



Legislation Text

File #: ID-431-20, **Version:** 1

Department of Community Development

Reference: Second Creek Interceptor Conditional Use Permit

To: Mayor Gregory Mills and Members of City Council

Through: Marv Falconburg, Acting City Manager

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PURPOSE

As outlined in the City of Brighton's *Land Use and Development Code*, a Conditional Use Permit (CUP) is required to be reviewed and approved by the City Council by Resolution after a public hearing has been held.

The CUP is the required process for Metro Wastewater's Second Creek Interceptor. The Second Creek Interceptor is a pipeline that goes from the Aurora Lift Station, through the Denver International Airport, through Adams County, through Commerce City and finally through the City of Brighton to connect to the existing lines that go to the Northern Treatment Plant located at Baseline Road and U.S. Highway 85.

NEW CODE TRANSITION STATEMENT

In the City's transition to the newly adopted code, applications submitted prior to the effective date of January 1, 2020, were reviewed by staff using the previous Land Use and Development Code and such sections and criteria are referenced in this report.

STRATEGIC FOCUS AREA

Supportive, Sustainable Infrastructure

BACKGROUND

The Metro Wastewater Reclamation District (Metro District) is constructing the Second Creek Interceptor (SD Interceptor), a pipeline that will provide a regional solution to conveyance of wastewater in the northeastern portion of the District's service area. A Conditional Use Permit (CUP) application and submittal is required for portions of the SD Interceptor located in the City of Brighton. As part of the regional planning for the Northern Treatment Plant (NTP), a Regional Master Plan (RMP) was developed through collaborative efforts of Aurora, Brighton, Denver, Denver International Airport (DEN) and South Adams County Sanitation District (SACWSD).

The SD Interceptor Project includes design and construction of the Metro District's proposed 17.5-mile-long SD Interceptor extending from the City of Aurora to Adams County, which includes approximately 2 miles in Brighton. The project benefits and collaborative efforts include the following:

- Recommends the alignment for the SD Interceptor on private parcels north of the E. 120th Avenue right-of-way (ROW);
- Minimizes impacts on the Prairie View High School and Prairie View Middle School properties through alignment

selection and by limiting construction to summer months;

- Supports the potential future decommissioning of Brighton's E. 120th Avenue and Peoria Street lift station by the City and the conversion of the pumped wastewater conveyance system to gravity flow to reduce operations and maintenance costs;
- Avoids disruptions to utilities and traffic along E. 120th Avenue between Peoria Street and Potomac Street by using trenchless construction under E. 120th Avenue; and
- Coordinates with future development plans.

SURROUNDING LAND USES

Please see Exhibit A.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM / STAFF ANALYSIS

Comprehensive Plan:

The SD Interceptor Project is consistent with the Future Land Use Map of the Comprehensive Plan and has different Land Use designations such as Estate Residential, Medium Density Residential, Mixed-Use Commercial, Mixed-Use Residential, and Public Land.

Existing Land Use:

Land uses where the alignment crosses through Brighton are natural vegetation, recreation, low-density residential, public schools, and agricultural use. The segment within Brighton is mainly located between E. 120th and E. 124th Avenues. Land within the Project corridor is zoned for businesses (both commercial and industrial) and Planned Unit Development (PUD). In addition, the SD Interceptor will pass through the School District 27J property and Orchard Church property along E. 120th Avenue.

Land Use and Development Code:

Section 17-8-60 Conditional Use states, "A conditional use is an additional use of land, structures or both that may be allowed with restrictions deemed necessary upon the review and approval of City Council. The conditional use is created in order to recognize that a use or structure may be allowed within a zone district on a specific parcel of ground in an area if restrictions and/or conditions are placed upon such use in order to ensure that such use or structure is compatible with the area in which it is intended to be located."

The City Council in making its decision shall use the following criteria (Section 17-8-60.d):

- 1.) *The proposed use shall be consistent with the Brighton Comprehensive Plan and other master plans;*
The proposed CUP complies with the Future Land Use Map as set forth in the *Comprehensive Plan*; almost all direct Project effects on existing land uses will be temporary to accommodate a standard construction width of 120 feet, which eliminates most ROW corridors from consideration because of existing utilities.
- 2.) *The location, size, design, and operating characteristics of the proposed use or structure shall be compatible with the existing and future land uses within the general area in which the proposed use or structure is to be located and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on conditional uses or structures to protect the public health, safety, and welfare by mitigating impacts to achieve compatibility and complementary design, especially where a nonresidential use is located adjacent to a residential use;*
The proposed construction of the SD Interceptor is designed to minimize impacts to vehicular traffic. Major roadway crossings near Brighton include Brighton Road, US 85, Peoria Street, E. 120th Avenue, and State Highway (SH) 2. Open cut construction will only be employed at the Peoria Street crossing. The remaining crossings will be accomplished using trenchless methods, and should not require any lane closures. Noise from construction will be similar to noise typical of gravel mining operations in the project vicinity.
- 3.) *The site shall be physically suitable for the type and intensity of the proposed conditional use or structure;*
The SD Interceptor will accommodate regional growth and protect the region's health and environment by cleaning water and recovering resources.

