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Appendix 5

Bechtel Bird Protection Guidelines

Introduction

According to the federal Migratory Bird Treaty Act, "it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird, including nests, feathers or other parts, eggs, or products, except as allowed by implementing regulations...only active nests require Federal permits for taking." These regulatory requirements apply to all migratory birds (e.g., osprey, eagles, hawks, falcons, owls, robins). Therefore, Bechtel and its subcontractors will utilize and follow this policy and the guidelines below whenever bird nests are encountered while working on existing cellular towers within the U.S.

The actions prescribed in this guideline focus primarily on osprey, but apply to all species of birds protected by regulation (see <http://www.fws.gov/migratorybirds/intrnltr/mbta/mbtandx.html>). The osprey (*Pandion haliaetus*) is an indigenous bird of prey found on all continents except South America (where it is a migratory visitor) and Antarctica. Osprey nests have been encountered on cellular towers in numerous jurisdictions. Florida, in particular, has a high concentration of osprey nests on cellular towers (i.e., 35 percent to 45 percent of all cellular towers have osprey nests). The osprey is a federally protected species under the Migratory Bird Treaty Act and is further protected by state wildlife laws.

The following information and guidelines have been developed to manage Bechtel construction activities on existing towers or other structures (e.g., tall buildings) used for installation of cellular antennas. These guidelines were developed from information derived from the following sources:

- Osprey Nest Removal Policies; Florida Fish and Game Wildlife Conservation Commission
- Kolakotkas Osprey Web Site (<http://home.aol.com/kalakot2/1/osprey.html>)
- Conferences with State of Florida biologists serving the Orlando, FL area
- Review of the Migratory Bird Treaty Act and state wildlife laws affecting birds of prey
- Discussions with representatives of the U.S. Fish and Wildlife Service

Definitions

Active Nest – Any nest being used by adult birds, containing any number of eggs, or having flightless chicks or young birds present.

ES&H Program Manager – Bechtel assigned environmental, safety, and health manager for the project.

Exotics – Any bird species that is not indigenous to the region (e.g., parakeets in the U.S.).

Fledged – Any chick that has learned to fly *and* has permanently left the nest.

Inactive Nest – Any nest that has no adult, eggs, or young birds present.

Project Environmental Lead – Bechtel environmental compliance scientist/specialist assigned to the project to provide environmental technical support and assistance.

Relocation – The act of: (1) physically removing an *inactive* nest (*taking*) and placing it on a reasonably fabricated nesting platform; or (2) destroying an *inactive* nest and constructing a reasonably fabricated nesting platform suitable for construction of a new nest by the bird.

Removal and Relocation Permit – Permit that may be required from a state fish and wildlife agency for physically removing and erecting a replacement platform for an inactive nest. Where required, a permit must be obtained prior to removal of an inactive nest. A removal and relocation permit normally takes 30-45 days to obtain. Permits for relocation of active nests are granted only in extreme circumstances and require both state and federal permits. Blanket permits do not authorize the taking of active nests.

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Taking/Take – To kill, disturb, harass, acquire, hold in custody, transport, or dispose of migratory birds or their parts, nests, or eggs.

Background

Ospreys and other migratory birds of prey, including their nests, are legally protected from disturbance under the Migratory Bird Treaty Act. In addition, bald eagles and golden eagles are protected under the Bald Eagle and Golden Eagle Protection Act of 1940 and peregrine falcons are protected under the Endangered Species Act. To effectively protect the osprey and other migratory birds, it is essential that the site acquisition staff, subcontractors, field coordinators, and ES&H personnel fully understand these policies and these guidelines. This document is focused towards ospreys because they are often encountered nesting atop cellular towers in both urban and rural areas. However, numerous additional species (e.g., ravens, owls, hawks) are also protected by the Migratory Bird Treaty Act as well as other federal and state regulations.

