

MOTION NO. M2015-25

**Agreement for Wildlife Survey and Control Services**

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Capital Committee	03/12/2015	Final Action	Ric Ilgenfritz, Executive Director of PEPD <b>Marti Louthier, Senior Environmental Planner</b>

PROPOSED ACTION

Authorizes the chief executive officer to execute a five-year agreement with United States Department of Agriculture – Animal and Plant Health and Inspection Services – Wildlife Division (APHIS-WS) to provide wildlife survey and control services, for a total authorized agreement amount not to exceed \$625,640.

KEY FEATURES SUMMARY

- This action will assist Sound Transit in complying with the Migratory Bird Treaty Act (MBTA), which prohibits harming, hunting, taking, capturing, or killing migratory birds, their nests, or eggs. Failure to comply can lead to fines and penalties.
- The proposed agreement would allow Sound Transit to hire qualified wildlife biologists with APHIS-WS to conduct pre-construction bird habitat and nest surveys to protect the birds while allowing construction activities to proceed during the long nesting seasons.
- Under the agreement, the biologists will remove any new or existing nests in the area designated for vegetation removal, building demolition, or bridge repair to discourage migratory birds from nesting in the project area.
- The agreement amount will only be used on an as-needed basis and should provide sufficient funding for the five-year agreement term.

BACKGROUND

The Migratory Bird Treaty Act (MBTA) is intended to protect migratory birds and their habitat. The list of migratory birds protected by the law is extensive, including common species like the black crow. The law is administered and enforced by the U.S. Fish & Wildlife Service (USFWS). Construction activities, such as clearing and grubbing, or other maintenance work are typical activities that may affect migratory birds, nests or eggs. The primary ways Sound Transit can comply with the MBTA is by ensuring vegetation-clearing activities during construction do not affect migratory birds, their eggs or nests. Other compliance strategies include preserving known habitat features, protecting nests on structures (e.g. underneath bridges), surveying structures and removing nests or eggs prior to demolition.

The USFWS has issued a permit to United States Department of Agriculture, Animal and Plant Health and Inspection Service–Wildlife Services (APHIS-WS) to remove nests, eggs, and birds if necessary and to assist other agencies to comply with the MBTA. The permit also provides protection if migratory birds are accidentally killed, despite best efforts. Currently APHIS-WS is working with the Washington Department of Transportation and the Oregon Department of Transportation. By engaging similar services, Sound Transit can take advantage of APHIS-WS technical expertise, resources, and permit coverage, which is more efficient and effective than obtaining and implementing a separate permit just for Sound Transit. The agreement with APHIS is also part of a broader effort to formalize Sound Transit’s compliance program to address the

MBTA, which will include an Avian Protection Plan and additional environmental controls. Sound Transit construction contracts prohibit the contractor from clearing vegetation when migratory birds nest in our region; this is generally from February–September. However, if the contractor or construction schedule cannot reasonably accommodate this restriction, then Sound Transit will be able to use this agreement with APHIS-WS for pre-construction and construction support services. In the year construction is scheduled to begin, APHIS-WS staff will begin conducting regularly scheduled bird and nest surveys early in the nesting season. The biologist will remove any existing nests and/or take down any new nests to discourage migratory birds from nesting in vegetation located in the project area. This will allow the contractor to continue operation without having to delay work. During construction, APHIS-WS staff will continue to conduct nest surveys as needed throughout the nesting season. The primary goal of the work is to prevent birds from nesting in the work area, ultimately avoiding harm to migratory birds.

This agreement will be used by the Design, Engineering and Construction Management (DECM) and Operations Departments to comply with the MBTA for construction and maintenance activities. Specific project or operational budgets will be used under this agreement. Staff from the Office of Environmental Affairs and Sustainability will coordinate and manage this agreement and subsequent Task Orders.

#### FISCAL INFORMATION

This action does not request budgetary action and does not commit or otherwise authorize expenditure of funds. Costs that will be incurred under this contract will draw from already approved PEPD, DECM or Operations project or department budgets or from allocations that may be approved in annual budgets. Budget will be assessed and authorized on a task order basis with a detailed scope and schedule. A review will be completed before task order authorization to ensure that there are available funds within the existing budget.

#### SMALL BUSINESS/DBE PARTICIPATION, APPRENTICESHIP UTILIZATION

Not applicable to this action.

#### PUBLIC INVOLVEMENT

Not applicable to this action.

#### TIME CONSTRAINTS

Bird nesting season begins in early spring (February/ March). Delaying this action by one month could jeopardize clearing and grading operations for projects that are slated to begin later this year.

#### ENVIRONMENTAL REVIEW

JI 3/4/2015

#### LEGAL REVIEW

BN 3/5/15

## **MOTION NO. M2015-25**

A motion of the Capital Committee of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a five-year agreement with United States Department of Agriculture – Animal and Plant Health and Inspection Services – Wildlife Division (APHIS-WS) to provide wildlife survey and control services, for a total authorized agreement amount not to exceed \$625,640.

### **BACKGROUND:**

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The proposed agreement would allow Sound Transit to hire qualified wildlife biologists with APHIS-WS to conduct pre-construction bird habitat and nest surveys to protect the birds while allowing construction activities to proceed during the long nesting seasons. Currently APHIS-WS is working with the Washington Department of Transportation and the Oregon Department of Transportation. By engaging similar services, Sound Transit can take advantage of APHIS-WS technical expertise, resources, and permit coverage, which is more efficient and effective than obtaining and implementing a separate permit just for Sound Transit. The agreement with APHIS is also part of a broader effort to formalize Sound Transit's compliance program to address the MBTA, which will include an Avian Protection Plan and additional environmental controls.

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**MOTION:**

It is hereby moved by the Capital Committee of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a five-year agreement with United States Department of Agriculture – Animal and Plant Health and Inspection Services – Wildlife Division (APHIS-WS) to provide wildlife survey and control services, for a total authorized agreement amount not to exceed \$625,640.

APPROVED by the Capital Committee of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on March 12, 2015.

  
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Fred Butler  
Capital Committee Chair

ATTEST:

  
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Kathryn Flores  
Acting Board Administrator