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| REVIEW OF NEW SPECIFICATION OR SPECIFICATION CHANGE  | **Log No.**  240-2C |
| **Specification Section No.:** 240 | **Item:** Protection of Migratory Birds |
| **Originating Office:** Landscaping/Environmental | **By:** Banovich |
| **Date Sent For Review:** November 19, 2010 | **Date Comments Due: December 17, 2010** |
| Please submit response to: STANDARDS AND SPECIFICATIONS UNIT, ROOM 290, HEADQUARTERS, DENVER |
| **Reviewer** | **Concurrent Reviews – Others Commenting** | The attached Draft Specification is submitted for your review and comments. If not returned by Date Comments Due, the draft specification will be considered to be approved unless the Specification Unit of Staff Design [(303) 757-9474, (303) 757-9402] is advised otherwise.**REMARKS:** If these proposed modifications are approved, it will result in the issuance of a new Project Special Worksheet. |
|  | **Spec Committee Members:** |  |
|  | Chairman: Wassenaar | X |
|  | Region 1: Cox | **X** |
|  | Region 2: Burch | **X** |
|  | Region 3: Alexander | **X** |
|  | Region 4: Frieler | **X** |
|  | Region 5: Beller | **X** |
|  | Region 6: Koenig | **X** |
|  | Project Development: Lacey | **X** |
|  | Specifications: Brinck | **X** |
|  | Bridge: Hasan | **X** |
|  | Agreements:  | **X** |
|  | Materials: Zufall | **X** |
|  | Traffic Engineering: Matthews | **X** | REVIEWER COMMENTS:( ) Approved ( ) Disapproved ( ) ModifiedIf disapproved or modified, give reason why and show any modifications on the attached draft copy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_ Name/Signature Date |
|  | Maintenance: Mueller | **X** |
|  | FHWA: Urban | **X** |
|  | Attorney General: Spear | **X** |
|  | Attorney General: Morrow | **X** |
|  |  |  |
|  | **Others:** |  |
|  | Colorado Contractors Assoc.: Moody | **X** |
|  |  |  |
|  | **Technical Committees:** |  |
|  | Bridge |  |
|  | Culvert |  |
|  | Joint Co-op, CCA/CDOT |  |

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| **COLORADO DEPARTMENT OF TRANSPORTATION****SUBMITTAL OF NEW SPECIFICATION OR SPECIFICATION CHANGE** | Log No. (Assigned by Standards and Specifications Unit)240-2C |
| TO: Standards and Specifications Unit, Project Development, Suite 290 | FROM:Mike Banovich, EBP, DTD(Region, Branch or Technical Committee) |
| SPECIFICATION SECTION NO.240 | ITEMProtection of Migratory Birds | Priority Routine[x]  Fast[ ]  |
| Reason for this new or changed specification:These proposed special provisions create a new Specification Section 240- Protection of Migratory Birds. Section 240 will address the requirements of the Migratory Bird Treaty Act (1918). It will ensure that consistent, appropriate and reasonable measures are taken to prevent injury to and death of migratory birds and that CDOT activities are compatible with current federal and state wildlife laws and regulations.The Environmental Advisory Committee (EAC) and the Specifications Unit has incorporated comments from PDAC, RPEMS and USFW agency to fulfill necessary provisions to protect migratory birds during construction.A pay item has been created to measure and pay for Item 240- Wildlife Biologist, Unit Hour. |
| New or Revised Specification:See 3 attached project special provision work sheets for use on the appropriate type of project.  |
| Note: See Procedural Directive 513.1 for a description of appropriate specification development procedures. |

 **CDOT Form 1215 10/01**

**PROJECT SPECIAL PROVISION WORK SHEET FOR PROJECTS INVOLVING CLEARING**

**AND GRUBBING, EARTHWORK, STRUCTURES, OR A COMBINATION THEREOF, WHEN THE BIOLOGICAL WORK IS DONE BY THE CONTRACTOR'S BIOLOGIST:**

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SECTION 240

PROTECTION OF MIGRATORY BIRDS

Section 240 is hereby added to the Standard Specifications for this project as follows:

**DESCRIPTION**

**240.01** This work consists of protecting migratory birds during construction.

**MATERIALS AND CONSTRUCTION REQUIREMENTS**

**240.02** The Contractor shall schedule clearing and grubbing operations and work on structures to avoid taking (pursue, hunt, take, capture or kill; attempt to take, capture, kill or possess) migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall retain a qualified wildlife biologist for this project. The wildlife biologist shall have a minimum of three years experience conducting migratory bird surveys and implementing the requirements of the MBTA. The Contractor shall submit documentation of the biologist's education and experience to the Engineer for acceptance. A biologist with less experience may be used by the Contractor subject to the approval of the Engineer based on review of the biologist's qualifications.