Active bird nests cannot be physically disturbed without a permit from the appropriate state fish and wildlife agency and, in some cases, the U.S. Fish and Wildlife Service. The state wildlife agency may issue a permit for the taking of an active nest, but only after a federal permit has been issued. In addition, many states have their own statutes regarding the taking of an inactive nest and may require a permit to remove an inactive nest. Some states also mandate that for every nest taken, a reasonably fabricated nesting structure be constructed as its replacement.

Work activities must not scare the parent bird away from the eggs or chicks for any sustained period of time (e.g., longer than 15 minutes). The eggs or the chicks can become overheated without the adult birds present and be permanently injured or die. If the parent is kept away from the chicks for too long, they may abandon the nest and the chicks will die. The work must not startle or scare the juvenile birds, as this may lead to premature fledgling. Additionally, some raptor species may attack or swoop at people encroaching on a nest, creating a significant risk of injury or fall. Based on these possible scenarios and associated consequences, working at sites with active nests is not an option in most cases.

It is important to note that the ES&H program manager and the project environmental lead (PEL) must be kept informed about all bird nest encounter situations. Regular and open communication will help keep the projects on schedule and in compliance.

Procedure

- 1) At the time of the site walkdown, the market implementation team will evaluate each tower, building rooftop, or other structure (and the immediately adjacent areas) to determine if nests are present. The initial and any subsequent observations of a nest shall be documented using the Tower Inspection Form included in this Appendix.
- 2) For each site where a nest is present, the team will document the nest location and determine if the nest physically impedes work. A nest (active or inactive) may NOT be disturbed without authorization by the PEL or his/her designee. In many jurisdictions, the disturbance of a nest requires a permit to be obtained from the lead wildlife agency. In addition, coordination with the tower owner may be necessary to ensure a consistent approach is utilized by all affected parties. If a nest is noted during the walkdown but found to be inactive, construction activities should be expedited if possible to avoid a potential future schedule conflict should the nest become active.
- 3) For sites where the nest is not a physical obstruction to the work to be performed, a preliminary determination will be made through direct observation from the ground to classify the nest site as active or inactive. The following method will be used to make this determination:
 - a) If no adult or juvenile bird activity is observed for a period of not less than 1 hour, then the "preliminary" determination may be made that the nest is inactive.
 - b) If adult birds are observed routinely leaving and returning to the nest or simply occupying the nest without leaving, then the determination will be made that the nest is active and has a high probability of containing eggs or chicks.

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- c) If chicks can be observed in the nest from the ground, the nest is active.
- d) Observe the ground area below the nest. If small bones and body parts (e.g., fish bones) are on the ground below the nest, this is a good indicator that the nest is active
- 4) If the nest is determined to be active, construction personnel will proceed as follows:
 - a) No work is permitted at an elevation above ground level until the nest is determined to be inactive. Subsequent evaluations to determine whether a nest is active or inactive should be performed no more frequently than bi-weekly. Consult with the PEL as needed for assistance in determining the typical nesting season for the species and the path forward.
 - b) Ground-level work requires advance written authorization by the Market Manager. A record of the advance written authorization must be promptly incorporated in the administrative file for the site. The planned scope of work, site environment (e.g., urban, rural), and height of the nest are among the factors to be considered by the Market Manager in determining the potential for construction activities to affect the normal behavior of the bird(s). To facilitate Market Manager review, the following information should be submitted as part of the evaluation request: a narrative describing the site setting (e.g., height of structure, approximate height of nest, nearby property uses) and planned scope of work, address of the site (or immediately adjacent property if no address for the site is available), and photographs detailing the nest/birds as well as the land uses at and adjacent to the site. The Market Manager is encouraged to seek technical assistance from the PEL on species identification and associated common behavioral characteristics when considering a request to authorize ground-level work at a site with an active nest. Postponement of ground-level work to a time when the nest becomes inactive is preferred to minimize the potential for an incidental take of a protected species (penalties include a fine up to \$15,000 and up to 6 months in jail).
- 5) If the nest is initially determined to be inactive, the following guidelines apply:
 - a) Proceed with work as necessary. The work must not disturb the inactive nest.
 - b) If, during the course of the work, it is realized that the nest is active, work will be stopped immediately and only resumed in accordance with the established guidelines shown in Step 4 above.
 - 6) If a nest must be relocated, contact the PEL or his/her designee for site-specific direction (requirements may vary by jurisdiction).

