

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.  
21

22 The Contractor shall protect these threatened and endangered species  
23 throughout the construction duration.  
24

25 **671.02 Materials.** None  
26

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.  
114
- 115                   ii.   No permanent streetlights shall be installed as part  
116                   of the project.  
117
- 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 USFWS (Ms. Megan Laut at 808-  
143                   792-9400), the Division of Forestry and Wildlife  
144                   (DOFAW) at (808) 274-3433 or SOS at (808) 635-  
145                   5117 within 24 hours.  
146

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

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

152  
153                   II. Place the seabird in the cat kennel and  
154 immediately contact the SOS Program  
155 Coordinator at 808-635-5117 for further  
156 instructions on where to deliver the seabird.

157  
158                   III. Deliver the seabird to the location  
159 determined by the coordinator of the SOS  
160 program and as directed by the Engineer.

161  
162                   IV. Keep the seabird in a cool, quiet location  
163 and out of direct sunlight with adequate  
164 ventilation.

165  
166                   V. The Contractor and any personnel on-  
167 site shall not feed, provide water, handle or  
168 release the seabird.

169  
170                   viii. The Contractor shall maintain records of all downed  
171 seabirds for the duration of the project. The records  
172 shall include the date, time, location and condition  
173 (dead or alive) the seabird was found and delivered.  
174 Submit a copy of the records to the Engineer after  
175 finding each and every downed seabird.

176  
177 **(3) Hawaiian Waterbirds.** Hawaiian waterbirds occupy fresh  
178 and brackish water marshes, coastal estuaries and natural or  
179 manmade ponds. Hawaiian stilts also occupy areas with ephemeral  
180 or persistent standing water, conditions of which can be found in  
181 culverts and drainage structures. Because this project occurs near  
182 water, threats to these species from this project may include  
183 predation, reduced reproductive success, disturbance from human  
184 activity and injury or mortality from vehicle strikes.

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

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

194 (b) If water resources are located within or adjacent to the  
195 project site, employ USFWS Best Management Practices for  
196 Work in Aquatic Environments.

197  
198 (c) Where appropriate habitat occurs within the vicinity of  
199 the project area, survey for Hawaiian waterbirds and nests  
200 prior to initiation of project work using survey biologists  
201 familiar with the species' biology. Survey biologists should be  
202 trained and capable of identifying adults and juveniles of each  
203 species, nesting behaviors, and nests. Repeat surveys again  
204 within three (3) days of project initiation during which the birds  
205 may attempt to nest.

206  
207 i. Surveys for species and nests should be repeated  
208 when a delay of work occurs that is three (3) days  
209 or more (during which the birds may attempt to  
210 nest).

211  
212 ii. If a nest or active brood is found, contact USFWS  
213 or the Kauai Branch DOFAW Office at (808) 274-  
214 3433 within 24 hours for further guidance.

215  
216 iii. Establish and maintain a 100-ft buffer around all  
217 active nests and/or broods until the  
218 chicks/ducklings have fledged. Do not conduct  
219 potentially disruptive activities or habitat alteration  
220 within this buffer.

221  
222 iv. A biological monitor that is familiar with the species'  
223 biology shall be present on the project site during  
224 all construction or earth moving activities until the  
225 chicks/ducklings fledge to ensure that Hawaiian  
226 waterbirds and nests are not adversely affected.

227  
228 v. Additionally for projects that include cleaning of  
229 existing culverts, a biological monitor that is familiar  
230 with the Hawaiian stilt's biology is required during  
231 Hawaiian stilt nesting season from February 15  
232 through August 31.

233  
234 l. A biological monitor that is familiar with the  
235 species' biology and approved by the  
236 Federal Highways Administration will  
237 conduct Hawaiian stilt nest surveys where  
238 appropriate habitat occurs within the

proposed maintenance site prior to cleaning of culverts and drainage structures.

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

**(4) 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)** All food and or beverage waste shall be disposed of in appropriate, covered trash receptacles.
- (c)** 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 (3) or more days (during which the birds may attempt to nest).
- (d)** 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 or the Kauai Branch DOFAW Office at (808) 274-3433 will be contacted immediately for further guidance.
- (e)** 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.
- (f)** There shall be no feeding of birds or dogs on the project site.

(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 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**