

**CITY OF BEND RESOLUTION NO. 3165
BEND PARK AND RECREATION DISTRICT RESOLUTION NO. 430**

A RESOLUTION DESCRIBING CONDITIONS FOR A COLLABORATION BETWEEN THE CITY OF BEND (CITY) AND BEND PARK AND RECREATION DISTRICT (BPRD) TO CONTRIBUTE TO THE PRESERVATION OF MIRROR POND, AND SETTING FORTH THE FRAMEWORK FOR A MEMORANDUM OF UNDERSTANDING (MOU) AND AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE TWO ENTITIES

Findings

- A. The creation of Mirror Pond was a side effect of the construction of the Bend Water, Light and Power Company's hydroelectric dam in 1910. Mirror Pond became a collector for sediment flowing through the Deschutes River, which backs up into the pond and further upstream from the Bend Hydro Dam (also called the "Pacific Power Hydro Dam" or "Newport Avenue Dam"), owned by PacifiCorp (dba Pacific Power in Oregon).
- B. Mirror Pond was last dredged in 1984 to remove sediment. The 1984 project was funded by a federal grant, City, BPRD, and private contributions in the following percentages: Federal (48%); BPRD (19%); City (16%); Pacific Power (10%); private contributions (6%). The 1984 project was based on the 1981 Mirror Pond Rehabilitation Study, which identified 352,806 cubic yards of silt and debris for possible removal at an estimated cost of \$1,340,300. However, due to funding limitations only 60,000 cubic yards were removed at a cost of \$312,000 or \$5.20/cubic yard. Sediment was removed at an average depth of 5-6 feet starting at the Bend Hydro Dam and moving south towards the Galveston Bridge.
- C. Since the early 2000s, various groups organized by the City have studied options and developed scenarios to address sediment build-up, including the Mirror Pond Management Board, the Mirror Pond Steering Committee, and the Mirror Pond Ad Hoc Committee.
- D. In December 2013, the City Council and BPRD Board of Directors resolved to pursue the preservation of Mirror Pond and further assess related costs, and to hold discussions with PacifiCorp about the future of the Dam. In 2015, the City Council and the BPRD Board agreed with the recommendation of the Ad Hoc Advisory Committee for a preferred alternative vision for Mirror Pond, characterized as a "middle ground" between the status quo option of dredging Mirror Pond and the "natural river" option of removing the Dam and allowing the river to flow naturally. (See City Resolutions 2932, 2981; BPRD Resolution 375).
- E. The Ad Hoc Committee identified the following seven goals for the Dam and

Mirror Pond: 1) retain Mirror Pond in near historic form; 2) modify the Dam to function more like a natural part of a river environment; 3) enhance habitat; 4) enable fish passage; 5) maintain or improve public spaces; 6) reduce the frequency and quantity of future sediment removal efforts; and 7) identify funding source(s) other than tax dollars. (See Resolution 2981 and BPRD Resolution No. 375).

- F. In 2016, Pacific Power, through its Sr. Vice President, provided a public statement that it was “committed to the Newport Dam/Bend Hydro project for the long-term.”
- G. The City believes it should focus its limited staff and financial resources on areas of governance that are among the primary responsibilities of a municipality such as transportation, land use, water utilities, and public safety.
- H. Mirror Pond is an aesthetic and recreational amenity used and enjoyed by many citizens and visitors in conjunction with recreational activities or for its aesthetic qualities. Canoeing, kayaking, and floating have increased in popularity in recent years, and Mirror Pond is the terminus of BPRD’s signature “float the river” route.
- I. The responsibility for policymaking and management of public recreational facilities primarily belongs with BPRD. BPRD does not currently have jurisdiction over Mirror Pond. Through an MOU between Mirror Pond Solutions LLC (the dredging project proponents) and BPRD, certain conditions are to be satisfied in order for BPRD to take ownership of Mirror Pond.
- J. The City desires to be a good steward of natural resources and to comply with all applicable federal, state, and local laws regulations. The City will operate its transportation and storm drain systems so as to reduce the amount of pollutants to the Deschutes River and Mirror Pond to the maximum extent practicable using best management practices. To that end, the City remains committed to a robust stormwater management plan for areas of its municipal separate storm sewer system basins that drain to the river.
- K. Within the City’s role related to the Deschutes River and Mirror Pond, the City plans to conduct independent work, or work in conjunction with BPRD, on future projects to replace and/or modernize the 13 stormwater outfalls as reflected in its 2015-2030 stormwater master plan. Although cost estimates for this work vary considerably depending on number of outfalls that can actually be replaced, and if not replaced, what type of stormwater solution is deployed as a result, the Class 5 estimated cost is \$3.5 million. Additional planned and recently completed storm drainage capital improvement projects, within the basin discharging to or just upstream of Mirror Pond, will help prevent stormwater runoff and improve water quality, at a Class 5 estimated cost of \$8 million dollars.
- L. City General Fund revenues support public safety (police and fire) and street operations. In Bend, parks and recreation services and facilities are ably run by a

