



MEETING DATE: June 25, 2024

ITEM NUMBER: 6.B

SECOND READING:

TYPE OF ITEM: General Business

PRESENTED BY:

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SUBJECT/AGENDA TITLE:

Resolutions For The Authorization Of Eminent Domain For The South St. Vrain Water Diversion
And St. Vrain Greenway Trail Projects

EXECUTIVE SUMMARY:

This item seeks City Council authorization for the use of eminent domain to acquire necessary property interests for the two City projects described below:

South Saint Vrain Diversion Structure Boundary Resolution Project

The South St. Vrain Diversion Boundary Resolution project involves a series of properties west of Lyons that the City acquired in 1901 and 1902. This property was acquired to create a diversion structure for water deliveries from the South St. Vrain to the City of Longmont's water system. Less than clear ownership in this area has hampered the City's ability to perform maintenance and operation of the City's raw water facilities at this location. The attached resolution authorizes the use of eminent domain to acquire title to a piece of property that ownership is not clear. Additionally, the resolution authorizes the City to clear up other property line discrepancies by filing a quiet title action. City staff has worked diligently with the adjoining property owners to resolve this matter, and they all support this course of action.

St. Vrain Greenway Trail Project

Acquisition of the 0.94-acre permanent trail easement over the 5.13-acre parcel is necessary to complete Phase 13 of the St. Vrain Greenway. Phase 13 will extend the St. Vrain Greenway approximately 2.2 miles east from the City of Longmont's Sandstone Ranch Nature Area, providing a multi-modal connection to St. Vrain State Park's trail network.

To date, staff has negotiated in good faith with this property owner but, unfortunately, has been unable to come to an agreement. The property owner has repeatedly stated that it is only interested in selling the entire 5.13-acre parcel. However, staff has determined that

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purchasing the entire parcel would not be an appropriate use of taxpayer dollars.

Negotiations with the property owner are ongoing, however, as an option of last resort, staff is requesting City Council's authorization to exercise the City's power of eminent domain to acquire the 0.94-acre permanent trail easement by condemnation.

COUNCIL OPTIONS:

Approve or Reject Resolution Authorizing Eminent Domain for Each Project

RECOMMENDED OPTIONS:

Approve Resolutions as presented for Both Projects

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

South Saint Vrain Diversion Structure Boundary Resolution Project

There are no fiscal impacts expected as part of this project. There will be staff and legal costs that will be covered by existing funds budgeted in the Water Utility Budget.

St. Vrain Greenway Trail Project

Total project costs for Phase 13 of the St. Vrain Greenway are estimated at \$12.5 million and will come from budgeted City funds, as well as a \$1.5 million Denver Regional Council of Governments (DRCOG) grant.

Legal fees associated with the potential eminent domain proceedings are not yet known. However, the City of Longmont would be responsible for paying its own legal fees associated with an eminent domain action, and would also be responsible for paying the property owner's reasonable attorney fees *should* the court dismiss the eminent domain action or *should* the final award of just compensation, as determined by the court, be equal to or exceed 130% of the City's final offer to purchase. These costs are anticipated to be paid out of the City of Longmont's Open Space Fund.

BACKGROUND AND ISSUE ANALYSIS:

Eminent Domain Primer

Eminent domain (aka condemnation) is a sovereign power which authorizes a governmental entity to involuntarily take private property necessary for a public purpose subject to the payment of just compensation. Longmont Charter section 13.5 explicitly provides, "The city shall have the right of eminent domain as provided by the constitution and the Statutes of the State of Colorado." City staff will make all reasonable attempts to negotiate with property owners to achieve a mutually acceptable resolution for the City's acquisition of private property. In the vast majority of circumstances, City negotiations are successful. However, in a select few situations, the parties are unable to come to agreement and City staff is forced to consider the use of eminent domain as an option of last resort.

The use of eminent domain is governed by state statute and caselaw which establish a process with robust safeguards to ensure the appropriate use of this remarkable power. To initiate an eminent domain action, the City files a petition in state district court. The court independently reviews the petition to ensure the property interest to be condemned is necessary to serve a legitimate public purpose. The statute also requires good faith negotiations with at least one written offer that clearly identifies the property sought to be acquired and the compensation offered. The City must reimburse the property owner for the cost of an appraisal of the subject property at the property owner's option. Significantly, the "130% Rule" provides that if the final compensation award achieved through the condemnation petition process is 30% or more than the final offer, then the property owner is entitled to recover its reasonable attorney fees. Regardless of the outcome, the property owner is always entitled to recover reasonable costs of litigation.

With respect to the actual eminent domain court proceeding, there are generally three phases. First, the governmental entity makes a deposit and may seek to take immediate possession of the property so that the public project can proceed in a timely fashion. It is during this phase that all challenges to the condemnation are heard, e.g., authority, public purpose, necessity and good faith negotiations. Second is the valuation trial consisting of expert witnesses, discovery and various motions. The trial is to a jury of landowners or a commission of landowners. The third and final phase is apportionment where the various interest holders, if more than one, divvy up the compensation award. The condemning entity is not usually involved in this third phase.

The condemnation court proceeding concludes with a Final Rule & Order: final judgment is entered in lieu of a deed and is recorded; the condemning entity deposits the compensation award into the court registry; and title to the property passes upon such deposit.

The remaining sections of this Council Communication describe in greater detail the history and purpose of each project.

South Saint Vrain Diversion Structure Boundary Resolution Project

This project involves a resolution of the ownership and property boundaries around property that the City of Longmont owns west of Lyons. This property is important to the City of Longmont in that it contains the City's "South St. Vrain Diversion Structure". This structure diverts water from the south St. Vrain Creek and into a pipeline which feeds water to the City's water treatment plant. This property was acquired in 1901 and 1902 as part of Longmont's original 1882 water system to create a turnout for water deliveries to Longmont. A portion of this City of Longmont Property was mistakenly sold in a tax lien sale by Boulder County in the 1980s. In January of 2024, the City entered into an agreement that quit claimed that portion of the property back to City of Longmont. Additionally, errors and

discrepancies in property surveys and older conveyances have created property lines which are less than clear and have hampered the City's ability to operate and maintain the City's raw water diversion facility at this location. City staff have been working with the surrounding property owners to clear up these property boundary and ownership issues so that the City can have clear title to the property it needs for the diversion structure.

The property shown as **Parcel 6 below** in Figure 1, is a piece of property over which ownership cannot be explicitly demonstrated by existing deeds or surveys. For this piece of property, city staff is recommending an eminent domain action to clear up ownership. This piece of property does not have a clear property owner and/or parties with claims to ownership may be deceased or unwilling or unable to convey clear title. This property is approximately 0.091 acres.

