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MEMORANDUM

**DATE:** April 16, 2020

**TO:** Mayor and City Councilmembers

**THRU:** Darin Atteberry, City Manager <sup>DS</sup>  
 Jeff Mihelich, Deputy City Manager <sup>DS</sup>  
 Kevin R. Gertig, Utilities Executive Director <sup>DS</sup>

**FROM:** Carol Webb, Deputy Utilities Director <sup>DS</sup>

**RE:** Local Review Processes for the Northern Integrated Supply Project (“NISP”)

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**Bottom Line**

The Northern Colorado Water Conservancy District (“Northern Water”) is beginning local review processes for NISP, including: Larimer County’s pending “1041” permitting process; the City’s “SPAR” review; and certain property rights acquisition processes.

These processes provide various opportunities for the City staff to comment on, and in some cases, provide approvals on certain aspects of NISP in relation to its development and construction impacts within the Fort Collins Growth Management Area (“GMA”) and its compliance with City Code and the Land Use Code.

City staff intends to actively engage in these processes in alignment with City Council’s current position on NISP, stated in City Council Resolution 2018-093 as: “the City Council cannot support NISP as it is currently described and proposed in the Final Environmental Impact Statement (FEIS) with the understanding that the City Council may reach a different conclusion with respect to a future variant of NISP and its mitigation plan, if such variant and associated mitigation address the City’s fundamental concerns expressed in the City’s comments to the DEIS, SDEIS, the State Fish and Wildlife Mitigation and Enhancement Plan, and FEIS through improved mitigation or other means.”

City staff will ensure that City Council and relevant City Boards and Commissions<sup>1</sup> are informed and/or engaged in local review processes and City staff comments on NISP. The City and Northern Water have not begun discussions on these items. Any proposed acquisition of real property rights for NISP on City-owned land would require City Council approval.

<sup>1</sup> Relevant City Boards and Commissions include: the Planning and Zoning Board; the Land Conservation and Stewardship Board; the Natural Resources Advisory Board; and the Water Board.



## **Background**

NISP is a proposed water supply and storage project that will serve 15 communities and water districts in northern Colorado (including the Fort Collins-Loveland Water District that serves portions of southeast Fort Collins and the GMA). Northern Water is the proponent of NISP on behalf of the 15 participant communities and districts that will receive water from NISP.<sup>2</sup>

## **Federal and State Permitting**

NISP requires various permits and approvals before it can be constructed and operated. NISP has been undergoing federal and state permitting for several years. Northern Water has been in the federal permitting processes for NISP since 2004, including for a “404 Permit” under the federal Clean Water Act. A record of decision on the 404 Permit is anticipated to be released this year.

Northern Water has also been undergoing state permitting processes in recent years, including for the Fish and Wildlife Mitigation and Enhancement Plan (approved in 2017) and the “401 Certification” for water quality (acquired earlier this year).<sup>3</sup>

## **Local Review**

Northern Water is now turning to the local review processes for NISP. As described in more detail below, these local review processes are generally narrower in scope than the federal and state processes, focusing on more specific issues, such as pipeline routes.

These local review processes include:

1. Larimer County’s pending “1041” permitting process;
2. The City’s Site Plan Advisory Review (SPAR); and
3. Acquisition of certain real property rights.

## **Larimer County’s “1041” Process**

NISP requires a “1041” permit from Larimer County under its Land Use Code.<sup>4</sup> Larimer County’s 1041 permit process is designed to ensure compliance with local master plans and environmental, public health, and safety standards while balancing costs and mitigation measures for development and activities of statewide interest as defined by Colorado statutes.

Larimer County has identified the City as a referral agency for the NISP 1041 permit and is requesting comments on the NISP 1041 permit application. Like other 1041 permit referrals received from Larimer County, the scope of the City’s review and comments will be limited to the development, construction, and impacts within the GMA. Specifically, the scope of the City’s review includes;

- installation of a new diversion structure on the Cache la Poudre River just upstream of Mulberry Street;

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<sup>2</sup> Various items related to NISP have been brought to City Council over the years and those materials provide lots of additional background that will not be restated here. However, those materials can be provided upon request.

<sup>3</sup> The State’s issuance of the 401 Certification for NISP has been appealed.

