

RESOLUTION 2012-001
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING AN UPDATED POLICY FOR THE REVIEW AND APPROVAL
OF EASEMENTS ON CITY NATURAL AREAS AND CONSERVED LANDS

WHEREAS, the City has acquired and designated natural areas and open space properties for the benefit of the citizens of the City, using multiple local, county and state funding sources intended for the conservation of natural areas and open lands; and

WHEREAS, the City is responsible for managing its natural areas and other conserved lands in a manner that protects the natural features and functions for which those properties were acquired; and

WHEREAS, the City from time to time receives requests for easements and other encroachments on City natural areas and other conserved properties, which requests are typically reviewed by City Natural Areas Program staff, the Land Conservation and Stewardship Board, and such other interested City staff or advisory boards or commissions as may be appropriate given the specific circumstances; and

WHEREAS, after staff and advisory board review, easement requests are then presented to the City Council for approval pursuant to City Code Section 23-111; and

WHEREAS, in July 2011, the City Council adopted Resolution 2001-094, establishing a policy for review and approval of easements on City natural areas and open lands, in an effort to document a standardized method of processing and evaluating such requests for easements and encroachments; and

WHEREAS, as the City has acquired more natural areas and other conserved properties, and as development pressure in the Fort Collins area has continued to increase, the number and frequency of requests for such easements and encroachments has steadily increased, and will likely continue to increase; and

WHEREAS, based on the City's growing experience with the management and review of easements on City property, and particularly on natural areas and conserved lands, staff has developed an updated policy outlining the various requirements, considerations and standards that will serve as a guideline in the future processing of easement requests, which policy is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Easement Policy"); and

WHEREAS, at its work session on November 30, 2011, the City Council reviewed a draft of the Policy; and

WHEREAS, the Land Conservation and Stewardship Board discussed and reviewed a draft of the Policy at its regular meetings on December 14, 2011, and voted to recommend that the City Council approve the Easement Policy; and

WHEREAS, in light of the comments received by staff from the Land Conservation and Stewardship Board and from the City Council, staff has refined and added language to the Easement Policy to clarify and describe expectations regarding certain items, including the addition of a requirement for a public meeting to be conducted by the party requesting an easement, language regarding easements related to oil and gas and minerals exploration, and other various items; and

WHEREAS, the City Council believes that the adoption and implementation of the Easement Policy will provide clear guidelines for City staff and for persons seeking to acquire easements on City natural area or other conserved property, and will assist with the protection of those properties and facilitate the effective and efficient processing of requested easements and encumbrances; and


WHEREAS, for the foregoing reasons, the City Council wishes to approve the Easement Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby approves and adopts the Easement Policy.

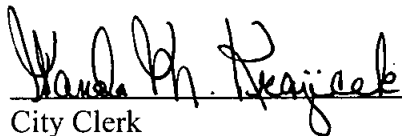
Section 2. That the City Council hereby directs the City Manager to receive, review and present for City Council consideration as appropriate in accordance with the Easement Policy, requests for easements on City properties acquired with funds dedicated to the acquisition of natural areas and other conserved property, properties otherwise managed and operated by the City for natural areas purposes, and properties on which the City has acquired a conservation easement.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 3rd day of January A.D. 2012.



Mayor

ATTEST:



City Clerk



**CITY OF FORT COLLINS
NATURAL AREAS AND CONSERVED LANDS
EASEMENT POLICY**

Adopted January 3, 2012

PURPOSE:

The purpose of the policy statement is to clarify the policies and procedures of the City of Fort Collins ("City") with respect to requests for easements or rights-of-way that affect publicly owned Natural Areas or other lands that are managed by the Natural Resources Department; lands owned in part by the Natural Resources Department; and private lands with Conservation Easements held by the Natural Resources Department. The policy does not apply to requests for easements or rights-of-way on or across other lands owned by the City.

APPLICABILITY:

The policy applies to requests for new easements or rights-of-way and to projects within existing easements, as appropriate, which provide for a wide variety of purposes, including without limitation, streets, water, sewer, drainage, flood control, electric power, wind generation, solar generation, pipelines, oil and gas and minerals exploration, and telecommunications facilities. The policy applies to projects of the City as well as those proposed by other public entities, such as special Utility Districts, and private parties. The policy does not apply to trails, parking lots, interpretive features or other facilities that are proposed as part of the management of public natural areas.

GENERAL POLICY:

Most of the natural areas and other conserved lands addressed by these policies were acquired by the City with dedicated funds from sales taxes that were approved by the voters of Fort Collins or Larimer County for the specific purpose of protecting natural areas and conserved lands. These lands are part of the fabric of the Fort Collins community, and are viewed as a type of "community facility" intended to meet specific community goals.

