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191305

Ordinance

Authorize the Bureau of Environmental Services to acquire certain permanent property rights necessary for construction of the Johnson Creek Oxbow Restoration Project through negotiation or exercise of the City's eminent domain authority

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The City may exercise the power of eminent domain pursuant to Oregon Revised Statutes ("ORS") 223.005 through 223.020 (Appropriation and Condemnation of Property for City Purposes; Special Procedure), ORS 223.105 (Municipal Condemnation Proceedings), and Sections 1-101 and 9-108 of the City Charter when deemed necessary by the City Council to accomplish public purposes for which the City has responsibility, provided that power is exercised in accordance with the eminent domain procedures established by ORS Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation, and early possession, if necessary.
2. The Bureau of Environmental Services ("BES") has the responsibility to provide stormwater collection and treatment services to accommodate the City's current and future needs and to protect public health, water quality, and the environment.
3. The project known as the Johnson Creek Oxbow Restoration Project (the "Project") has been planned in accordance with appropriate engineering standards for the construction, maintenance, or improvement of the City's stormwater infrastructure in a way that minimizes property damage, promotes healthy ecosystems, and safeguards the environment. The Project has been planned, designed, located, and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.
4. This project will restore instream and riparian habitat by reconnecting Johnson Creek and Errol Creek with their natural floodplains. It will help protect threatened, endangered and vulnerable species, improve water

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Environmental Services](#)

Contact

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Requested Agenda Type

Consent

Date and Time Information

Requested Council Date

June 7, 2023

quality, provide habitat for birds and other wildlife, and reduce flood risk in the surrounding neighborhood.

5. To accomplish the Project goals set forth above and to construct the Project as designed, the City must acquire the property interests described and depicted in Exhibits A and B ("Property Interests"), attached to this Ordinance and by this reference incorporated herein.
6. All affected property owners have been contacted and informed as to the City's need for the Property Interests required for completion of the Project.


NOW, THEREFORE, the Council directs:

- A. That it is necessary for the preservation of economic well-being, public health, public safety, and public welfare to commence the acquisition process described herein and acquire the Property Interests for the Project.
- B. That the power of eminent domain is hereby exercised with respect to the Property Interests, as needed.
- C. That, subject to the payment of just compensation and the procedural requirements of Oregon law, the Director of BES and the City Attorney are authorized to acquire the Property Interests for the Project through negotiation or through the exercise of the City's eminent domain authority to the extent that negotiations fail, as discussed herein, and to offer relocation benefits, all within available Project budget funds.
- D. That the Director of BES and the City Attorney are further authorized to enter into obligations agreements with property owners and/or tenants to address construction management concerns within available Project budget funds.
- E. That the Director of BES and the City Attorney are authorized to attempt to agree with the owners and other interest holders of the Property Interests as to the compensation to be paid for each acquisition. If no satisfactory compensation agreement can be reached, the City may commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined or determinable by the City Council.
- F. That the Director of BES is authorized to determine the continuing necessity or propriety of the acquisition authorized by this Ordinance, its quantity, quality, or locality, and to reduce or abandon any portion of the Property Interests.
- G. That, in accordance with ORS 35.265, BES is authorized to create a fund in the amount estimated to be the just compensation for the Property

Interests which, if necessary, shall be deposited with the clerk of the court where a condemnation action is commenced.

H. That the Mayor and Auditor are authorized to pay for the Property Interests and relocation benefits from the Sewer System Operating Fund Budget when demand is presented and approved by the proper authority.

Documents and Exhibits

 [Exhibits A and B \(https://www.portland.gov/sites/default/files/council-documents/2023/exhibits-a-and-b-johnson-creek-oxbow-e08406-eminent-domain-ordinance-legal-and-map.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/exhibits-a-and-b-johnson-creek-oxbow-e08406-eminent-domain-ordinance-legal-and-map.pdf) 186.72 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
June 7, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

The purpose of the proposed legislation is to authorize BES to acquire certain permanent property rights necessary for construction of the Johnson Creek Oxbow Restoration Project through negotiation or the exercise of the City's eminent domain authority. This conservation easement will allow BES staff and contractors to access, restore and maintain this reach of the creek.