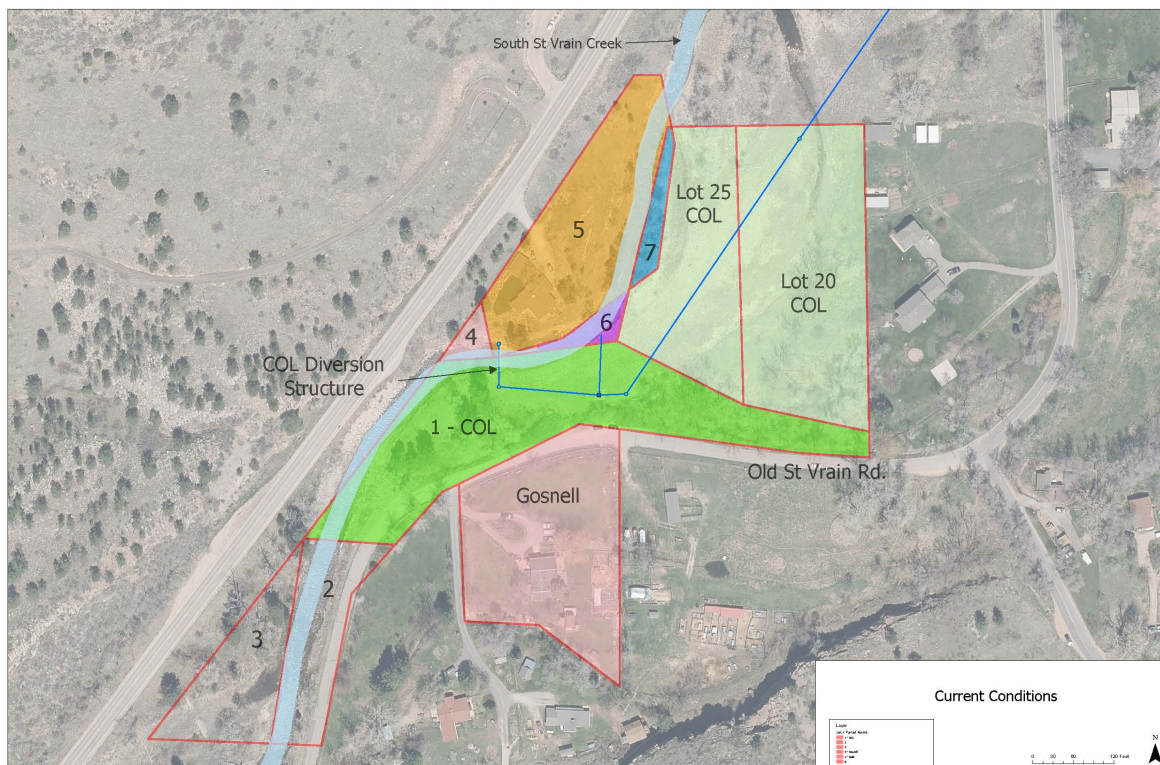


Figure 1. South Saint Vrain Diversion Structure Property Map

The other properties depicted above are pieces of property which have clearer ownership and city staff is recommending resolving any property line discrepancies by a quiet title action, lot line adjustments and/or land exchanges. The city has been negotiating with surrounding property owners and has been successful in negotiating win-win land exchanges whereby the surrounding property owners receive portions of City property that are not needed for the diversion structure but benefits them, and the City acquires the property that is needed for the diversion structure.

City staff have been working with all adjacent property owners at this location. At this time, all of the actions contemplated in this process to reach a final resolution to property lines at this location have support of all adjacent property owners.

St. Vrain Greenway Trail Project

The St. Vrain Greenway trail was originally envisioned as a regional, multimodal trail in the City of Longmont's 1993 St. Vrain Greenway Master Plan. Today, the completed trail sections (Phases 1 through 11) extend approximately eight miles through the City of Longmont from Golden Ponds to Sandstone Ranch Nature Area. The final two trail sections to be designed and constructed, Phases 12 and 13, will connect Longmont's trail into Boulder County's trail system to the west (Phase 12) and into St. Vrain State Park to the east (Phase 13).

When complete, Phase 13 will extend approximately 2.2 miles east from Longmont's Sandstone Ranch Nature Area, providing a multi-modal connection to St. Vrain State Park's trail network, which ultimately connects to the Weld Legacy Trail east of I-25 in the Town of Firestone. The St. Vrain Greenway is also part of the Colorado Front Range Trail, which is planned to extend from Wyoming to New Mexico.

In 2019, DRCOG awarded the City of Longmont \$1.5 million in Multi-Modal Operating Fund Transportation Improvement Program funding to support design and construction of Phase 13. The grant terms require the City of Longmont to provide a 50% local agency match and spend this grant funding by June 2025. Additionally, since the Colorado Department of Transportation (CDOT) administers this grant funding, the City of Longmont is required to follow CDOT procedures and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act during the acquisition process.

Phase 13 design began in April 2022, and has been a multiagency effort, involving various City departments, including Parks and Natural Resources, Public Safety, Waste Services, and Engineering, as well as CDOT, U.S. Fish and Wildlife Service, Colorado Parks and Wildlife (CPW), U.S. Army Corps of Engineers, St. Vrain State Park, Weld County, Boulder County, and the Town of Firestone. Currently, project design is 100% complete and the project team is nearing completion of right-of-way (ROW) agreements with all involved property owner stakeholders, except one.

Acquisition of the 0.94-acre permanent trail easement over the 5.13-acre parcel (Figure 2) is necessary to complete Phase 13.

