabird fledging period (September 15 through December 15).

(4) Hawaiian Waterbirds. Hawaiian waterbirds occupy fresh and brackish water marshes and natural or manmade ponds. Hawaiian stilts also occupy areas with ephemeral or persistent standing water. Because this project occurs near water, threats to these species from this project may include disturbance from human activity and injury or mortality from vehicle strikes.

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

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

(b) Because water resources occur in the project site, employ U.S. Fish and Wildlife Service Recommended Standard Best Management Practices when working in aquatic environments.

(c) Survey for Hawaiian waterbirds in or near the project area prior to work using survey biologists. 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 more (during which the birds may attempt to nest).

ii. If a nest or active brood is found, contact the Service 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. Have a biological monitor that is familiar with the species' biology 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.

(B) Compliance Requirements. The Contractor shall protect all species noted above for the duration of construction. Failure to comply with the construction requirements, harm or a taking of an individual during the construction duration shall be enforceable by the U.S. Fish and Wildlife Service 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.

671.04 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.

671.05 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."

671.06 Working Hours; Night Work

"Perform night work only as follows:

Sunday thru Thursday nights, from 6:00 P.M. to 12:00 midnight
Monday thru Friday mornings, from 12:00 midnight to 7:00 A.M.

246 The Engineer has secured a Noise Variance from the Department of Health
247 according to Administrative Rules Title 11, Chapter 11-46, Section 11-46-8 for this
248 work.”

249
250 **END OF SECTION 671**
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