

MOTION NO. M2015-43

**King County Mitigation Reserves Program Agreement for Sounder South Expansion Project Easement 4**

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Capital Committee	05/14/15	Recommend to the Board	Ahmad Fazel, DECM Executive Director Mark Johnson, Project Director, Sounder
Board	05/28/15	Final Action	<b>Melissa Flores Saxe, Project Manager</b> <b>Ellie Ziegler, Senior Environmental Planner</b>

PROPOSED ACTION

Authorizes the chief executive officer to execute an agreement with King County to participate in King County's Mitigation Reserves Program to process a wetland mitigation payment for Easement 4 within the Sounder South Expanded Service project for a total authorized agreement amount not to exceed \$6,507,670.

KEY FEATURES SUMMARY

- In 2010, Sound Transit purchased four additional Sounder roundtrip commuter rail easements from The BNSF Railway along the Tacoma to Seattle rail corridor. As part of the purchase and sale agreement, BNSF will complete track and signal work needed to support the additional Sounder trips, and Sound Transit will obtain the environmental permits for that work.
- Track and signal improvements associated with the fourth commuter rail easement have wetland impacts that will need to be mitigated in accordance with Federal regulations and as conditioned by the US Army Corps of Engineers (Corps) and Department of Ecology (Ecology) permits for this Easement.
- Sound Transit will participate in King County's Mitigation Reserves Program (MRP) to complete wetland mitigation requirements for wetland impacts along The BNSF Railway's corridor in Kent and Auburn.
- King County's MRP was established by King County to provide compensatory mitigation for unavoidable adverse impacts to the waters of the United States and the State of Washington.
- The in-lieu fee payment to King County's MRP is based on the number of credits required by the permits issued by the Army Corps of Engineers and Department of Ecology.
- Sound Transit entered into a similar agreement with King County in 2014 for wetland mitigation associated with Easement 3.

BACKGROUND

The Tacoma-to-Seattle Sounder segment is along the 40-mile BNSF railroad corridor between Seattle and Tacoma that includes seven Sounder commuter rail stations in Seattle, Tukwila, Kent, Auburn, Sumner, Puyallup, and Tacoma. It also connects to the Tacoma-Lakewood Sound Transit rail segment.

Under the Sounder South Expanded Service project, Sound Transit and The BNSF Railway executed a purchase and sale agreement for Sound Transit to purchase four additional roundtrip easements for Sounder commuter trains to operate on BNSF's Tacoma to Seattle rail corridor. The agreement was authorized by the Board in 2010 through Resolution No. R2010-14. In that agreement, Sound Transit was required to obtain the environmental clearances and environmental permits for the track and signal improvements associated with the four additional easements. The NEPA Documental Categorical Exclusion (DCE) was approved by the Federal Transit

Administration in April 2012 and the SEPA Determination of Non-significance (DNS) was issued in April 2012.

The planned BNSF track and signal improvements associated with Easement 4 within the Souder South Expanded Service project will result in impacts to wetland and stream areas and those impacts are required to be mitigated in accordance with Federal regulations and the Corps and Ecology permits issued for this project. Mitigation for this project will be accomplished through the purchase of mitigation credits from King County's MRP.

The King County MRP was established by King County in accordance with the terms of 33 CFR 325 and 332 for the purpose of providing compensatory mitigation for unavoidable adverse impacts to the waters of the United States and the State of Washington. The number of credits required to be purchased is set by a condition of the Corps and Ecology permits for the Souder South Expanded Service project and the project cannot undertake impacts to wetlands or streams until the purchase is complete.

Upon its receipt of Sound Transit's payment for mitigation credits, the King County MRP will execute a "Statement of Sale" to Sound Transit that will then be transmitted to the Corps and Ecology, after which point Sound Transit will have met its wetland mitigation obligation and project impacts to wetlands and streams can commence.

#### FISCAL INFORMATION

The Lifetime project budget for the Souder South Expanded Service, as shown in the 2015 TIP, is \$201,967,962. Within that amount, \$8,426,264 has been set aside for wetland mitigation in-lieu payment to King County. The proposed action would commit \$6,507,670 to this line item, leaving a remaining balance of \$1,021,658.

This action is within the adopted budget and sufficient monies remain after approval of this action to fund the remaining work in the construction phase as contained in the current cost estimates.

#### Souder South Expanded Service

	Adopted 2015 TIP	Board Approvals	This Action	Board Approved Plus Action	Uncommitted / (Shortfall)
Agency Administration	5,650	1,043		1,043	4,607
Preliminary Engineering	1,007	431		431	576
Final Design	400				400
Right of Way	186,485	185,182		185,182	1,303
Construction	8,426	897	6,508	7,405	1,022
Construction Services					
Third Party Agreements					
Vehicles					
<b>Total Current Budget</b>	<b>201,968</b>	<b>187,553</b>	<b>6,508</b>	<b>194,060</b>	<b>7,908</b>

#### Phase Detail

##### Construction

Construction	8,426	897	6,508	7,405	1,022
<b>Total Phase</b>	<b>8,426</b>	<b>897</b>	<b>6,508</b>	<b>7,405</b>	<b>1,022</b>

#### Agreement Detail

##### King County Mitigation Reserves Program

	Board Approvals to Date	Current Approved Contract Status	Proposed Action	Proposed Total for Board Approval
Agreement Amount	897	897	6,508	7,405
Contingency Amount				
<b>Total Contract</b>	<b>897</b>	<b>897</b>	<b>6,508</b>	<b>7,405</b>
Percent Contingency	0%	0%	0%	0%

#### Notes:

Amounts are expressed in Year of Expenditure \$000s.

