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**Title:** AN ORDINANCE authorizing the condemnation of a subsurface easement from the city of Seattle needed for the conveyance tunnel for the Brightwater regional wastewater treatment system; and repealing Ordinance 15943, Section 1, Ordinance 15943, Section 2, Ordinance 15943, Section 3 and Ordinance 15943, Section 4.

**Sponsors:** Larry Phillips

**Indexes:** Brightwater, Condemnations, Seattle, City of

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**Attachments:** 1. 15990.pdf, 2. 2007-0625 Staff Report - Subsurface Easement Condemnation (11-27-07).doc, 3. 2007-0625 Condemnation final actions--Notice required--Final action defined.doc, 4. 2007-0625 Hearing Notice published.doc, 5. 2007-0625 Hearing Notice.doc, 6. 2007-0625 Notice of Public Hearing.doc, 7. News release for 2007-0625 an edits.doc

Date	Ver.	Action By	Action	Result
12/10/2007	1	Metropolitan King County Council	Hearing Held	
12/10/2007	1	Metropolitan King County Council	Passed	Pass
12/3/2007	1	Metropolitan King County Council	Introduced and Referred	
11/27/2007	1	Growth Management and Natural Resources Committee	Deferred	

Clerk 11/20/2007

AN ORDINANCE authorizing the condemnation of a subsurface easement from the city of Seattle needed for the conveyance tunnel for the Brightwater regional wastewater treatment system; and repealing Ordinance 15943, Section 1, Ordinance 15943, Section 2, Ordinance 15943, Section 3 and Ordinance 15943, Section 4.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

**SECTION 1. Findings:**

A. By Ordinance 13680, on November 29, 1999, King County adopted the Regional Wastewater

Services Plan ("RWSP"), which set forth treatment plant policies intended to guide the county in providing wastewater treatment at its existing plants, and in expanding wastewater treatment capacity through the year 2030. The RWSP calls for construction of a new wastewater treatment plant in north King County or south Snohomish county by 2010.

B. On December 10, 2001, by Ordinance 14278, the King County council authorized the preparation of an Environmental Impact Statement ("EIS") on the siting and construction of the north treatment facility project, now known as the Brightwater regional wastewater treatment system. King County issued the final EIS on the Brightwater regional wastewater treatment system in November 2003. In December 2003, the King County executive selected the Route 9 - 195th Street system alternative, including a new regional wastewater treatment plant, conveyance facilities, with five primary portals, and an outfall to Puget Sound as the final Brightwater alternative. King County has developed the plans, designs and specifications, obtained all necessary permits and approvals and has awarded construction contracts for construction of the Brightwater regional wastewater treatment system and construction of the Brightwater regional wastewater treatment system is now underway. The Brightwater regional wastewater treatment system is an essential public facility, the siting and construction of which are protected under the Growth Management Act.

C. King County has acquired, or has use and possession of, all of the property needed for the Brightwater project, including all subsurface easement areas, except a small subsurface area within the Seattle Public Utilities' Tolt Pipeline right-of-way. This subsurface easement from the city of Seattle is needed for the conveyance tunnel for the Brightwater project. The King County council has approved five condemnation ordinances to enable the county to acquire all of the fee parcels and subsurface easement areas needed for the Brightwater project. However, the subsurface area in the Seattle Public Utilities' Tolt Pipeline right-of-way had not been included in the prior ordinances because county and Seattle Public Utilities ("SPU") staffs were working cooperatively, government to government, and the county did not believe that a condemnation action between the two governments would be needed.

D. On October 29, 2007 by Ordinance 15943 the King County council took action authorizing the condemnation of the subsurface easement. Due to administrative error, the notice required by RCW 8.25.290 was not provided prior to the council's final action on Ordinance 15943.

E. RCW 8.25.290 requires that the county provide notice before the council takes final action to authorize the condemnation of a specific property. The required notice for final action on this ordinance has been provided.

F. The property rights and property interests set forth in this ordinance are necessary for and are part of the conveyance tunnel alignment which has been designed, engineered and will soon be under construction. Timely acquisition of the property interests set forth in this ordinance is critical to maintaining the currently designed tunnel alignment and construction schedule for the Brightwater regional wastewater treatment system and will minimize the risk of a costly work stoppage. This parcel is the last parcel in the tunnel alignment stretching from the city of Bothell to the city of Shoreline, which has not been acquired. A map of the conveyance alignment described in this ordinance is enclosed as Exhibit A to Attachment A to this ordinance.

G. In August 2006, SPU notified the county that SPU concurred with the grant of the subsurface easement to King County for the Brightwater Project. The Seattle City law department had approved the wording of the easement. Per SPU, it was expected that an ordinance authorizing the conveyance of the easement would be presented to the Seattle City council within six months, and that SPU would recommend passage of that legislation.

H. On April 23, 2007, an ordinance, Seattle Council Bill No. 115874, declaring surplus certain subsurface property rights in SPU's Tolt Pipeline right-of-way and authorizing the conveyance of a subsurface easement for such surplus property rights to King County for the Brightwater project was introduced and assigned to the Seattle City council environment, emergency management and utilities committee ("utilities committee").

I. On May 8, 2007, the utilities committee put the legislation on hold. On October 23, 2007, the

utilities committee referred the legislation to the council. Subsequent discussions with the chair of the committee led the executive to conclude that the easement would not be approved until sewer contract negotiations were concluded. King County must proceed with condemnation of this subsurface easement or risk significant construction schedule delays for the entire Brightwater project.

J. King County is authorized by chapters 8.12 and 36.56 RCW, RCW 35.58.320 and 35.58.200, K.C.C. chapter 28.81 and Ordinance 10531 to acquire and condemn real property for public use for sewage treatment and water pollution abatement facilities.

K. In order to acquire the property interests and property rights set forth in this ordinance, which are necessary to construct the Brightwater regional wastewater treatment system, including the conveyance facilities, it is necessary for King County to condemn certain lands, property rights and rights in property. The acquisition of such property rights is for a public purpose.

L. The King County council finds that public health, safety, necessity, convenience and welfare demand that certain properties and rights in those properties, including those set forth in the ordinance be condemned, appropriated, taken, and damaged for the purpose of construction, operation and maintenance of the Brightwater regional wastewater treatment system, including the conveyance facilities.

SECTION 2. The King County council has deemed it necessary, for the proposed public purpose and in the best interest of the ratepayers of the regional wastewater treatment system, that all or any portion of the property described in Attachment A to this ordinance, and other property interests, property rights and rights in property, be condemned, appropriated, taken and damaged in fee and/or in easements for construction, operation and maintenance of the Brightwater wastewater treatment system, including the conveyance facilities, subject to making or paying of just compensation to the owners herein in the manner provided by law.

SECTION 3. Condemnation proceedings are hereby authorized to acquire property interests and property rights and rights in property in all or any portion of the property described in Attachment A to this ordinance for the purpose of the Brightwater project.

SECTION 4. The attorneys for King County are hereby authorized and directed to begin to prosecute the proceedings provided by law to condemn, take and appropriate the land and other property interests, property rights and rights in property necessary to carry out this ordinance.

SECTION 5. Ordinance 15943, Section 1, Ordinance 15943, Section 2, Ordinance 15943, Section 3 and Ordinance 15943, Section 4 are each hereby repealed.

15 days prior

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