The Johnson Creek Oxbow Restoration Project is located on Johnson Creek near SE 45th Avenue and SE Harney Street. The Project has been developed to address several significant issues in this area, namely the impacts of offsite flooding, degraded water quality, inhibited stream and floodplain processes, and habitat loss.

A prominent feature of the Project reach is the namesake "oxbow" meander along Johnson Creek. In the 1930s, the Works Progress Administration (WPA) constructed a bypass channel to connect the southern ends of this oxbow, forming a small island in the middle. The WPA project lined the bed and banks of the bypass channel with rock and constructed a concrete fish ladder that spans the main channel of Johnson Creek to maintain a flow split between the two channels. WPA rock levees were also constructed along the main channel to confine streamflow to the designated channels. The WPA channel work intended to control flooding, however by disconnecting the natural floodplain, stream power and flood volumes concentrated instream have increased risk to civil infrastructure downstream. High water no

longer flows naturally across adjacent floodplain areas to slowly soak into the ground, which has resulted in loss of wetland and riparian habitat in addition to degradation of instream habitat. Today, overbank flows create concerns for nearby homes, businesses and roads.

Over the past two decades, the City has acquired flood-prone properties within the Project area through the Willing Seller Program, to address the impacts of flooding and to restore a healthy riparian corridor. BES has since developed a comprehensive restoration project that meets program objectives and accommodates natural river processes.

A permanent conservation easement is required to implement and maintain restoration of Johnson Creek through the Project area. At present, the main channel of Johnson Creek flows through the northwest corner of the subject property, bounded along the rightbank by the existing WPA levee. The restoration Project will remove the existing levee to widen the flow corridor and accommodate dynamic conditions caused by natural sediment and wood transport. The levee removal will restore floodplain function while reducing flooding of private property and will improve aquatic and terrestrial habitat. The proposed Project promotes system resilience in the face of climate change and urban development.

Financial and Budgetary Impacts

The cost of acquiring the needed property right will be determined by an independent appraisal during the easement acquisition process. Funds are available in the Sewer System Operating Fund, FY 2023-2024 Budget, Bureau of Environmental Services WBS E08406.L10.

Community Impacts and Community Involvement

Only the northwest portion of this property will be affected, said portions being described and depicted in Exhibits A and B. The Project will require a conservation easement for access to, construction of, and long-term maintenance of this section of Johnson Creek. Contract documents will require the Contractor to restore all disturbed areas within the subject property.

BES staff has attempted to contact the Property Owner over the course of the past 2 years to discuss this Project but have been unsuccessful. Attempts have included mailings, phone calls, and repeated visits to the subject property. To date, the Property Owner has been unresponsive.

The location of the easement is on an inaccessible portion of the property situated across Johnson Creek from the house and accessible portions of the property. The easement area is "landlocked" by other properties and has no direct access to a road. Acquiring this easement will provide financial benefit to the Property Owner and transfers future maintenance responsibilities for creek conditions to the City.

BES staff held several outreach events for immediate community members to discuss this Project and associated public works. Outreach for this Project began in December 2021 with letters to adjacent residents inviting them to meet with the project team at their convenience. A larger neighborhood

meeting was held onsite in May 2021 that provided information about the Project and solicited public feedback. Neighbors were invited to attend a September 2021 online Zoom meeting and on October 6th, 2021 the project team attended the Brentwood-Darlington Neighborhood Association's monthly meeting to share information. Outreach staff have also sent project updates to the surrounding neighborhood in June of 2022 and January of 2023; these updates included mailers, email updates, web updates, and Nextdoor posts.

We do not anticipate that any individuals or groups will be testifying with regard to this proposed legislation. The specific location for this ordinance does not impact the general public.

100% Renewable Goal

There is no impact anticipated towards the City's 100% Renewable Goal.

Budget Office Financial Impact Analysis

Funds to acquire the property rights to conduct this project will be determined by an independent appraisal. Further, funds are budgeted in the bureau's FY 23-24 Approved Budget's Sewer Operating Fund to cover the estimated cost.

Agenda Items

434 Consent Agenda in [May 31-June 1, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/31)
(<https://www.portland.gov/council/agenda/2023/5/31>)

Passed to second reading

Passed to second reading June 7, 2023 at 9:30 a.m.

467 Consent Agenda in [June 7-8, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/6/7)
(<https://www.portland.gov/council/agenda/2023/6/7>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Absent

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea