



DATE: December 17, 2020

TO: Mayor and Members of the City Council

FROM: Dante Hall, Interim City/District Manager

SUBJECT: DISCUSSION OF OPTIONS FOR CHANGES TO THE BAY TRAIL
CLOSURE PLAN FOR THE LEVEE PROTECTION PLANNING AND
IMPROVEMENTS PROJECT (CIP 657) CONSTRUCTION

RECOMMENDATION

City staff seeks City Council direction, by minute order, on whether any of the identified options for changes to the Bay Trail closure plan for the Levee Protection Planning and Improvements Project (CIP 657) should be further explored.

INTRODUCTION

In 2014, the Federal Emergency Management Agency (FEMA) informed the City that the Foster City Levee System (Levee) no longer met the its mandated flood protection requirements, and FEMA would therefore designate the City as a flood zone if the height of the Levee was not raised to meet FEMA's new stricter accreditation standards. FEMA also advised the City that if the City was designated as a flood zone, all property owners in the City with federally-back mortgages would be required to buy flood insurance. To avoid this designation and to ensure that the Levee System adequately protected residents from floods, the City began the massive undertaking of studying, designing, permitting, and funding a project to raise the Levee (the "Project").

On June 5, 2018, the residents of the City voted to fund the Project through a \$90 million bond measure by a margin of 80.6% approving. In May 2017, the environmental review concluded with certification of the EIR and on December 19, 2019, the permitting process for the Project was completed with the issuance of the Bay Conservation and Development Commission (BCDC) Permit. The City Council then approved Plans and Specifications for the construction of the Project and the City

called for construction bids. On July 20, 2020, the City Council awarded a construction contract in the amount of \$60,218,000 to Shimmick Construction Company, Inc. for completion of this Federally mandated Project.

At the November 16, 2020 City Council meeting, as the contractor prepared to begin construction, staff presented a report regarding construction impacts, including the planned phased closing of the Bay Trail, which was designed to provide as much access to the Bay Trail as possible while executing the Project within the voter approved funding limitation and in the safest possible manner for the public.

Subsequent to that City Council meeting, concerns have been expressed by some members of the public about the closure plan for the Bay Trail. Given those concerns regarding Bay Trail closure, the City Council has asked for additional information and options regarding the Bay Trail closure in order to consider ways to limit closures to the Bay Trail, or the duration of those closures, and to understand the potential cost and safety impacts associated with these options. As explained in this report, the City Council can direct the contractor to implement another closure plan, but that may have cost and safety implications. City staff recommends that, after reviewing this report, and taking comments from the public, the City Council indicate whether it wishes to further explore any of the identified options. If so, City staff will return to Council with estimated cost and safety impacts associated with the preferred option(s).

BACKGROUND OF THE PROJECT

After receiving the notification from FEMA in 2014 that the Levee System was deficient and would lose its flood protection accreditation if not improved, City staff began working to design a project to retain FEMA accreditation. The first step was to perform an Environmental Impact Analysis and ultimately draft, circulate, revise, and obtain City Council certification of an Environmental Impact Report (EIR), as required by the California Environmental Quality Act (CEQA). In 2015, the City contracted with Schaaf & Wheeler to provide a preliminary design study that would be used as the foundation for the EIR and with Urban Planning Partners to perform the environmental study of the potential project and draft the EIR.

It is important to note that a project cannot be fully designed prior to the environmental review. The preliminary design study provided by Schaaf & Wheeler and studied by Urban Planning Partners included a general description of the work and improvements that would be required to retain FEMA flood protection accreditation, and the areas that would potentially be impacted. Full, final designs and construction plans are not vetted during the EIR process, because the EIR is intended to inform the decisions made during the design of the project, so that potential impacts and mitigations are studied prior to making those decisions. CEQA also requires that the “no project/no-build” alternative be a part of the environmental review and alternatives studied in the EIR.

As such, the City could not make the determination that it would move forward with the Levee Project prior to certifying the Final EIR in May 2017.

After the EIR was certified, initial designs were prepared and the Project was then presented to all State and Federal permitting agencies. For the Project, the City was required to obtain seven such approvals, with the last being a permit from the San Francisco Bay Conservation and Development Commission (BCDC), which was issued on December 2, 2019. In total, the permitting process took approximately two and a half years.

While City staff and the design team worked to secure the necessary permits and approvals, the City also prepared and the City Council authorized a ballot measure to ask the voters whether they wanted to fund the Project through the sale of \$90 million in bonds, which would be repaid by Foster City residents through annual assessments over the next 30 years. Again, at the time that the ballot measure was presented to the voters in June 2018, the ultimate design of the Project was not complete, as it would take another 18 months to complete the permitting process. The ballot measure – Measure P – was not an approval of the Project or of the construction plan. Instead, it was a question put to the voters about whether they wanted to fund, through annual assessments, Levee improvements that would ensure FEMA flood protection accreditation. As such, the official statements both for and against Measure P, which appeared on the ballot, focused solely on the estimated cost of the Project; not the design or construction plan. The voters ultimately approved the funding for a project by a margin of 80.6%.