Board Approvals = Committed To-Date + Contingency, and includes pending Board actions.

Project budget page is located on page 57 of 210 of the Adopted 2015 Transit Improvement Plan (TIP).

## SMALL BUSINESS/DBE PARTICIPATION

Not applicable to this action.

## PUBLIC INVOLVEMENT

Not applicable to this action.

## TIME CONSTRAINTS

A one month delay would impact Sound Transit's ability to obtain environmental permits in the timeframe required for BNSF to meet their current scheduled date for advertising this construction project.

## PRIOR BOARD/COMMITTEE ACTIONS

Motion M2014-76: Authorized the chief executive officer to execute an agreement with King County to participate in King County's Mitigation Reserves Program to process a wetland mitigation payment for Easement 3 within the Sounder South Expanded Service project for a total authorized agreement amount not to exceed \$896,935.

Resolution R2012-12: Authorized the chief executive officer to purchase two perpetual commuter rail easements in The BNSF Railway Company's right of way between Seattle and Tacoma in the amount of \$52,000,000 for Easement 3 and \$48,000,000 for Easement 4, consistent with a Purchase and Sale Agreement with The BNSF Railway Company.

Resolution R2010-14: Authorized the chief executive officer to 1) execute a Purchase and Sale Agreement with The BNSF Railway Company (BNSF) for the acquisition of four perpetual commuter rail easements in BNSF's right of way between Seattle and Tacoma in the amount of \$41 million for Easement 1, \$44 million for Easement 2, \$52 million for Easement 3 and \$48 million for easement 4, 2) make a deposit of \$5 million for Easement 2, and 3) close on the purchase of Easement in July 2010 and Easement 2 in January 2011.

## ENVIRONMENTAL REVIEW

JI 4/20/2015

## LEGAL REVIEW

JW 5/07/2015

## **MOTION NO. M2015-43**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute an agreement with King County to participate in King County's Mitigation Reserves Program to process a wetland mitigation payment for Easement 4 within the Sounder South Expanded Service project for a total authorized agreement amount not to exceed \$6,507,670.

### **BACKGROUND:**

The Tacoma-to-Seattle Sounder segment is along the 40-mile BNSF railroad corridor between Seattle and Tacoma that includes seven Sounder commuter rail stations in Seattle, Tukwila, Kent, Auburn, Sumner, Puyallup, and Tacoma. It also connects to the Tacoma-Lakewood Sound Transit rail segment.

Under the Sounder South Expanded Service project, Sound Transit and The BNSF Railway executed a purchase and sale agreement for Sound Transit to purchase four additional roundtrip easements for Sounder commuter trains to operate on BNSF's Tacoma to Seattle rail corridor. The agreement was authorized by the Board in 2010 through Resolution No. R2010-14. In that agreement, BNSF was required to complete track and signal work needed to support the additional Sounder trips, and Sound Transit was required to obtain the environmental clearances and environmental permits for the track and signal improvements associated with the four additional easements. The NEPA Documental Categorical Exclusion (DCE) was approved by the Federal Transit Administration in April 2012 and the SEPA Determination of Non-significance (DNS) was issued in April 2012.

The planned BNSF track and signal improvements associated with Easement 4 within the Sounder South Expanded Service project will result in impacts to wetland and stream areas and those impacts are required to be mitigated in accordance with Federal regulations and the US Army Corps of Engineers (Corps) and Department of Ecology (Ecology) permits issued for this project. Mitigation for this project will be accomplished through the purchase of mitigation credits from King County's MRP.

The King County MRP was established by King County in accordance with the terms of 33 CFR 325 and 332 for the purpose of providing compensatory mitigation for unavoidable adverse impacts to the waters of the United States and the State of Washington. The number of credits required to be purchased is set by a condition of the Corps and Ecology permits for the Sounder South Expanded Service project and the project cannot undertake impacts to wetlands or streams until the purchase is complete. The in-lieu payment to King County's MRP is based on the number of credits required by the permits issued by the Corps and Ecology.

Upon its receipt of Sound Transit's payment for mitigation credits, the King County MRP will execute a "Statement of Sale" to Sound Transit that will then be transmitted to the Corps and Ecology, after which point Sound Transit will have met its wetland mitigation obligation and project impacts to wetlands and streams can commence.

**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 an agreement with King County to participate in King County's Mitigation Reserves Program to process a wetland mitigation payment for Easement 4 within the Sounder South Expanded Service project for a total authorized agreement amount not to exceed \$6,507,670.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on May 28, 2015.

  
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Paul Roberts  
Board Vice Chair

ATTEST:

  
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Kathryn Flores  
Board Administrator