



DENVER
THE MILE HIGH CITY

Land Acquisition Ordinance Request for Sand Creek Project

FOR CITY SERVICES VISIT | CALL
DenverGov.org | **311**

Background: CCD's efforts along Sand Creek have focused on providing for:

- Safe flood conveyance and mitigating flood hazards;
- Improving environmental health and water quality;
- Developing a regional public trail; and
- Maintaining habitat connectivity



Location: Part of 8101 East 40th Ave in the Stapleton Neighborhood

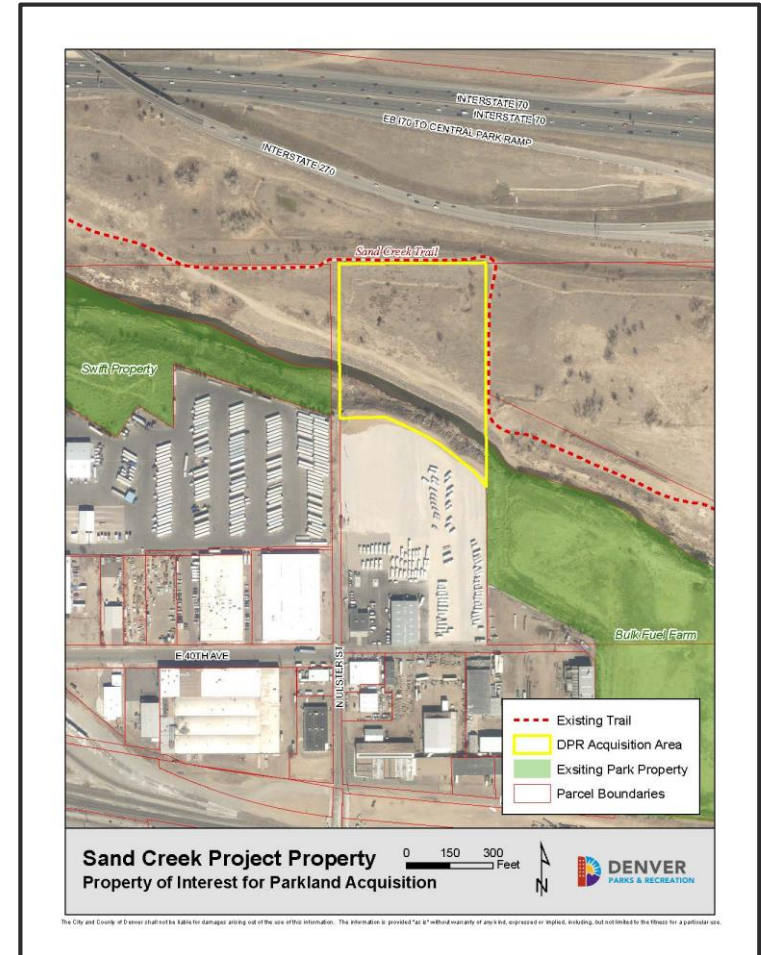
Size: 6.79 acres

Zoning: I-B

District: 8

Funding Sources: \$250,000 from MHFD & 2020 Parks Legacy Fund (2A)

Existing Use: Vacant land predominantly in the Sand Creek 100-year floodplain





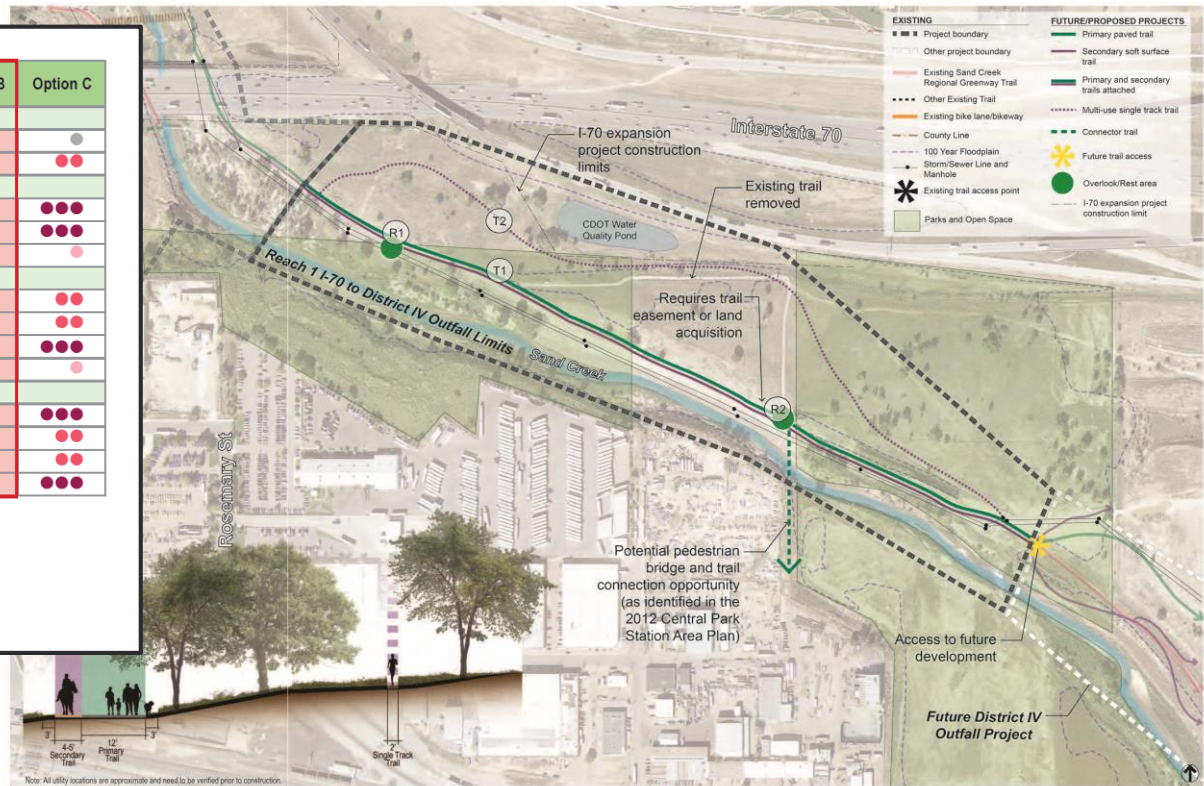
Improvements: Metro Wastewater sanitary line runs along the north side of Sand Creek within the property. The line was severely damaged during the 2013 floods and has subsequently been repaired and heavily armored

- Acquisition will enable CCD to realign and improve the Sand Creek Regional Trail—a recommended alternative and preferred option (Option B) in the 2016 Sand Creek Regional Greenway Trail Master Plan and a partnership project with Mile High Flood District (MHFD)
- The project is currently at 30% design and construction is expected to begin in October 2020
- Immediate acquisition is critical for utilizing MHFD funding, finalizing the design plans and beginning construction later this year
- Dedicated funds are already committed to this project