Once all permits were obtained, the City began preparing the Plans and Specifications and bid documents to secure a contractor for this Project. As is true with all public projects, the City was required by the California Public Contract Code to publicly bid the Project and then to award a contract to the lowest responsive and responsible bidder.

The Plans and Specifications for this Project were approved by the City Council on May 4, 2020, and a call for bids was issued to the group of contractors who had been prequalified to bid on the Project. Bids were received on June 30, 2020 and the contract was awarded to Shimmick Construction Company, Inc. on July 20, 2020 for \$60,218,000. This construction cost allows the Project to remain under the \$90 million budget set by the voters, inclusive of design, engineering, management, and other Project related costs.

ANALYSIS

Contract Documents

The Plans and Specifications which were incorporated into the construction contract include “Work Restrictions” provisions governing the contractor’s execution of the work. These restrictions include, but are not limited to, the days and hours that work is allowed to be performed and limitations on the traffic and right-of-way closures. Ultimately, however, the “specific means and methods of construction are at the sole discretion of the Contractor,” so long as the contractor adheres to the constraints placed on the Project by the regulatory permits “when scheduling and performing Work on the Project.” (Section 01 14 00, Part 1, Section 1.03(A) and (B)). While the contractor is required to provide the City with a Progress Schedule that governs the sequencing and scheduling of the work, the contractor retains discretion over how to best complete the Project within the regulatory confines of the permits issued for the Project. Providing the contractor this discretion is common in public contracting, and ensures that contractors bidding on public projects will find the most cost effective and efficient ways to perform the specified work to submit a competitive bid and ultimately deliver an on-time project.

While this is a Foster City project, it is governed by a permit issued by BCDC. The BCDC permit issued on December 1, 2019 sets the regulatory confines within which Shimmick must execute the work. The permit requires that construction of the Project begin by January 1, 2023 and be completed within three years from the date work actually commences. Under Special Condition II.F of the BCDC Permit, the Bay Trail is authorized to be closed for up to 30 months, so long as detour routes and signage regarding those detour routes are maintained during the closure. Under Finding and Condition III.D.8 of the Permit, it indicates that:

The City will close and detour the Bay Trail and other public access areas for the duration of construction. Special Condition II.F limits those closures to the plans approved through Special Condition II.A and requires the permittee to abide by closure duration limitations and extensions thereof, and to provide a detour plan, signage, and conduct public outreach to the public . . . to communicate closure plans. Special Condition II.F also requires the permittee to reopen completed sections of the Bay Trail between completed access facilities where feasible if construction lasts longer than anticipated.

Under Finding and Condition III.D.8.a, BCDC explained more about the reasoning for full closure of the Bay Trail:

Construction phasing: The public access amenities will be built concurrently with the flood protection aspects of the project, while the trail is closed to the

public. Given that the project can be phased only to the extent that existing access points line up with the City-approved haul routes for construction equipment access, completing the project in a single phase will be the shortest and therefore the most cost-effective phasing alternative. A single closure will also be the safest and least disruptive to the community because it will set the detour routes for the term of the project. The City anticipates to re-open the entire length of the trail in one year and nine months. The alternative considered by the City included closing the Bay Trail in three phases and would have taken an entire year longer to complete.

Project Sequencing

As demonstrated by the BCDC conditions of approval quoted above, the BCDC permit's provisions regarding the Bay Trail closure, incorporated into the approved construction contract's Plans and Specifications, allow the contractor to close the entire Bay Trail for up to 30 months. During the permitting process, BCDC asked the City to estimate how long it believed the Project would take to complete if the Bay Trail was to close completely for the duration of the construction, rather than in phases. The design team gave its best estimate that, under optimal conditions, and without delays that might arise due to required environmental mitigations that may limit construction periods, the Project could potentially be completed in 21 months with a full closure of the Bay Trail. The City's team also estimated that phasing the closure could extend the Project's total construction time up to a year. BCDC included this information in the findings quoted above as part of the explanation for authorizing the Bay Trail to close completely, rather than in phases. However, it ultimately authorized, through Special Condition II.F, a Bay Trail closure of up to 30 months.

Based on that allowance, and in keeping with the discussion of the construction phasing included in the BCDC permit, Shimmick proscribed a method of completing the work where it would drive all sheet piles starting on the southern-most end of the Levee System and work its way north until that portion of the work is complete. Shimmick will then return to the southern end of the Levee to perform all remaining improvements, again working south-to-north in phases until the Project is entirely complete.

This is the most cost-effective way to perform the Project because it limits the down time for equipment and supplies. For example, driving the sheet piles all at once before completing additional work will allow the very large and expensive equipment needed to drive the sheets to be released from the Project as quickly as possible. It will also reduce the amount of time and resources spent preparing individual work areas, detour routes, and other mobilization costs associated with opening and closing segments of the Levee in serial fashion.

