



Snohomish County Council

Legislation Details (With Text)

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Title: Motion 21-215, authorizing approval of the Underpass Agreement and Associated Easement Agreement with BNSF for the Meadowdale Beach Park and Estuary Restoration Project

Sponsors:

Indexes:

Code sections:

Attachments: 1. Motion 21-215, 2. BF10014348 Meadowdale Beach Park - SIGNED, 3. BAR Executed, 4. Mot 20-401 (copy), 5. 2021-0021 Staff Report, 6. Motion Assignment Slip, 7. Distribution Sheet

| Date | Ver. | Action By | Action | Result |
|----------|------|------------------------|----------|--------|
| 6/7/2021 | 1 | Administrative Session | Approved | Pass |

Executive/Council Action Form (ECAF)

ITEM TITLE:

Motion 21-215, authorizing approval of the Underpass Agreement and Associated Easement Agreement with BNSF for the Meadowdale Beach Park and Estuary Restoration Project

DEPARTMENT: Conservation and Natural Resources

ORIGINATOR: Logan Daniels

EXECUTIVE RECOMMENDATION: Approve

PURPOSE: To execute the Underpass Agreement and the associated Easement Agreement with Burlington Northern Santa Fe (BNSF) Railway Company to allow construction of a railroad bridge , ADA-accessible public beach access and estuary within the 100-foot wide BNSF-owned railroad right-of-way; and to establish a permanent easement across the railroad right-of-way beneath the proposed railroad bridge for access and maintenance purposes.

BACKGROUND: Meadowdale Beach County Park, visited annually by more than 70,000 park patrons, is approximately 108-acres and extends from the rim of Lunds Gulch to the tidelands of Puget Sound. The County-owned tidelands are separated from the lower park lawn area by a 100-foot wide right-of-way owned by Burlington Northern Santa Fe Railway Company (BNSF). This section of rail is known as BNSF’s Scenic Subdivision Line Segment 50. Multiple carriers including Amtrak, Sound Transit and Union Pacific operate along this rail line under contracts with BNSF. Two main tracks supported by a raised rock-armored embankment and a 6-foot wide, 5.5-foot high, 60-foot long concrete culvert conveying Lunds Gulch Creek, a salmon-bearing stream are located within the 100-foot wide right-of-way. A major park development project, completed in 1988, included securing an agreement with BNSF for shared use of the

culvert and installation of a wooden boardwalk (now steel grating) above the stream for the purpose of providing public beach access. Over time, increased runoff and rainfall events within the gulch have resulted in sediment delivery, flooding, public safety, and fish impediment issues at the entrance to and within the culvert. Under flooded conditions, the public, determined to get to the beach, trespass across BNSF right-of-way. A Feasibility Study commenced in October 2014 with BNSF-experienced railroad and geotechnical consultants and concluded with selection of a Preferred Alternative to address the identified issues. The Preferred Alternative, developed through a public process, included replacing the undersized culvert and approximately 128 linear feet of hard armored BNSF railroad embankment with a multi-span railroad bridge (Structure), providing a widened opening for creek meander and sediment delivery, restoring a pocket estuary (Estuary) for juvenile Chinook and other salmonids, and providing an ADA-accessible path (Underpass Trail) under the bridge, separated from the creek and critical areas. Since improvements proposed by the Preferred Alternative were partially located within the BNSF-owned right-of-way, landowner cooperation was essential for implementation of this project. The County initiated the collaborative process with BNSF prior to the Feasibility Study in 2014 and submitted preliminary plans for the Preferred Alternative to BNSF prior to the design phase for review and comment. Design commenced in 2016 with a second process again requiring BNSF-experienced railroad and geotechnical engineering design consultants. The County followed BNSF's procedures for review, submitting thirty, sixty, ninety and one hundred percent civil and structural plans to BNSF for review and comment, along with the geotechnical and hydrologic/hydraulic reports and structural calculations. The railroad bridge was designed using standard BNSF bridge components, which resulted in shorter span lengths to allow flexibility for construction by BNSF bridge construction crews or a third-party County-procured consultant, recognizing that there would likely be a cost-savings if BNSF crews could construct the bridge. BNSF indicated at the sixty percent design submittal that it was their preference to use their crews to install the two bridges. BNSF will provide forces to complete at minimum the following tasks for the "Structure" construction: Flagging, inspection and engineering as warranted; Procurement of materials, equipment and supplies necessary for construction of the bridge; Partial removal of the existing underpass (culvert) to limits necessary to set bridge spans; Removal of the existing embankment to the depth necessary to install precast bridge components; Removal of approximately 200 feet of each main track; Construction of the bridge, including pile driving, setting precast bridge components, installing handrail, waterproof membrane, ballast, and replacement track panels; and Raising Main 2 track using ballast and other necessary materials. Strider Construction, the County procured and awarded contractor (Bid Award Recommendation dated 3/31/21) will support BNSF and "Structure" construction by constructing the temporary embankments for equipment crossing and access, installing a soil retention system, removing and disposing remaining embankment materials, installing the bridge drainage system, and safety fencing and signage. In addition, Strider Construction will construct the improvements below the bridge including the "Underpass Trail" and "Estuary". An Underpass Agreement must be executed prior to commencing any construction within BNSF's right-of-way. In 2019 BNSF initially indicated that because this was a County-initiated project that it was the County's responsibility to provide them an agreement. The PA's office in coordination with Parks Department and Department of Risk Management commenced drafting a project agreement incorporating BNSF standard template language but conforming the document to Snohomish County approved form. A draft agreement was submitted to BNSF in May 2020. In August 2020, the County was informed that BNSF would not accept the County's form of agreement but instead required the BNSF form template with minimal modifications. The BNSF template was minimally modified to include project specifics and the various required grant terms and was submitted to BNSF in September 2020. The Underpass Agreement outlines County and BNSF construction and long-term ownership and maintenance responsibilities, Federal Rail Administration and Washington State Recreation and Conservation Office grant terms, estimated costs for work performed by BNSF, and includes attachments in the form of Exhibits listed below: Exhibit A - Approved Plans Exhibit A-1 - Legal Description of Temporary Construction Easement- BNSF to Agency for Temporary Construction License Exhibit B - Form Underpass Trail and Estuary Easement - BNSF to Agency Exhibit B1 - Memorandum of Easement for Underpass Trail and Estuary - BNSF to Agency Exhibit C - Contractor Requirements Exhibit C1 - Form Agreement between BNSF Railway Company and the Contractor Exhibit D - Estimated Project Costs for Bridge Work Completed by BNSF Exhibit E - Approval Letter for Plans and Specifications from BNSF's Public Project Manager Exhibit F - Requirements for Grade Separation Projects by a Public Agency Exhibit G - Estimated Project Costs for Bridge/Underpass Trail/Estuary Work Completed by County's Contractor The Underpass Agreement indicates that BNSF will own and maintain the "Structure" while the County will own and maintain the "Underpass Trail", "Estuary" and the security fencing and signage within BNSF right-of-way. The Easement