OPTION B CONCEPT ALTERNATIVES - REACH 1 I-70 TO DISTRICT IV OUTFALL

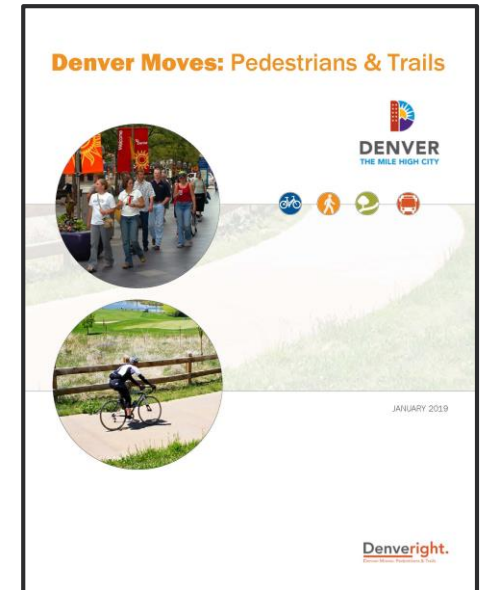
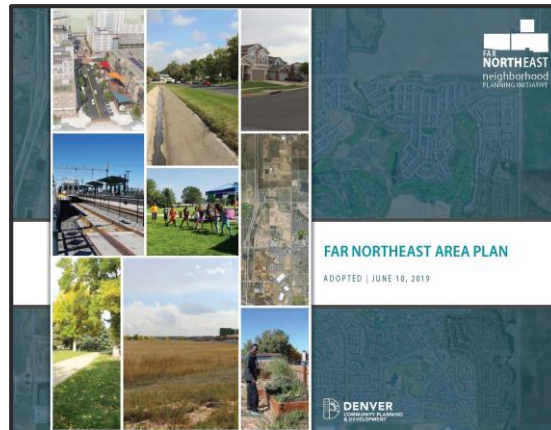
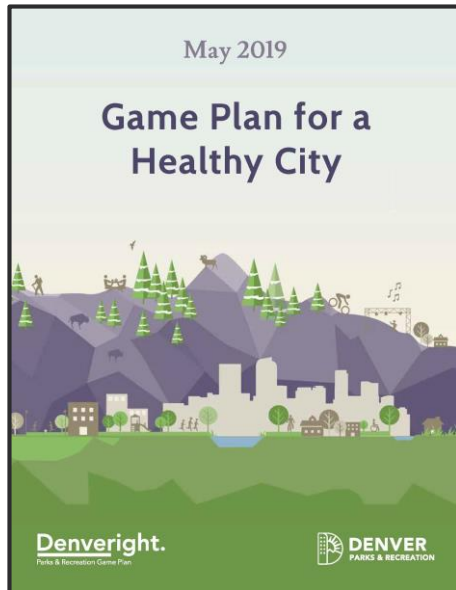
Evaluation Criteria	Option A	Option B	Option C
Safety			
Flood/Inundation	●	●●	●
General Safety	●	●●	●●
Maintenance			
Reduced maintenance	●●●	●●●	●●●
Trail durability	●●●	●●●	●●●
Less flooding/erosion/debris on trail	●	●	●
Experience			
Improved connectivity	●●	●●●	●●
Enhanced aesthetic and enjoyment	●	●●●	●●
More sinuous trail	●	●●●	●●●
Usable more frequently during/just after flood events	●	●	●
Costs and Value			
Phased construction with available funding	●●●	●●●	●●●
Construction feasibility/efficiency results in cost savings	●●●	●●●	●●
Lower maintenance/operations costs	●●●	●●●	●●
Addresses issues and capitalizes on opportunities	●	●●●	●●●

●● Moderately Addressed ●●● Fully Addressed ● No Change
Option B = Preferred Alternative



- Acquisition will also enable CCD to maintain open space to limit flood hazards and protect critical and unique habitats; provide for overbank storage; and create restoration opportunities for water quality and habitat improvements (collectively, “Public Uses & Purposes”)

- Lastly, acquisition will advance and accelerate recommendations from several CCD plans:



Land Acquisition Ordinance

- CCD uses a Land Acquisition Ordinance (LAO) to acquire land for critical projects that provide a public purpose
- A LAO grants CCD the authority to acquire needed property through negotiated purchase or condemnation ***For more information on LAO's please see the Appendix**
- Only a portion of one property (Raiatea LLP) is impacted

- Due to the necessary realignment of the Sand Creek Trail and flood mitigation, the Division of Real Estate requests moving forward with a Land Acquisition Ordinance so that CCD may proceed negotiating with the owner
- Funding is Parks Legacy Fund (2A) and \$250,000 from MHFD



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APPENDIX

Right of Way Process including Land Acquisition Ordinance

February 25, 2020

The government cannot take private property for a public use without just compensation...