For natural areas, the goal is to *"preserve and protect natural areas within Fort Collins and the Community Growth Management Area to provide habitat essential to the conservation of plants, animals, and their associated ecosystems and to enrich the lives of citizens by providing opportunities for education, scientific research, nature interpretation, art, fishing, wildlife observation, hiking and other activities."*

For other types of conserved lands, e.g., agricultural areas, lands are protected to shape the physical structure of the community: These lands *"provide the community with a well-defined edge, establish community separators, direct growth, and preserve rural character."*

Requests for easements or rights-of-way that affect natural areas or other conserved lands must be considered within this context. Accordingly, the general policy is to avoid, to the

maximum extent feasible, granting easements or rights-of-way for activities that will adversely affect the use of the land for meeting the community's goals for natural area protection or community shaping. Where easements or rights-of-way are authorized by ordinance of the City Council, the general policy is to minimize the impact on the natural area or the community, to the maximum extent feasible, by limiting the size and visibility of the area affected, managing construction or other human activities with respect to their timing, duration, and frequency of occurrence, and restoring affected areas to a condition that is equal to or better than the condition at the time the easement is granted.

Because the natural areas and other conserved lands owned by the City are in many instances within an urban context, it is recognized that easements and rights-of-way may be necessary to allow for the orderly development of the community in accordance with the adopted Plan Fort Collins (2011). Individual easement requests will be evaluated in accordance with both the general policy and with the specific policies listed in following sections.

In addition, many properties owned by the City were subject to easements and rights-of-way granted by prior owners at the time the City acquired them. The City will take advantage of any opportunities to establish terms and conditions or specific project plans consistent with the terms of this Policy in connection with any such prior

In connection with any work anticipated to take place within an existing easement, the City will establish a mutually agreed plan for notification and consultation regarding the work. The City will negotiate with the easement holder to establish a process for advance coordination, scheduling and planning for avoidance of impacts and mitigation, if necessary.

SPECIFIC TYPES OF FACILITIES:

Public Streets. New public highways, roads, or streets will not be allowed within City-owned natural areas or conserved lands, except for those specifically identified in the adopted City Master Street Plan or comparable Master Transportation Plan adopted by the appropriate governing body in cases where the natural area or conserved land is located outside of the city limits of Fort Collins. Widening or other street improvement projects on existing streets within natural areas or conserved lands will be allowed, consistent with the City Master Street Plan or comparable adopted Master Transportation Plan. The City will work to influence the alignment and design of any highway, road, or street improvement so as to avoid or minimize the effect on the natural area or conserved land.

Private Streets or Other Private Access. Requests by private parties for private streets or access easements to cross natural areas or conserved lands in order to gain access to a private parcel of land will not be considered unless crossing the City's property is the only feasible means of providing access to a legal parcel of land, or unless determined to be beneficial for the Natural Areas Program in the specific circumstances.

Overhead Electric Power, Telephone, or Cable Lines. New overhead cable lines will not be allowed within any City-owned natural area or conserved land, unless determined to be beneficial for the Natural Areas Program in the specific circumstances. Replacement of existing overhead cables with underground cables will be encouraged unless the installation of underground lines will result in adverse impact to the natural area that is inconsistent with these policies. Use of the latest technology reasonably available will also be encouraged.

Any change in above ground features (number of poles, pole height, number of wires, etc) within easements granted by the City or granted prior to City ownership of the land (to the extent there is an opportunity to negotiate or impose new conditions) will require review and approval by the City.

Aboveground Structures. New buildings or other structures, including without limitation, towers, transmitters, receiving stations, tanks, substations, or billboards, other than those of the City, will not be allowed on City-owned natural areas or conserved lands. The City will seek and take advantage of opportunities to require or negotiate for the undergrounding, avoidance or removal of above-ground structures associated with existing infrastructure.

Underground Utility Cables or Pipelines. Consistent with standard practice within Fort Collins, underground utility cables (e.g., electric, telephone, fiber optic, etc.) and pipelines (e.g., gas, water, sewer) will be located within the street and utility right-of-way adjacent to the natural area or conserved land. In instances where the existing right-of-way does not conform to the planned future street right-of-way as depicted on the applicable adopted Master Transportation Plan, cable or pipeline easements will be located parallel to the existing roadway and within the area encompassed by the future street and utility right-of-way.

Some larger utility transmission cables or pipelines are not typically placed beneath streets due to reliability or safety concerns. In instances where the cable or pipeline cannot safely be placed within the road right-of-way, it will be located as close as practicable, and parallel to the road right-of-way.

Above-ground features associated with buried utility cables and pipelines will not be allowed on City property unless required by applicable technical standards for public safety and utility marking or other applicable legal or regulatory requirements. The location, color and height of any such above-ground features must be approved by the City. The City will seek and take advantage of opportunities to require or negotiate for the undergrounding, avoidance or removal of above-ground structures associated with existing infrastructure.