separate taxing district. However, the City also recognizes the importance of aesthetic and recreational amenities such as Mirror Pond as a contributor to the economy and vibrancy of Bend and Central Oregon. BPRD recognizes the important service that the City provides in managing the City's stormwater plan.

- M. BPRD provides stewardship of the banks of the Deschutes River along all District-owned or controlled properties. As a part of the Mirror Pond Vision, BPRD will be constructing a boardwalk extending the Deschutes River Trail from Pacific Park to Drake Park in areas adjacent to Mirror Pond. BPRD will also be reestablishing riparian habitat identified in the vision as an environmental benefit to the pond.
- N. The City owns and maintains a pedestrian bridge across Mirror Pond providing pedestrian access between Drake Park and Pageant Park and is a link in the City bicycle transportation plan.
- O. The City and BPRD desire a collaborative relationship with one another in order to pursue reasonable solutions to accomplish the dredging portion of the Mirror Pond Community Vision.
- P. In 2018, BPRD, Pacific Power, Mirror Pond Solutions (through public fundraising), and the City agreed to provide contributions of \$300,000 each toward the efforts to dredge Mirror Pond, with various conditions. The City intends its contribution to be included in the total amount discussed below.
- Q. The Council has the discretion to allocate unrestricted General Fund monies for any legal purpose. In its discretionary policy-making role, the Council has considered various factors and issues related to the current and future status of Mirror Pond, the City's role, and a contribution of City funding to a project to address preserving Mirror Pond, including dredging and other community goals.
- R. BPRD funds acquired from taxes must be used for park and recreation purposes. The contribution of BPRD funding to dredge Mirror Pond, redevelop the pond's riparian habitat and develop a boardwalk to fill an important gap in the Deschutes River Trail will further the recreational activities of Drake Park and Mirror Pond.
- S. The City believes any funding contribution should acknowledge what it contributed in 1984 (16% of the project cost), with an additional amount to account for the federal funding that was included in the 1984 project funding but is not currently available. Supporting an aesthetic or community icon valued by citizens and visitors to Bend, with perceived economic and environmental benefits to the community can be an appropriate use of public funds.
- T. With a rough estimated cost of \$6.7 million for a dredging project, 16% equates to approximately \$1,040,000. Because the availability of federal funds is limited, the City is willing to make a larger contribution to fill the gap and work toward a community vision for a preservation project. The City will therefore commit to

providing funding for up to 50% of the overall Mirror Pond preservation project related to the Pond and River, or \$3,000,000, whichever is less, contingent on the terms in Sections 1-7 below.

- U. The Council and BPRD Board of Directors acknowledges that this has been a long and exhaustive process, and this Resolution is intended to build on past work toward a reasonable and fair solution.
- V. The Council and BPRD Board of Directors support the entire vision developed by the 2015 Ad Hoc Committee and this resolution and the anticipated MOU and IGA are intended to move that vision forward

Based on these findings, THE CITY COUNCIL OF THE CITY OF BEND AND THE BEND PARK AND RECREATION DISTRICT BOARD OF DIRECTORS RESOLVE AS FOLLOWS:

- Section 1.
- A. The City will agree to contribute up to 50% of the overall Mirror Pond preservation project or \$3,000,000, whichever is less, from City General Fund resources, and BPRD will agree to contribute \$300,000, provided that a Memorandum of Understanding (MOU) and then an Intergovernmental Agreement (IGA), both satisfactory to the City and BPRD, are entered into between BPRD and the City, as set forth below, and the provisions of Sections 4 and 5 are met.
 - B. The City contribution, if approved, will be paid over a ten-year period through roughly equal annual payments as set forth in the IGA, unless payment can be accelerated because set aside transient room tax monies out of the discretionary General Fund allocation become available. In determining the 50% contribution to the overall project costs, the City's intent is to contribute to the overall preservation project related to the Pond and the river, but not to BPRD projects specific to trail connection/riverbank restoration.
 - C. BPRD has reserved a \$300,000 contribution through Resolution No. 418. In addition, BPRD has budgeted over \$6.5 million toward the Mirror Pond Community Vision for bank restoration, riparian habitat and Deschutes River Trail project. BPRD's intent through this collaborative effort is to contribute to the overall Mirror Pond Community Vision, but not to the City stormwater filtration or stormwater outfall improvements.
- Section 2. The City Manager is authorized to enter into an MOU with BPRD, and BPRD Executive Director is authorized to enter into an MOU with the City to conduct a public, independently-facilitated process which recognizes the extensive work and community outreach done to date, and to update the 2015 Community Vision by evaluating options for fish passage,

including modification of the dam to function more like a natural river and ways to reduce the frequency and quantity of future sediment removal efforts. This process must include an opportunity for public comment and should address the seven goals identified by the Mirror Pond Ad Hoc Committee. As part of the MOU, the City and BPRD will also work together to confirm their commitment to pursue funding for fish passage and the proposed preservation project from private and public sources, other than the City and BPRD. The MOU may be entered into by the City Manager and Executive Director consistent with this Resolution without further approval.

Section 3. The City and BPRD will enter into an IGA to accomplish the updated Community Vision for Mirror Pond, as long as documents can be negotiated that align with the following key points and the proposed process:

- A. BPRD agreement to manage, administer, and oversee any proposed project to dredge Mirror Pond consistent with public contracting law;
- B. Binding commitments by Mirror Pond Solutions and other contributors for all funding sources necessary to complete the project, aside from the contributions made herein by City and BPRD;
- C. City and BPRD are successful in entering into an MOU pertaining to Section 2;
- D. An understanding from all parties to the Mirror Pond project, that these Resolutions and subsequent MOU and/or IGA do not commit current or future governing bodies to funding the operation or maintenance of Mirror Pond; and
- E. Other provisions required by the City and BPRD, and in a form approved by the City Attorney's office and BPRD legal counsel.

This Resolution does not entitle any transfer of funds. The IGA must be reviewed and authorized by the City Council and BPRD Board prior to the commitment of any funds referenced in this Resolution for the preservation project.

Section 4. City and BPRD funding are conditioned on legally protected public use of the Project Area being donated to BPRD by the owners of the private interest in the riverbed at the completion of any dredging project, through a perpetual easement or other legal mechanism, in a form acceptable to the City and BPRD.

Section 5. Mirror Pond Solutions LLC, as the dredging project proponents and

owners of record of the riverbed, must execute release and indemnification agreements, in forms acceptable to the City Attorney's Office and BPRD legal counsel, before any City or BPRD funding is committed through a MOU or IGA.

Section 6. This Resolution is intended as a refinement and evolution of the policy direction in City Resolutions 2932 and 2981 and BPRD Resolution 418. Based on current Council and BPRD Board of Directors direction and evolving information and input, those Resolutions are superseded by the policy direction in this Resolution, except as referenced herein (such as the reference to the seven goals and "middle ground" vision—see Findings D, E and V).

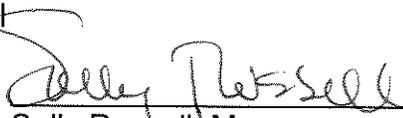
Section 7. Council and BPRD Board of Directors are hopeful that these Resolutions will move this project forward. Regardless of the outcome, Council and BPRD Board of Directors intend that the commitments and policy direction made in these Resolutions be reconsidered in no more than three years in order to continue to be effective.

Section 8. This resolution takes effect immediately on passage.

Adopted by motion of the City Council on June 19, 2019.

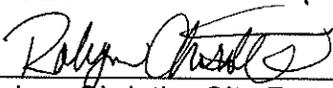
YES: Sally Russell, Mayor
Bruce Abernethy
Barb Campbell
Bill Moseley
Justin Livingston
Gena Goodman-Campbell
Chris Piper

NO: none



Sally Russell, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



Mary A. Winters, City Attorney

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Section 9 This Resolution No. 430 is adopted by the Bend Park and Recreation District Board of Directors on this 18th day of June, 2019.



Brady Fuller, Chair

ATTEST:



Don Horton, Executive Director