<sup>4</sup> Some of the NISP infrastructure (such as various pipelines and the proposed Galeton Reservoir) extends into Weld County. NISP may also thus need a 1041 permit from Weld County, though that is beyond the scope of this memo.



- temporary impacts from the installation of underground pipelines across private property and several City-owned natural areas;
- installation of above ground infrastructure near the intersection of Lemay Avenue and Mulberry Street; and
- associated impacts to traffic, utilities, engineering, and stormwater.

A map is attached indicating the current proposed NISP conveyance alignment within the GMA.

While the scope of Larimer County's 1041 review also includes recreation on Glade Reservoir and a northern pipeline route and realignment of seven miles of Highway 287, these impacts fall outside of the GMA and is not within the scope of City staff's analysis.

City staff comments on the 1041 application will be sent to Larimer County as part of their public review process, which will eventually include public hearings before the Larimer County Planning Commission and the Larimer County Board of County Commissioners. The deadline imposed by Larimer County for submittal of 1041 comments by referral agencies (such as the City) is mid-May. City staff comments will be technical in nature and in alignment with the City's current position on NISP, as stated in City Council Resolution 2018-093.

While the short timeline for submittal of comments does not allow for approval by City Council, City staff will provide a copy of the technical comments to City Council and to the Land Conservation and Stewardship Board, the Natural Resources Advisory Board, the Water Board, and City Council prior to submittal.

Comments from the City (in addition to the technical comments provided by City staff) may also be provided at the upcoming public hearings including at the tentatively scheduled July 8 Larimer County Planning Commission meetings and the August 17 meeting of the Larimer County Board of County Commissioners.

### **City's "SPAR" Review**

The portions of the NISP project that are in the Fort Collins city limits, such as piping or diversion structures, will be subject to the City's Site Plan Advisory Review ("SPAR") process. A SPAR is the City's local review of development by a public entity. Often called a "location, character, and extent" review, the process is defined by state statutes and requirements. A SPAR application will be reviewed for consistency with the City's land use designations as outlined in *City Plan* (our comprehensive plan), as well as adherence to design, landscape, and architectural standards, and the identification and mitigation of impacts to local facilities, infrastructure, and environment.

The Planning and Zoning Board is the designated decision-maker for SPAR application, which must be reviewed and processed within 60 days of the City receiving the application. A minimum of 10 days prior to submittal of a SPAR application, a neighborhood meeting must be held consistent with adopted notification requirements. In light of light of COVID-19-related distancing restrictions, City staff anticipates that the neighborhood may be in a "virtual" format given the anticipated date of the SPAR submittal. The SPAR process culminates in a public hearing where the Planning and Zoning Board may approve or disapprove the application. The



governing body of the public entity submitting the application (in this case the Northern Water Board of Directors) may overrule a disapproval by the Planning and Zoning Board by a two-thirds vote. The SPAR Review for NISP is tentatively scheduled for the July 16 Planning and Zoning Board meeting.

Staff will provide a copy of the SPAR application and minutes from the Planning and Zoning Board meeting to City Council.

SPAR comments will be technical in nature and in alignment with City Council's current position on NISP.

**Property Rights Acquisition**

Northern Water will require various real property rights for portions of NISP, such as ownership of some land in fee, and various easements. Most relevant to the City is Northern Water's need to acquire real property rights on City-owned land and in City right-of-way near the intersection of Lemay Avenue and Mulberry Street, where Northern Water would divert NISP water from the Cache la Poudre River.

The City and Northern Water have not yet begun those discussions. Any acquisition of real property rights for NISP on City-owned land would require City Council approval.

pc: Cameron Gloss, Manager, City Planning  
Ryan Mounce, City Planner  
John Stokes, Deputy Director, Community Services  
Jennifer Shanahan, Sr. Specialist, Sciences  
Eric Potyondy, Assistant City Attorney  
Brad Yatabe, Assistant City Attorney



# NISP Alignment



- Legend**
- Conservation Easements
  - Natural Areas**
    - Natural Area (City of Fort Collins)
    - State, County or Other Municipal O
  - Meadow Springs Ranch (City c
  - Growth Management Area
  - City Limits
  - Citations

1:27,437



1.0 0 0.50 1.0 Miles

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
City of Fort Collins - GIS

This map is a user generated static output from the City of Fort Collins FCMaps Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**Notes**