Drainage Facilities for Private Development. Drainage facilities that serve new development (such as detention, retention, or water quality ponds) shall be located on private land within the development and not on City-owned natural areas or conserved land. Easements for conveyance facilities will be considered on a case-by-case basis

when the City-owned land is located between the private parcel and the historic receiving channel or stream. The design of the new flow conveyance must utilize existing drainages to the maximum extent feasible and must blend into the surrounding terrain; must not impact the existing geomorphic character of the drainage; and must enhance the natural habitat features and character of the site.

Requests will not be granted for easements by private entities to construct flood control or drainage structures on natural areas or conserved lands to create developable land by removing it from the floodplain, unless determined to be beneficial for the Natural Areas Program in the specific circumstances. Requests will be considered on a case by case basis for construction of flood control measures to address existing flood hazards that threaten public health or safety; in these cases, use of the natural area or conserved land must be the only reasonable alternative to address the flood hazard and the structure or measure must be designed to minimize the impact to the natural area.

Public Flood Control and Drainage Facilities. The City's Natural Areas, Storm Drainage, and Water Quality programs have a strong record of collaboration in the joint acquisition of land and in the design of projects that meet multiple community needs. To the maximum extent feasible, planning for storm drainage, water quality and natural areas and land conservation acquisitions shall continue to be coordinated so that lands needed for all of these uses are purchased jointly. Innovative approaches shall continue to be used so that flood control and water quality facilities are designed, constructed, and managed to maintain or enhance natural area protection values while meeting flood control, stream stability, and water quality needs. Easements or rights-of-way for flood control structures or facilities will be considered on natural area or conserved land when the facility is part of the implementation of an adopted basin-wide master plan (e.g., Canal Importation Master Drainageway Plan, Poudre River Master Drainageway Plan).

Oil and Gas and Minerals Exploration. In connection with the exploration of oil and gas and minerals resources, access, pipeline, and other types of easements may be requested. Such requests, will not be considered unless crossing the City's land is the only feasible means of providing access to the location on which the oil and gas or minerals exploration will occur, or unless determined to be beneficial for the Natural Areas Program in the specific circumstances. Any easement for this type of activity will incorporate, to the extent applicable, the most current Best Management Practices requirements developed for use in connection with oil and gas exploration activities.

Conservation Easements. The owners of private property protected by a conservation easement held by the City's Natural Areas program may receive requests for easements across their property for roads, utilities and other uses. Notice to the City of the easement request is generally required in the applicable conservation easement, and property owners should notify the Natural Areas Program of any such requests. Staff will consult with the property owner to evaluate such requests on a case-by-case basis, taking into account the terms of the conservation easement, the conservation values of the property, and this Policy, to the extent permissible. In order to complete the appropriate review of any such requested easement, the City will obtain information regarding the nature,

scope, design, location, timetable and other material aspects of the proposed activity, and evaluate the proposed activity to determine if it is permissible under, and consistent with, the applicable conservation easement and the conservation values of the property.

The City's Natural Area Program owns lands protected with conservation easements held by other entities. Once the City receives a request for an easement across these properties, the City will notify the owner of the conservation easement. Staff will then work with the conservation easement owner to evaluate such requests on a case-by-case basis, taking into account the terms of the conservation easement, the conservation values of the property, and this Policy, to the extent permissible.

ALTERNATIVES ANALYSIS:

In general, a right of way or easement across a City-owned natural area or conserved land will only be approved if it is the only reasonable alternative, considering environmental impacts, impacts to the recreation uses of the natural area by the community, financial costs, engineering feasibility, public health and safety and other appropriate factors. Applications for easements or rights-of-way must identify and evaluate the environmental impact, engineering feasibility, and the cost of alternatives that do not affect the city-owned natural area or conserved land. Depending on the type of proposal, alternatives will need to consider both alternative locations for the facility as well as alternative designs. The number of potential alternatives to be considered will depend on the location and nature of the proposal, but must be sufficient to allow City staff, the Land Conservation and Stewardship Board, and City Council to evaluate the cost and environmental impact of the available alternatives for meeting the intent of the proposal. Applicants should expect to provide information on the available alternatives at a level of detail to allow independent review of the conclusions by City staff or outside consultants retained by the City to assess the easement request.

LAND USE CONSISTENCY:

Applicants for rights of way and easements must demonstrate that any development to be served by the proposal is consistent with the Plan Fort Collins, the City's Comprehensive Plan. Where the purpose of the easement is to provide utility services to areas outside the land use jurisdiction of the City, the applicant must demonstrate consistency with the adopted comprehensive plan of the governing jurisdiction, and with any applicable growth management policies of the City. Applications for easements that facilitate development or growth that is contrary to the policies of the City will not be approved.