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Tower Inspection Form

Site Number:

Site Name:

Tower Owner:

Tower Location:

Inspector Name/Title/Company:

Date/Time:

Nest Present?: Y N

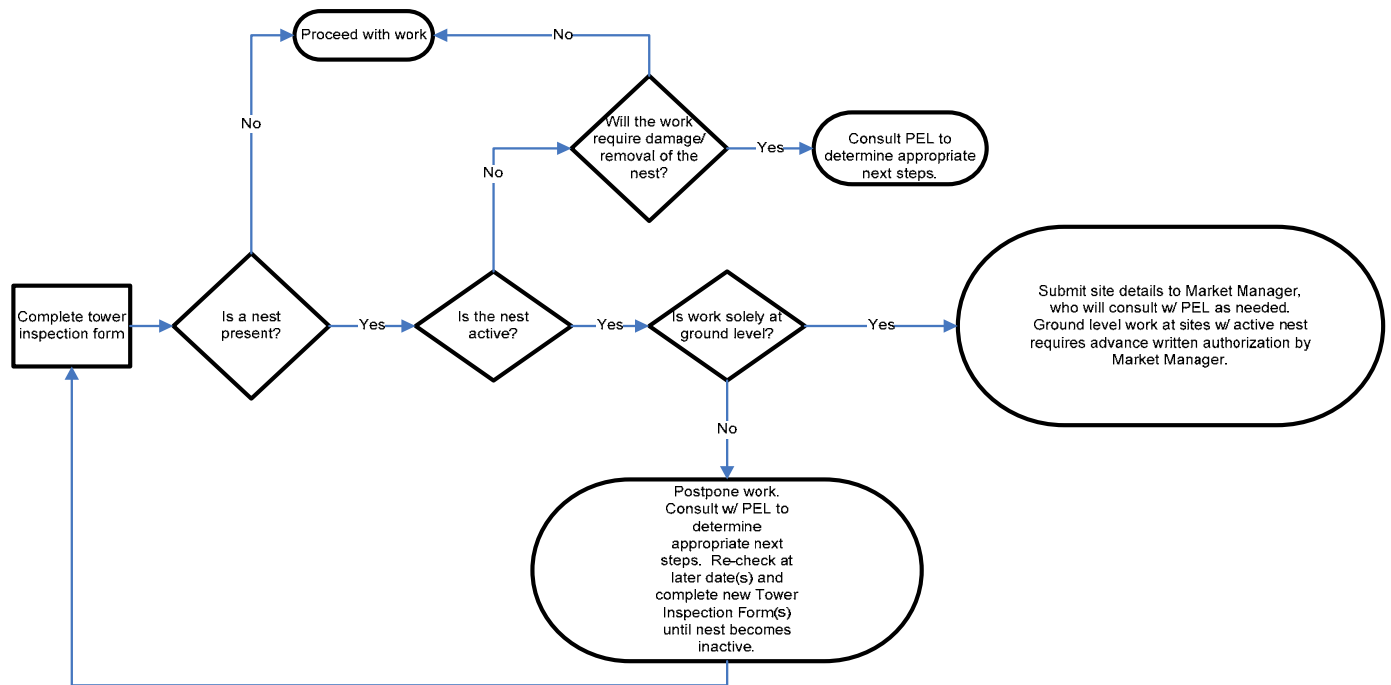
Nest Occupied?: Y N

Is disturbance of the nest required to accomplish work*?: Y N

***Note: disturbance of the nest requires the advance approval of the PEL or his/her designee**

Photos:

Bechtel Communications Bird Protection Guidelines Process Flow Diagram



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