

## Motion No. M2022-34

### Agreement with National Marine Fisheries Service for staffing support related to Endangered Species Act compliance

Meeting:	Date:	Type of action:	Staff contact:
System Expansion Committee Board	05/12/2022 05/26/2022	Recommend to Board Final action	Don Billen, Executive Director of PEPD <b>Ellie Ziegler, Director of Environmental Affairs and Sustainability</b>

### Proposed action

Authorizes the chief executive officer to execute a two-year staffing agreement with three one-year options to extend for a total agreement duration of five years with the National Marine Fisheries Service for staffing support to provide predictable and expedited Endangered Species Act consultations on Sound Transit projects in an amount not to exceed \$1,220,000 with a 10 percent contingency of \$122,000 for a total authorized agreement amount not to exceed \$1,342,000.

### Key features summary

- This agreement will provide funding for one full-time temporary employee at National Marine Fisheries Service (NMFS) to be dedicated solely to Endangered Species Act (ESA) consultation work on Sound Transit projects.
- The agreement stipulates that NMFS will execute a separate, no-cost agreement with US Fish and Wildlife Service (USFWS) whereby, the Sound Transit funded full-time employee (FTE) will be loaned to USFWS for the purpose of completing ESA consultations on Sound Transit projects for ESA listed species under the purview of USFWS.
- The agreement duration is for two years with three one-year options to extend for a total agreement duration of up to five years, which is anticipated to cover the ESA consultation needs for the listed projects.
- Projects anticipated to utilize this agreement include:
  - West Seattle and Ballard Link Extensions
  - Operations and Maintenance Facility South
  - Tacoma Dome Link Extension
  - Everett Link Extension and the Operations and Maintenance Facility North
  - Bus Base North
  - I-405 BRT
  - SR 522 BRT

## Background

Completing the regulatory process for federal projects with the potential to affect threatened and endangered (ESA) listed species can take two or more years to complete. Sound Transit works through the Federal Transit Administration (FTA) in a consultation process that requires the National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (USFWS) to determine the extent to which Sound Transit projects may impact ESA listed species and their critical habitat. This consultation includes the development of documentation detailing the pathways through which a project may impact ESA listed species and their habitat and how those impacts will be offset and mitigated. If there is the potential for adverse effects, then NMFS and USFWS must write their own decision document called a Biological Opinion. This document stipulates the amount of “take” of a given ESA listed species that is permitted for a particular project as well as reasonable and prudent measures the project must take to minimize that “take”. The numerous steps involved in this consultation process take substantial time to complete.

Due to staffing challenges NMFS and UWFWS and the number of projects in our region that must consult under the ESA, the consultation process routinely takes two years or more to complete. This duration is creating substantial schedule risks for Sound Transit’s ST3 program.

This agreement will mitigate that schedule risk by providing one fulltime employee who will be dedicated to working on Sound Transit ESA consultations and ensure those consultations can be completed in the timeframe required to meet ST3 project schedules.

## Fiscal information

The anticipated cost of this action is allocated to six different projects as narrated below and summarized in the agreement summary below.

Agreement Detail National Marine Fisheries Service	Board Approvals to Date	Current Approved Contract Status	Proposed Action	Proposed Total for Board Approval
Contract Amount	\$	\$	\$1,220	\$1,220
Contingency			122	122
<b>Total Contract</b>	<b>\$</b>	<b>\$</b>	<b>\$1,342</b>	<b>\$1,342</b>
Percent Contingency	0%	0%	10%	10%

Allocation of cost to the projects below is based on the estimated complexity of the consultations and the level of effort required to complete the requirements of the Endangered Species Act.

This action is within the authorized project allocation and sufficient monies remain after approval of this action to fund the remaining work in the associated projects third party phase(s).

Amounts provided below are as of 4/30/22 and are provided in year of expenditure dollars.

### Tacoma Dome Link Extension

The current authorized project allocation for the Tacoma Dome Link Extension is \$126,373,000. \$6,350,000 has been allocated to the third party phase within that phase, \$1,475,955 has been allocated to the budget line item for Other Third Parties. The action would commit an additional \$536,800 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving an uncommitted phase budget balance of \$2,534,426. Operations and Maintenance Facility -South (OMF-S) activities are included in the Tacoma Dome Link Extension project allocation.

### West Seattle & Ballard Link Extension

The current authorized project allocation for the West Seattle & Ballard Link Extension is \$286,746,000. \$10,400,000 has been allocated to the third party phase, within that phase \$3,000,000 has been allocated to the budget line item for Other Direct Charges. The action would commit an additional \$268,400 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving an uncommitted phase budget balance of \$6,764,005.

### Everett Link Extension

The current authorized project allocation for the Everett Link Extension is \$187,942,000. Within the third party phase, \$8,000,000 has been allocated to the budget line item for Miscellaneous Third Parties. The action would commit an additional \$402,600 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving an uncommitted phase budget balance of \$12,416,050. Operations and Maintenance Facility -North (OMF-N) activities are included in the Everett Link Extension project allocation.

### I-405 Bus Rapid Transit

The current authorized project allocation for the I-405 Bus Rapid Transit project is \$703,930,356. Within the third party phase, \$321,422 has been allocated to the budget line item for Other Third Parties. The action would commit an additional \$53,680 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving a phase budget balance of \$730,695.

### SR 522 Bus Rapid Transit

The current authorized project allocation for the SR 522 Bus Rapid Transit project is \$209,128,354. \$12,144,000 has been allocated to the third party phase, within that phase \$10,562,351 has been allocated to the budget line item for Other Third Parties. The action would commit an additional \$40,260 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving an phase budget balance of \$1,038,793.

### Bus Rapid Transit Maintenance Base

The current authorized project allocation for the Bus Rapid Transit Maintenance Base project is \$64,011,000. \$160,000 has been allocated to the third phase, all of the \$160,000 has been allocated to the budget line item for Other Third Parties. The action would commit an additional \$40,260 to this line item for the predictable and expedited Endangered Species Act consultations with National Marine Fisheries Service, leaving an phase budget balance of \$13,058.

This action does not impact the affordability of the Agency's finance plan or any other project.

## **Disadvantaged and small business participation**

Not applicable to this action.

## **Public involvement**

Not applicable to this action.

## **Time constraints**

A one-month delay would not impact project schedules.

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**Environmental review** – KH 4/28/22

**Legal review** – AJP 5/9/22

## **Motion No. M2022-34**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a two-year staffing agreement with three one-year options to extend for a total agreement duration of five years with the National Marine Fisheries Service for staffing support to provide predictable and expedited Endangered Species Act consultations on Sound Transit projects in an amount not to exceed \$1,220,000 with a 10 percent contingency of \$122,000 for a total authorized agreement amount not to exceed \$1,342,000.

### **Background**

This agreement will provide funding for one full-time temporary employee at National Marine Fisheries Service (NMFS) to be dedicated solely to Endangered Species Act (ESA) consultation work on Sound Transit projects.

The agreement stipulates that NMFS will execute a separate, no-cost agreement with US Fish and Wildlife Service (USFWS) whereby, the Sound Transit funded full-time employee (FTE) will be loaned to USFWS for the purpose of completing ESA consultations on Sound Transit projects for ESA listed species under the purview of USFWS.

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Due to staffing challenges NMFS and UWFWS and the number of projects in our region that must consult under the ESA, the consultation process routinely takes two years or more to complete. This duration is creating substantial schedule risks for Sound Transit’s ST3 program.

This agreement will mitigate that schedule risk by providing one fulltime employee who will be dedicated to working on Sound Transit ESA consultations and ensure those consultations can be completed in the timeframe required to meet ST3 project schedules. The agreement duration is for two years with three one-year options to extend for a total agreement duration of up to five years, which is anticipated to cover the ESA consultation needs for the listed projects.

Projects anticipated to utilize this agreement include the West Seattle and Ballard Link Extensions, Operations and Maintenance Facility South, Tacoma Dome Link Extension, Everett Link Extension and the Operations and Maintenance Facility North, Bus Base North, I-405 BRT, and SR 522 BRT.

## Motion

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a two-year staffing agreement with three one-year options to extend for a total agreement duration of five years with the National Marine Fisheries Service for staffing support to provide predictable and expedited Endangered Species Act consultations on Sound Transit projects in an amount not to exceed \$1,220,000 with a 10 percent contingency of \$122,000 for a total authorized agreement amount not to exceed \$1,342,000.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 26, 2022.



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Kent Keel  
Board Chair

### Attest:



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Kathryn Flores  
Board Administrator