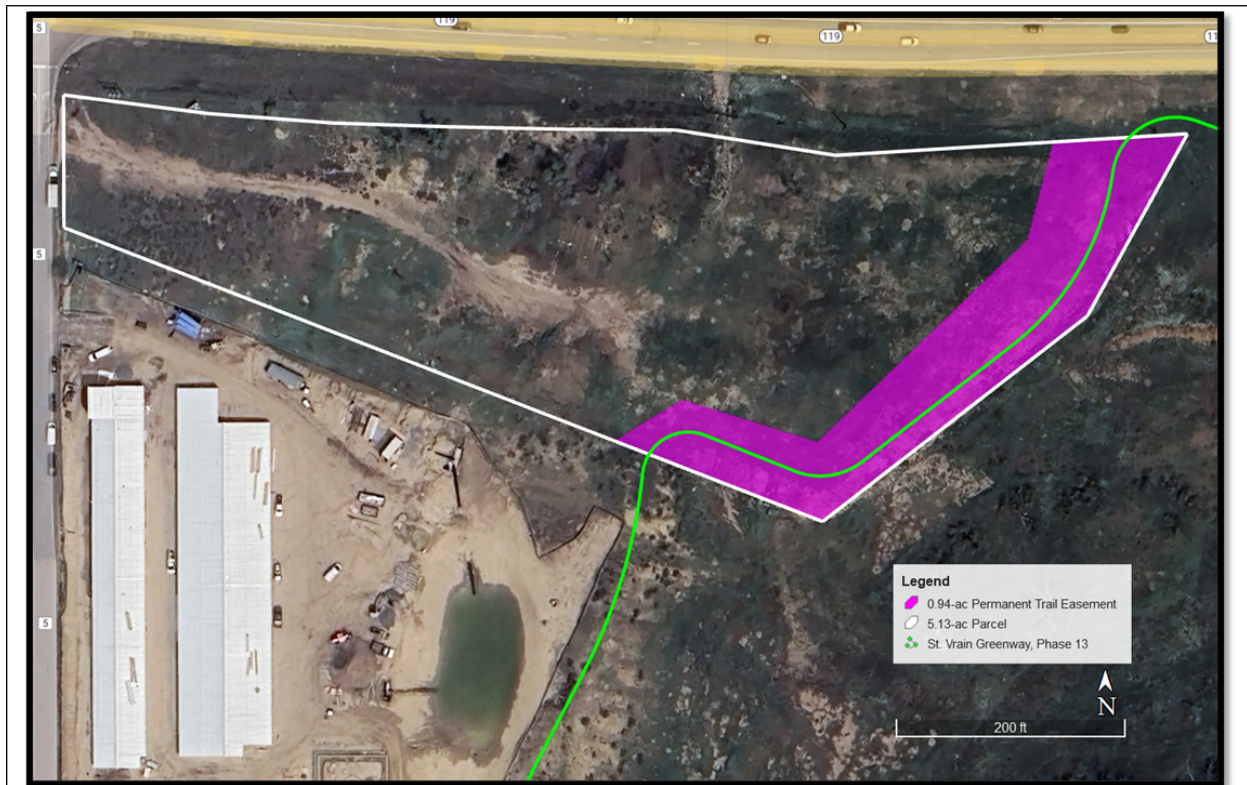


Figure 2. Permanent Trail Easement Map

During the early stages of design, the design team considered a variety of alternatives to the current trail alignment, including alternatives that would have avoided acquisition of the 0.94-acre trail easement. However, after much analysis, partner agencies and the design team concluded that to provide the safest, most scenic, and ADA-compliant user experience, the current alignment was the best option for many reasons, including:

1. Avoiding the placement of fill within the floodplain (not allowed per the Federal Emergency Management Agency and CDOT).
2. Reducing the size of the trail easement needed across the 5.13-acre parcel and minimizing impacts on the remainder parcel by locating the trail along the steeply sloped, far eastern edge of the parcel and constructing into the side of the hillslope.
3. Reducing environmental impacts and cooperating with CPW by staying out of the St. Vrain Creek corridor, not fragmenting this ecologically important area, and not disturbing the bald eagle winter nesting area and required bald eagle nest buffer.
4. Requiring minimal ROW acquisitions as compared to other alternatives.

In early 2023, staff began discussions with the property owner stakeholders. At this time, the subject property owner informed staff that it was only interested in selling Longmont the entire 5.13-acre parcel, not just the 0.94-acre permanent trail easement. Staff considered

this option, i.e., using the 5.13-acre parcel as trail parking or to meet other City needs; however, based on the proximity to parking at St. Vrain State Park and discussions with other City departments, staff determined that purchasing the entire parcel would not be an appropriate use of taxpayer dollars.

In late 2023, a CDOT-qualified acquisition agent, Western States Land Services, LLC (Western States), began serving as the City's ROW acquisition agent, leading communications with the property owner stakeholders, as required by CDOT.

In December 2023, Western States sent the subject property owner a formal *Notice of Interest to Acquire and Authority to Obtain an Appraisal*. In March 2024, Western States submitted a formal offer of \$467,000 for the purchase of the 0.94-acre permanent trail easement based on an appraisal of the easement's fair market value performed by a CDOT-qualified independent appraiser. As of this time, the subject property owner has not obtained an independent appraisal from an appraiser of their choosing.

At this point in the Phase 13 project, design is 100% complete, negotiations with other stakeholders are nearing completion, and the project's grant funding deadline is approaching. Staff has negotiated in good faith with this property owner but, unfortunately, has been unable to come to an agreement. The property owner has repeatedly stated that it is only interested in selling the entire 5.13-acre parcel (currently listed for sale for \$3.59M). Currently, staff is continuing to negotiate with the property owner and preparing to make one last final offer. However, should the last round of negotiations prove unsuccessful, staff is requesting City Council's authorization to exercise the City's power of eminent domain to acquire the 0.94-acre permanent trail easement by condemnation.

ATTACHMENTS:

Resolution for the South St. Vrain Creek Water Diversion Structure Project
Resolution for the Saint Vrain Greenway Trail Project