The wildlife biologist shall record location of each protected nest, bird species, the protection method used, and date installed. A copy of these records shall be submitted to the Engineer.

1. *Vegetation Removal.* When possible, clear material prior to when active nests are present. Vegetation removal activities shall be timed to avoid the migratory bird breeding season which begins on April 1 and runs to August 31. All areas scheduled for clearing and grubbing between April 1 and August 31 shall first be surveyed within the work limits for active migratory bird nests. The Contractor's wildlife biologist shall also survey active migratory bird nests within 50 feet outside work limits. The wildlife biologist shall enter areas outside CDOT right of way only if a Form 730, *Permission to Enter Property*, has been signed by the property owner. The Contractor shall avoid all active migratory bird nests. The Contractor shall avoid the area within 50 feet of the active nests or the area within the distance recommended by the biologist until all nests within that area have become inactive. Inactive nest removal and other necessary measures shall be incorporated into the work as follows:
	1. *Grasses and Forbs Management*. Due to the potential for encountering ground nesting birds’ habitat, if work occurs between April 1 and August 31, the area shall be surveyed by a wildlife biologist within the seven days immediately prior to ground disturbing activities.

The undisturbed ground cover 50 feet beyond the planned disturbance inside the right of way shall be maintained at a height of 6 inches or less beginning prior to April 1. The 6 inch or less height shall be maintained until August 31 or until the end of ground disturbance work (whichever comes first).

If birds establish a nest within the survey area as observed by the wildlife biologist or project personnel, a buffer of 50 feet around the nest shall be established by the wildlife biologist. The buffer dimension may be changed if determined appropriate by the wildlife biologist and approved by the Engineer. Work or any activity shall not proceed within the buffer until the young have fledged or the nests have become inactive.

Protection, consisting of fence (plastic), shall be placed at the perimeter of each buffer from a nest to be undisturbed. If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor’s expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges, but will be charged as contract time.

1. *Tree and Shrub Removal or Trimming.* Due to the potential for nesting birds, tree and shrub removal or trimming shall occur before April 1 or after August 31 if possible. If tree and shrub removal or trimming will occur between April 1 and August 31, a survey for active nests shall be conducted by the wildlife biologist within the seven days immediately prior to beginning work in each area of tree and shrub removal or trimming. The survey shall be conducted for each phase of tree and shrub removal or trimming.

If an active nest containing eggs or young birds is found, the tree or shrub containing the nest shall remain undisturbed and protected until the young leave the nest [fledge]. The nest shall be protected by placing fence (plastic) a minimum distance of 50 feet from each nest to be undisturbed. A larger buffer shall be used if recommended by the wildlife biologist. Work shall not proceed within the fence line until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor’s expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges, but will be charged as contract time.

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1. *Work on structures*. The Contractor shall prosecute work on structures in a manner that does not result in a taking of migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall not prosecute the work on structures during the primary breeding season, April 1 through August 31, unless he takes the following actions:
2. The Contractor shall remove existing nests prior to April 1. If the Contract is not awarded prior to April 1 and CDOT has removed existing nests,then the monitoring of nest building shall become the Contractor’s responsibility upon Notice to Proceed.
3. During the time that the birds are trying to build or occupy their nests, between April 1 and August 31, the Contractor shall monitor the structures at least once every three days for any nesting activity.
4. If the birds have started to build any nests, they shall be removed before the nest is completed. Water shall not be used to remove the nests.
5. Netting or another approved method to prevent nest construction at a site is acceptable. The netting shall be monitored and repaired or replaced as needed. Netting shall consist of a mesh with openings that are ¾ inch or less in diameter.

If active nests become established, i.e., there are eggs or young in the nests, all work that could result in abandonment or destruction of the nests shall be avoided until the young have fledged or the nest is unoccupied as determined by the wildlife biologist and approved by the Engineer. The Contractor shall prevent construction activity from displacing birds after they have laid their eggs and before the young have fledged.

If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, the Contractor shall remove and properly dispose of any netting used on the structure.

1. *Taking of a Migratory Bird.* The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.

