



STAFF REPORT

To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water
Laura Kindt, P.E., Stormwater Manager

Title: **Ordinance Authorizing the Exercise of the Town's Powers of Eminent Domain for the East Plum Creek/Sellars Gulch Confluence Project**
[Downtown Castle Rock]

Executive Summary

Castle Rock Water (CRW) is seeking Town Council adoption of an Ordinance (***Attachment A***) authorizing the exercise of the Town's power of eminent domain for the East Plum Creek/Sellars Gulch Confluence Project (Project), if necessary. This ordinance authorizes CRW staff to follow the property acquisition process consistent with the potential use of eminent domain, however, any use of eminent domain on any specific property will require CRW staff to return to Council for additional authorization in the form of an ordinance specific to that property. During this additional public hearing, Council will be provided with the details of that specific property, the offers made to the property owner for that specific property and all the other information associated with the final use of eminent domain to acquire that needed property.

Engineering consultant, Olsson Inc. (Olsson), was retained to complete a stream stabilization design for the Project in January 2023. Alternative Analysis is underway and expected to be submitted to the Town in July 2023. Design is anticipated to be completed by the end of 2023, with environmental permitting to be completed in 2024 and construction in 2025. The Town retained Western States Land Services (Western States), to assist with property owner coordination and good-faith negotiations to acquire easements as needed.

The project is located in downtown Castle Rock at the confluence of East Plum Creek and Sellars Gulch. The project is bounded by Plum Creek Parkway to the South, I-25 to the West, Douglas County properties to the North and the East Plum Creek Trail to the east. The project includes 2,800 linear feet of stream stabilization, water quality/detention improvements, and potential for a passive recreational trail. The project crosses or impacts twelve properties.

There are five different property owners associated with these twelve properties (see ***Attachment B*** for a map showing the various properties).

Staff requested title searches of the two privately owned parcels within the project limits. The title search easily identified the property owner for one parcel, while the other parcel required extensive research to determine ownership. Upon completion of the title search, it was determined that the second parcel was placed in a trust in 1939. The owner deceased in 1960, with no further ownership records. Staff have exhausted all resources to identify further ownership records of the parcel.

Given the project has exhausted all resources to identify current ownership of the parcel, Staff requests adoption of this ordinance to begin the process to obtain ownership of the parcel through eminent domain if the selected alternative impacts the parcel. Adoption of this ordinance will also allow CRW staff to follow the eminent domain process in case negotiation of the acquisition of easements on the other private parcel are unsuccessful.

Notification and Outreach Efforts

The Town has reached out to all known property owners on this project via in person and virtual meetings. The Town has met with Colorado Department of Transportation (CDOT) and Douglas County twice.

History of Past Town Council, Boards & Commissions, or Other Discussions

On January 17, 2023 Town Council approved Resolution 2023-009 to award a services agreement in the amount of \$647,754 with Olsson along with authorization of \$64,775 in staff-managed contingency to complete design and permitting for the East Plum Creek/Sellars Gulch Confluence Project.

On January 25, 2023, CRW staff updated Castle Rock Water Commission on the Resolution 2023-009 approved by Town Council to award a services agreement in the amount of \$647,754 with Olsson along with authorization of \$64,775 in staff-managed contingency to complete design and permitting for the East Plum Creek/Sellars Gulch Confluence Project.

Castle Rock Water staff presented this item to the Castle Rock Water Commission at their meeting held on July 26, 2023, and the Castle Rock Water Commission voted unanimously 6 to 0 to recommend Town Council approval of the Resolution as presented.

Discussion

Alternative analysis is underway and expected to be submitted to the Town in July 2023. Design is anticipated to be completed by the end of 2023, with environmental permitting to be completed in 2024 and construction in 2025.

In February 2023, the Town retained a consultant, Western States, to assist with acquiring temporary and permanent easements needed from the two private property owners. The other three property owners are CDOT, Douglas County and the Town of Castle Rock.

In January 2023 Staff requested a title search of the privately owned properties within the project limits. One parcel easily identified one property owner, while the other parcel required extensive research to determine ownership. The second parcel required determining ownership by examining the Douglas County Tract index located in Greeley and running backwards to the origination of the Town of Castle Rock in 1874.

In April 2023, upon completion of the title search it was determined that the second parcel was placed in a trust in 1939. The owner deceased in 1960, with no further ownership records. Western States reached out to the Douglas County Trustee office in regards to the ownership of the parcel in question. Douglas County Trustee had no further information and recommended the Town pursue eminent domain on the parcel. The Town's legal department has also recommended the use of eminent domain for this specific parcel.

Staff have exhausted all resources to identify further ownership records of the parcel. Therefore, an ordinance authorizing eminent domain is recommended for approval at this time. Staff are working closely with CDOT, Douglas County and the other private parcel owner to obtain permanent and temporary easements on the remainder of properties impacted. The size, location and cost of easements have not been determined at this time. CDOT and Douglas County have agreed to provide temporary and permanent easements for the proposed work. The other private parcel owner is currently working with the Town on easements associated with the project. The first meeting with the owner indicated that they would review the easement request as well as the appraisal and determine whether the assessed value was acceptable. This parcel also may require eminent domain to obtain easements if an agreement cannot otherwise be negotiated.

Budget Impact

The estimated legal fees to execute eminent domain are \$20,000. The overall project costs as they are known to date are shown in the table below.

This project is being funded from both system development fees and rate fees and Sellars and East Plum Creek account with a 2023 account balance of \$712,529.

Fund	Account Number	Amount	Cont.	Total	Budget
Sellars Gulch	212-4475-444.75-72	\$161,938	\$16,194	\$178,132	\$161,938
East Plum Creek	212-4475-444.76-37	\$485,815	\$48,581	\$534,396	\$485,815
Total		\$647,754	\$64,775	\$712,529	

Staff Recommendation

Staff recommends Town Council approval of the ordinance authorizing the use of eminent domain to acquire the unclaimed privately owned parcel and easements on the other privately owned parcel, if necessary.

Proposed Motion

"I move to approve the Ordinance as introduced by title."

Alternative Motions

"I move to approve the resolution as introduced by title, with the following conditions: (list conditions)."

"I move to continue this item to the Town Council meeting on _____ date to allow additional time to (list information needed)."

Attachments

Attachment A: Ordinance
Attachment B: Location Map