Agreement (Exhibit B), which also requires execution by the County, grants the County public beach access and access for maintenance of the “Underpass Trail”, “Estuary” and fence, excluding any access across the tracks. The Easement stipulates that the easement shall be perpetual unless sooner terminated under provisions of the Easement Agreement. Snohomish County Public Works R/W, Sr. Appraiser prepared an appraisal based on the easement descriptions prepared by a professionally licensed surveyor for the temporary construction and permanent easement areas required for the project. The resulting appraised values of \$63,500 and \$141,500 for the temporary and permanent easements, respectively was submitted to BNSF in September 2020 for review. Jones, Lang LaSalle (JLL) Brokerage Inc. provides real estate services to BNSF and performed the evaluation of the appraisal documents. The County had several exchanges with BNSF and JLL to defend the County methodology, and proposed reduction strategies but the outcome resulted in use of JLL’s final figures of \$430,294 for the permanent easement and \$124,614 for the temporary easement for a total cost for both easements of \$557,408. Exhibit C (Contractor Requirements) and Exhibit C-1 (Agreement Between BNSF Railway Company and the Contractor) of the Underpass Agreement were included in the Meadowdale Beach Park and Estuary Restoration Project bid documents (Bid 002-21SB). The awarded contractor will execute Exhibit C-1 with BNSF in compliance with the Underpass Agreement. Exhibit D of the Underpass Agreement provides cost estimate for work to be performed by BNSF including \$125,461 for flagging, \$133,066 for Main 2 track raise, \$111,100 for inspection, and \$1,585,150 for bridge construction for a total construction cost of \$1,954,777. The Engineer’s Estimate for the project is \$15,000,000. In consideration of the easement cost, BNSF waived the mitigation fee, which was considered a substantial savings, in addition to the cost-savings of BNSF crews constructing the bridge as opposed to a third-party contractor. Capital Improvement Program (CIP) funding for Meadowdale Beach County Park has been included in the Park 6-yr CIPs since 2016. Funding for the Meadowdale Beach Park and Estuary Restoration Project includes awards from seven grants totaling \$6,954,078 with the remaining \$8,045,922 from REET 2 funding and tax-exempt bond funds as approved in Motion 20-401. The Federal Rail Grant will reimburse the County for payments to BNSF for construction costs outlined in the Agreement at a rate of 46.5263% or a total of \$909,485.41 based on estimated costs in Exhibit D. Snohomish County will be responsible for 53.4737% of estimated construction costs or \$1,045,291.59 plus the temporary and permanent easement cost of \$557,408 for a total of \$1,602,699.59. BNSF will email the Underpass Agreement and the Easement Agreement in separate emails for execution through DocuSign upon notification from Parks that the Council has authorized execution of the two agreements. The urgency for getting these two documents executed is so BNSF may procure bridge materials that require long lead times and so construction may commence on the railroad bridge as soon as possible in order to meet BNSF’s time-line that requires the bridge installation to be complete and operational by October 1st to meet BNSF’s restriction of prohibiting work on-track during the fourth quarter of any year due to increased freight operations. The October 1st deadline is also driven by marine and freshwater fish windows.

FISCAL IMPLICATIONS:

| EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU | CURRENT YR | 2ND YR | 1ST 6 YRS |
|--|-----------------------|--------|-----------|
| 309-51094621366599 Meadowdale Bond- Constr Svcs | \$1,602,699.59 | | |
| 309-51094621346599 Meadowdale-Grants (FRA)-Constr Svcs | \$ 909,485.41 | | |
| TOTAL | \$2,512,185.00 | | |

| REVENUE: FUND, AGY, ORG, REV, SOURCE | CURRENT YR | 2ND YR | 1ST 6 YRS |
|---|------------|--------|-----------|
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| TOTAL | | | |

DEPARTMENT FISCAL IMPACT NOTES: Click or tap here to enter text.

CONTRACT INFORMATION:

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|-----------|---|-----------|--------|----------------|
| ORIGINAL | X | CONTRACT# | AMOUNT | \$2,512,185.00 |
| AMENDMENT | | CONTRACT# | AMOUNT | |

Contract Period

| | | | | |
|-----------|-------|----------------|-----|-----|
| ORIGINAL | START | Upon Execution | END | N/A |
| AMENDMENT | START | | END | |

OTHER DEPARTMENTAL REVIEW/COMMENTS: Approved/Reviewed by Risk & Finance