4.) *The proposed conditional use or structure shall not adversely affect traffic flow or parking in the neighborhood;* Temporary construction impacts will include nuisance effects, such as noise, vibration, and traffic and direct effects caused by landscaping disturbances and restoration, as well as the interceptor installation.

5.) *The conditional use is consistent with the purpose and intent of the zoning district and overlay district in which it is located.*

The SD Interceptor alignment was developed based on engineering analysis, aerial imagery, topography, site observations, identified wetlands, discussions with stakeholders, and potential connectors. Additionally, Metro Wastewater has been in communication with Village at South Gate, Fuller Estates East, and planned residential development adjacent to minimize and limit any potential impacts.

Development Review Committee (DRC) Review:

The Development Review Committee (DRC) and referral agencies have reviewed the CUP and all comments have been resolved. A complete list of comments and the agencies who made them are available upon request.

PUBLIC NOTICE AND INQUIRY

As required by Section 17-8-30(f) of the *Municipal Code*, mailings were sent to all property owners within 300' of this proposed CUP. These mailings were sent out on August 17, 2020 and included a letter describing the proposed CUP as well as the time and place for the public hearing. Also included with the letter was a map of the subject area. Along with the public mailings, public hearing signs were posted on August 10, 2020, along the northeast corner of 120th Avenue and Peoria Street and the northeast corner of 120th Avenue and Potomac Street adjacent to the proposed project. Finally, a notice was published in the *Brighton Standard Blade* on August 17, 2020, to give notice to those who are not affected property owners or those who do not drive near this property on a consistent basis. As of the date of this staff report, no formal comments have been received by staff. Please see all public notice attachments for further detail.

SUMMARY OF FINDINGS AND STAFF RECOMMENDATION

Staff finds that the proposal meets the review criteria found in Section 17-8-60 of the *Land Use and Development Code* and therefore recommends approval of this CUP.

A draft resolution has been provided to the City Council should it decide to proceed with the application as presented. The draft resolution contains the following ten conditions:

1. **Metro Wastewater shall be responsible for obtaining all necessary easements to construct the pipeline alignment of the SD Interceptor in strict compliance with the approved Site Plan;**
2. **Any additional modifications made during the preliminary design phase construction, or expansion of the SD Interceptor beyond what is depicted in the Site Plan, shall require a subsequent Conditional Use review by the City Council;**
3. **All disturbed land shall be restored back to original condition with a ground cover that matches original condition;**
4. **Metro Wastewater shall be responsible for construction impacts, interceptor alignment, easement obtainment, and restoration plans;**
5. **Any and all signs on the Property shall be approved by the City of Brighton prior to installation, and shall conform to applicable provisions of the Sign Code in effect at the time of application;**
6. **Metro Wastewater is responsible for easement acquisition and negotiations with private landowners, permits, and other approvals;**
7. **Metro Wastewater shall obtain building permits and pay all applicable fees before construction within the City of Brighton's boundary;**
8. **Any approvals by the City Council will be considered null and void should easement acquisition not be obtained;**
9. **Metro Wastewater is required to get all Rights-Of-Way (ROW) permits in advance of the closing of any (ROWs), located within the City of Brighton's area;**
10. **A signed and completed contract or easement, between Metro Wastewater and the owner(s) of each property within the City of Brighton boundary, allowing the construction of the pipeline on private property shall be provided to the City of Brighton before construction of said interceptor begins.**

OPTIONS FOR COUNCIL CONSIDERATION

The City Council has four options when reviewing this CUP application. City Council may:

- 1.) Approve the Second Creek Interceptor Conditional Use by resolution;
- 2.) Approve the Second Creek Interceptor Conditional Use by resolution with modifications;
- 3.) Deny the resolution with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date.

ATTACHMENTS

- Draft City Council Resolution
- Applicant's Vicinity Map
- Neighboring Property Owner Notification
- Addresses of Property Owners Notified
- Buffer Map of Mailing Area
- Newspaper Notice
- Newspaper Publication Proof
- Affidavit of Sign Posting
- Draft City Staff PowerPoint

EXHIBIT
Exhibit A