- fifth amendment, takings clause

Condemnation is
authorized by the
constitution and a
creature of Statute

Read the Statute:
- C.R.S. 38-1-101 et seq



- The City uses a Land Acquisition Ordinance (LAO) to acquire land for transportation projects, including roadway and pedestrian projects, and other key City projects which provide a public purpose.
 - Must have a public purpose.
 - Grants authority to acquire needed property through negotiated purchase or condemnation.
 - Can include full or partial property acquisition or temporary or permanent easements.
 - City cannot acquire more property than is anticipated for use (not a mechanism to land bank).
 - City will sometimes acquire a whole property when only a portion is needed if the remainder property would become useless to the land owner
 - Individual transactions do not come to City Council for approval.
 - Funding for acquisition is included as part of the project budget.
 - Large roadway projects typically use vesting deeds to describe the LAO area. This is due to timing of the engineering design and approval and construction schedule.
 - Describes a broader area within which acquisitions will happen.
 - Smaller sidewalk and pedestrian projects use legal descriptions as described in the right of way plans to describe the LAO area.
 - More precise; limited to a more specific area for acquisition.

- Property owner and tenant, if applicable, are notified in writing of the project through a Letter of Intent.
- City orders an appraisal to determine fair market value based upon the engineering plans and legal descriptions defining the required area.
- City sends a Relocation General Information Notice, if applicable, and the Acquisition Offer Letter Packet based upon the fair market value.
- Owner has the right to obtain its own appraisal at City's expense.
- City negotiates with Owner to come to a settlement agreement.
- If Owner accepts offer, City prepares Purchase Agreement and moves forward with acquisition, relocation and closing.
- City sends a Final Offer and Last and Final Offer Letter if there has been no response from the owner during the initial 30 day period.

- If owner rejects offer or does not respond to offer, City moves forward with condemnation.
 - Requires approval from the Mayor to condemn.
 - Documents are filed with the Courts.
 - An Immediate Possession Hearing (IP) date is scheduled.
 - IP Hearing authorizes possession of the property; fair market value is deposited with the Courts.
 - Resolution through a settlement or trial.

RIGHT OF WAY DEFINITIONS

- **Eminent domain:** The legal process that allows the government to take title and possession of private property from the landowner for a public purpose or necessity. In the United States, just compensation must be paid for private property acquired through eminent domain.
- **Condemnation:** The legal process of acquiring private property for public use or purpose through the acquiring agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An acquiring agency then goes to court to acquire the needed property.

- **JUST COMPENSATION:** The price the Agency must pay to acquire real property under eminent domain. The price offered by the Agency is considered to be fair, equitable and “just” to both the property owner and the public. The Agency’s offer to the owner is determined as “just compensation” and may not be less than the amount established in the approved valuation report as the fair market value for the property. If you and the Agency cannot agree on the amount of compensation to be paid for the property needed, and it becomes necessary for the acquiring Agency to use the condemnation process, the amount determined by the court is the just compensation for your property. See also definition of “Fair Market Value” (Reasonable Market Value) above.

- **FAIR MARKET VALUE (REASONABLE MARKET VALUE):** For purposes of eminent domain acquisition in Colorado, the term “Fair Market Value” is considered to have the same meaning and definition as the term “Reasonable Market Value” described in Colorado Jury Instructions for eminent domain acquisition: “Reasonable [Fair] Market Value means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.”
- **Uniform Relocation Act:** Ensures fair compensation and assistance for those whose property was acquired for public use under "eminent domain" law.

- **Fee Interest:** The legal possession of both the surface and mineral rights for a property.
 - Full take: City acquires entire parcel.
 - Partial take: City acquires only what it needs and does not negatively impact the remainder of the parcel.
- **Easement:** An interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.
 - Temporary easement: Typically needed only during construction.
 - Permanent easement: Attached to the deed and continues to affect the land through subsequent changes in ownership.