**METHOD OF MEASUREMENT**

**240.03** Wildlife Biologist will be measured by the actual authorized number of hours a wildlife biologist is on site performing the required tasks.

Removal of nests will be measured by the actual number of man-hours spent removing inactive nests just prior to and during the breeding season, April 1 through August 31. During this period, the Contractor shall submit to the Engineer each week for approval a list of the workers who removed nests and the number of hours each one spent removing nests.

Netting will be measured by the square yard of material placed to keep birds from nesting on the structure. The square yards will be calculated using the length of netting measured where it is attached to the ground and the average height of the netting where it is attached to the structure. Overlaps will not be measured.

Clearing and grubbing will be measured and paid for in accordance with Section 201.

**BASIS OF PAYMENT**

**240.04** The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

Payment will be made under:

**Pay Item Pay Unit**

Wildlife Biologist Hour

Removal of Nests Hour

Netting Square Yard

Payment for Wildlife Biologist will be full compensation for all work and materials required to complete the item, including wildlife biologist, wildlife survey, and documentation (record of nest location and protection method)

Payment for Removal of Nest will be full compensation for all work and material required to complete the work.

Payment for netting will be full compensation for all work and material required to complete the item. Overlaps of netting will not be measured and paid for separately, but shall be included in the work. Maintenance and replacement of netting will not be measured and paid for separately, but shall be included in the work.

Removal and disposal of netting will not be measured and paid for separately, but shall be included in the work.

Clearing and grubbing will be measured and paid for in accordance with Section 201. Mowing will not be measured and paid for separately, but shall be included in the work.

Removal and trimming of trees will be measured and paid for in accordance with Section 202.

Fence (Plastic) will be measured and paid for in accordance with Section 607

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**INSTRUCTIONS** **TO** **DESIGNERS** (delete instructions and symbols from final draft):

Include this special provision on all projects involving migratory birds and earthwork or vegetation disturbancewhen the biological work is done by the Contractor's biologist. This includes, but is not limited to roadway earthwork, bridge demolition or construction, new signing, new lighting, new guardrail posts, erosion control, and minor drainage. Use of CDOT Maintenance personnel or others to remove nests without fledglings before construction must be coordinated with Region Environmental personnel.

Coordinate with Regional Environmental personnel to determine if wildlife biologist duties can be completed internally. Regional Environmental personnel should coordinate with design project manager to show inactive bird nests and potential nesting habitat in the plans via table or site drawing. If these activities can be done by CDOT personnel, then use the alternative special provision intended for that situation.

Permission to Enter Property must be obtained prior to project advertisement to facilitate Wildlife Biologist's ground surveys within adjacent property (area within 50 ft of work limits) where Region Environmental Personnel have determined ground nesting bird habitat may be present. If Permission to Enter Property is denied by a property owner, record the denial and place the record in the project file to document that due diligence was pursued.

♦Include the following paragraph when Region Environmental Personnel have determined that Bald Eagle roosts may be present:

The wildlife biologist shall conduct dusk and dawn surveys of Bald Eagle roosts within seven days prior to starting any construction during the winter season, November 15 to March 15. If a Bald Eagle roost is identified, construction activity shall not proceed within 0.25 mile of active nocturnal roost sites between November 15 and March 15.

▲Include the following paragraph when Region Environmental Personnel have determined that raptors may be present:

The wildlife biologist shall conduct raptor nest surveys within 0.5 mile of the construction site prior to start of construction and prior to each construction phase. This survey can be done with binoculars. If construction activities are located within the Colorado Division of Wildlife (CDOW) recommended buffer zone for specific raptors, "NO WORK" zones shall be established around active sites during construction according to the CDOW standards or as recommended by the wildlife biologist in consultation with the CDOW. The "NO WORK" zone shall be marked with either fencing or signing. Work shall not proceed within a “NO WORK” zone until the wildlife biologist has determined that the young have fledged or the nest is unoccupied.

♥Include the following paragraph when Region Environmental Personnel have concluded that important raptor perches will be affected:

The Contractor shall install perch poles, made from 2 inch round steel sign posts with 24-inch T brackets without sign mounting holes. The poles shall be at least 12 feet in height.

♣Include the following paragraph when Region Environmental Personnel have concluded that important raptor perches will be affected:

Perch poles, made from steel sign posts, (2 inch round) will be measured and paid for by the linear foot according Section 614. 24-inch T brackets without sign mounting holes will not be paid for separately but shall be included in the work.