This is also the safest way to perform the Project, as noted in the BCDC permit,

because it will result in a shorter construction timeframe and remove the public from the work areas until those areas are in a finished and safe state. It also establishes definite and clear detour routes for the duration of the Project, which will allow Shimmick and the City to better manage the routes and give the public certainty about those detours.

While a complete closure for the duration of the Project provides the safest condition for public and the most cost-effective construction methodology, City staff and Shimmick worked to identify ways to safely allow some segments of the Bay Trail to remain open for certain times during construction. Specifically, rather than shut the Bay Trail all at once, Shimmick proposed to close portions of the Bay Trail as it make its first pass from the southern end of the Levee to the north end. That plan was discussed in the City Council's November 16, 2020 meeting where the City Council reviewed the proposed phasing plan that calls for the first segments of the Levee to be closed in October, with likely two additional segment closures slated for early 2021 and later in Q1 of 2021.

Bay Trail Closure

City Staff understands that losing access to portions of the Bay Trail creates an impact for the community. City Council and staff have heard from some community members that they believe closing the Bay Trail is not only inconvenient, but is also not authorized by the EIR, as the EIR included an assumption that the Bay Trail would be closed and detoured in segments rather than all at once. But, as was indicated by Urban Planning Partners in the November 11, 2020 Addendum to the EIR, which was reviewed by the City Council at its meeting on November 16, 2020, the changed assumption about the Bay Trail closure plan does not present a new significant environmental impact that needs additional study. The environmental impact is the closure itself, and the associated mitigation for that impact is the detour route. And, hopefully, executing the Project as currently planned will result in less total time that the Bay Trail remains detoured. Currently, the construction schedule shows the contractor finishing the trail improvements from Shorebird Park to the southern end of the project in early January of 2023. Without making any changes to the schedule, the current plan to close the trail north of the San Mateo Bridge around May of 2021. If no action by the City Council is taken, assuming no unforeseen delays, the entire trail will be closed for a period of about 19 months.

Options for Discussion

Given the concerns expressed by residents subsequent to the November 16, 2020 meeting, City Council requested that staff schedule this public meeting in order to allow for additional public comment on this aspect of the Project so that the City Council could determine whether options exist which would allow for changes to the Bay Trail closure plan and to understand the safety and cost impacts associated with these

options. With the time available to analyze construction-sequencing options, the contractor was not able to provide exact estimates on impacts to the construction schedule or budget. Currently, the construction schedule shows the contractor finishing the trail improvements from Shorebird Park to the southern end of the project in early January of 2023. Without making any changes to the schedule, and assuming no unforeseen delays, the entire trail will be closed for a period of about 19 months. If the City Council wishes to further explore any of the options identified in this report, City staff will work with the contractor and the City's Construction Manager to return with precise estimates of the associated impacts. Staff, working with our Construction Manager, Tanner Pacific, has identified the following options for City Council discussion:

Option 1: Hold All Work North of SM Bridge

Description: This option would include holding all work operations north of the SMB, until the southern section of the trail (Shorebird Park to the southern extent) can be reopened around January 2023. This would provide the public with an open portion of the trail at all times during construction. For the safety of the public, the contractor would most likely demobilize their sheet pile operation and hire a subcontractor to perform that work later, which would add cost. This option would likely be safer and more aesthetically pleasing for the public than having the contractor install the sheet piles prior to demobilizing their equipment, and then securing the site to provide public access. This option would also require the longest extension of the contract of all options, as the contractor would be unable to meet the original milestones. This would increase costs due to remobilization of equipment, extended overhead costs for the contractor, and contract extensions for other consultants on the project team. Overall, this option would likely rank lowest in terms of cost impact, and would include the longest overall project timeline.

Option 2: Same as Option 1 + Acceleration of Work North of SM Bridge

Description: This option includes all the same provisions as Option #1 above, except the work would be accelerated north of the SM Bridge. This option would reduce the costs associated with extended overhead, but would retain the costs associated with remobilization and would include the cost of additional resources to accelerate the work. To maximize acceleration, this option would include longer working days, and potentially more weekend work. Option #2 would likely cost slightly more than Option #1 but would require less of an extension to the overall project timeline.

Option 3: Accelerate the Project As-Is

Description: This option would include adding additional resources to the project to accelerate the speed of construction. This option provides the highest level of safety to

the public, as it would not include opening any portions of the trail temporarily. The benefit to the public would be providing earlier access to the improved trail along Beach Park Boulevard specifically with a reduced overall construction timeline. Potential impacts would include longer working days, inefficiencies in the work sequence, and costs associated with providing additional resources to the project by the contractor and consultant teams. This would likely be the most costly of the options evaluated.

FISCAL IMPACT

There is no fiscal impact associated with this report. If the City Council directs that options be further studied, those impacts will be addressed in that staff report.

CONCLUSION

City staff seeks City Council direction on whether any of the above options should be further explored.

City staff also seeks City Council's approval to schedule a public study session where members of the public can meet with the Project team to answer questions on this Project. City staff anticipates these meetings would be held in early January 2021.

Attachments:

- Attachment 1 - Bay Trail Detour Routes Plan