



## Legislation Text

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**File #:** CU-123-20, **Version:** 1

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Metro Wastewater Reclamation District is requesting a Conditional Use Permit for a 6.4 mile long wastewater pipeline project, along Second Creek, known as the Second Creek Interceptor (Extends from E. 81<sup>st</sup> Ave. and Tower Rd to E. 120<sup>th</sup> and Wheeling Street) and the extension of the existing Sand Creek Interceptor an additional 0.8 miles (near E. 64<sup>th</sup> Ave. and York St.).

### **Summary and Background Information:**

Council voted to continue this case during the September 21 hearing to allow Metro Wastewater Reclamation District (MWRD) time to come to an agreement with the Farmers Reservoir & Irrigation Company (FRICO) regarding the crossings of the Little Burlington Ditch and O'Brian Canal. The District and FRICO have now reached an agreement to perform both crossings via open cut methods as requested by FRICO at the City Council Hearing. The executed agreements between the two parties are attached as an Exhibit.

The change from tunneling under the canal to the open cut construction method will result in a closure to East 112<sup>th</sup> Avenue in this area. The new construction method requires approximately a six-week closure of East 112<sup>th</sup> Avenue and detour around the work area (anticipated mid-October to late November 2021). A second closure is anticipated once the interceptor piping will be installed through the casing, which will require about a four-week closure of East 112<sup>th</sup> Avenue (anticipated in the fall of 2022). All road closures, traffic control plans and detours will be coordinated with City Public Works and Engineering departments. The Public Works Department does not have any objection to these new closures.

Based on the revised construction method, the District is also now requesting an extension of the work hours for the work associated with the O'Brian Canal crossing to accommodate the schedule restrictions limiting work impacting the canal to a 30-day window between October 15, 2021 and December 3, 2021. The open cut casing installation will require the District's contractor to work 24 hours a day, 7 days a week (2 shifts per day) for about one month (approximately November 1, 2021 through November 30, 2021) to meet the conditions in the agreement and applicable agency environmental schedule restrictions. Staff does not have concerns with this specific and narrowly defined exception to the permitted work hours as the construction site is in an undeveloped area approximately a quarter of a mile away from the nearest residence, an unincorporated agricultural property.

Staff has reviewed and is supportive of the application revisions proposed in order to reach the agreement with FRICO. The proposed conditions for the conditional use permit remain mainly the same as what was recommended at the September 21 meeting with the exception of adding the October 2020 resubmittal to Condition A.

The Second Creek Interceptor (SD Interceptor) and Sand Creek Interceptor System (SCIS) Improvements were recommended by the Regional Master Plan, commissioned by Metro Wastewater Reclamation District (MWRD) in collaboration with the municipalities and special districts

that MWRD serves, as the most feasible solution for adding the necessary conveyance capability to accommodate growth in the MWRD's northeastern service area.

The MWRD's proposed 17.5-mile-long SD Interceptor extends from the City of Aurora north to Adams County, with approximately 6.4 miles located in the City. The SCIS improvements include the approximately 0.5-mile segment on the District's Robert W. Hite Treatment Facility (RWHTF) property, which was previously approved by the City under a separate CUP in 2010 (CU-37-93- 10), and the approximate 0.3-mile segment on the adjacent Suncor Energy USA Refinery property being submitted under this application.

The proposed route crosses approximately 41 properties with 19 different owners within Commerce City. The proposed interceptor route crosses the Public District (Public), Agricultural District (AG), and Planned Unit Development (PUD) zone districts in Commerce City.

The proposed route originates from Brighton moving into Commerce City by heading south of I-76 just south of approximately the alignment of East 117th Avenue and heads south along the western boundary of the City's Second Creek future park and open space area. The route then crosses E. 112th Avenue and continues south along Oakwood's future Reunion Village 8 development.

The route continues east along Second Creek, crossing Chambers Road. Then the interceptor traverses the floodplain to the north of the Second Creek Village Commercial Development. The route then crosses East 104th Avenue just to the west of Second Creek at approximately the alignment of Joplin Street. The Interceptor continues south, clipping the north east corner of the Stuart Middle School site and moving south on west side of Second Creek down to East 96th Avenue.

The interceptor crosses East 96th just to the east of the former Buckley Road alignment continuing south along the east side of City-owned Parcel K open space portion of the Buffalo Highlands Development. The route crosses East 88th Avenue and continues along Second Creek through the Nexus North and Nexus developments, crossing East 83rd/84th Avenue and Tower Road at approximately the alignment of East 82nd Avenue. Another branch continues south from East 83rd/84th Avenue across East 81st Avenue, through US Airport parking in unincorporated Adams County and then into the City and County of Denver. The branch that heads East, across Tower Road, along Second Creek through the Allied Waste landfill site and then into the City and County of Denver.

A Conditional Use Permit (CUP), as defined by Section 21-3230 of the Land Development Code, is required for this project as a public utility installation pursuant the Land Use Table (Section 21-5200). A conditional use permit process allows for special consideration of certain specified uses that may or may not be compatible with an area, depending on the specifics of the particular project. If granted, a conditional use permit will lapse in 2 years if not commenced or if the use is abandoned or discontinued for 180 days or more.

In addition to requiring a Conditional Use Permit (CUP) for a public utility (CU-123-20), the Interceptor falls within the City's permitting authority as a matter of "state interest" (Chapter 22), also known as 1041 regulations from the bill that created the authority. The City and MWRD elected to pursue an Intergovernmental agreement to address the 1041 regulations for the Second Creek Interceptor project.

The Planning Commission has evaluated all of the information contained within the applicant's proposal, request, and application materials, referral and agency comments, and public input associated with this request. In addition, the Planning Commission has reviewed the project against the Comprehensive Plan and City's Land Development Code, specifically as it relates to findings for the granting or denial of a Conditional Use Permit. In Planning Commission's assessment, the proposed location and alignment may be supported.

Staff is recommending Council consider approval conditions that include minor changes from the ones approved by Planning Commission. Changes were made to the conditions primarily to align the conditions with 1041 IGA for consistency, to improve formatting, and to correct typographical errors. The IGA was still be negotiated at the time the case was heard at Planning Commission, resulting in the need for minor changes to make sure the notification time frames and other issues were treated the same. Those changes are noted and explained in the attached staff report starting on page 27.

**Staff Responsible (Department Head):** Jason Rogers, Community Development Director

**Staff Member Presenting:** Jenny Axmacher, Planner

**Financial Impact:** N/A

**Funding Source:** N/A

**Staff Recommendation:** Approval with Conditions, per Planning Commission recommendation with updated conditions.

**Suggested Motion:** I move to approve CU-123-20 with the conditions outlined starting on page 24 of the staff report.