MASTER PLAN CONSISTENCY:

As a condition of approval, the applicant must demonstrate that the requested easement or right-of-way is consistent with the adopted utility master plan or service plan for the area where the easement is requested. The applicant must demonstrate that the proposed project is located and designed appropriately to meet the future needs of the service area based on the adopted land use plans and/or zoning in the area served. This requirement is intended to encourage thorough planning, coordination among property owners, and to avoid multiple requests for easements or premature expansion or modification of the facility before the end of its normal service life.

COORDINATION WITH OTHER ENTITIES:

Generally, the City will not grant exclusive easements. As a condition of approval, the applicant must contact other utility service providers in the project vicinity to determine if they have current or future plans for additional facilities in the area. To the extent feasible, the planning, design, and construction of facilities shall be coordinated among utility providers to conserve easement corridors and to avoid repeated construction activities that may affect the natural area or conserved land. Applicants must provide copies of written requests for utility coordination and the responses received from other service providers.

COMPLIANCE WITH EXISTING EASEMENTS:

Applicants must demonstrate compliance with the requirements of prior easements on land subject to this Policy or other City property. Requests for new or additional easements will not be considered if the applicant has not met the requirements of existing easement agreements and has failed to make diligent efforts to correct the situation after notification by the City.

RESOURCE PROTECTION STANDARDS:

As a condition of approval of any easement or right-of-way, the City will impose appropriate measures to assure adequate resource protection for the natural area or conserved land. These measures will be determined based on the characteristics of the proposal and the affected land, but may include, without limitation: field investigations to determine the presence of sensitive plants and wildlife; siting requirements to minimize the effect on natural resources; seasonal timing restrictions to avoid impacts to wildlife or sensitive habitat during critical periods of the year; access restrictions to control times and locations of access to the easement; construction management measures to ensure that activities are restricted to designated areas, to control erosion, to limit noise, or other impacts; restoration requirements to ensure the timely regrading and revegetation of disturbed areas to a condition consistent with the future management of the area; mitigation measures to replace resource values lost to the community as a result of the project; and requirements to minimize the impact to the natural area of ongoing operation and maintenance of the facility. The City Manager or his or her designee shall develop and maintain a general list of resource protection standards that are applicable to natural areas and conserved lands. This list, which is now maintained by the Natural Areas Program, may be modified from time to time based on the experience gained in managing easements, developing knowledge about the resource values of the City's natural areas and conserved lands, and improved knowledge related to best management practices needed to protect the natural values of the City's properties and to reflect specific circumstances or concerns in connection with a particular easement or project.

COMPENSATION AND MITIGATION:

As a condition of approval of any easement or right of way, the City will require cash compensation for the value of the permanent and temporary easements and for the administrative costs of processing and managing the easement, except where there is offsetting value and benefit to the Natural Areas Program. In addition, the City will require compensation for the loss of ecological service values, recreation values, and

other intrinsic values of the property. Compensation for the value of the land and for damages will be based on fair market value as determined by accepted appraisal techniques. Compensation for loss in ecological services and recreation use will be based on values reported in appropriate professional and technical publications. Compensation for losses in ecological services and recreation use may be negotiated to be paid in cash or through the completion of appropriate mitigation measures. Additional fees assessed for other costs associated with processing the easement request and approval process, overseeing construction activities, and managing the easement following construction will be based on the estimated actual costs of the service provided. Furthermore, the City will seek compensation intended to support on or off-site capitol improvements or land conservation. In general, compensation and fees will be administered so as to result in a net benefit to the Natural Areas Program.

PUBLIC INFORMATION AND REVIEW PROCESS:

In addition to the formal advisory board and City Council review procedures described below, the applicant requesting an easement on City-owned natural area or conserved land will be required to arrange for a public meeting at which information regarding the proposed easement and related project will be provided, and at which questions regarding the easement and related project will be taken. The applicant shall be responsible for ensuring that responses are provided to questions asked at the meeting to the extent practicable, and that questions and responses and any input received at the meeting are documented and provided to City staff. The applicant shall be responsible for providing timely and meaningful notice to the general public in advance of any such public meeting.

ADVISORY BOARD AND COUNCIL REVIEW:

Granting an easement or right-of-way conveys a property right, and must be approved by the City Council by ordinance. The Land Conservation and Stewardship Board will also review the easement proposal and make a recommendation in its advisory role to the City Council. City staff will be responsible for working with the applicant on the application process, reviewing and evaluating the application, and making a recommendation to both the Land Conservation and Stewardship Board and the City Council. If an easement is granted by the City Council, staff will be responsible for overseeing and managing the easement and ensuring that the conditions of the grant are met.

APPLICATION REQUIREMENTS AND REVIEW PROCESS:

In addition to this Policy, the City Manager or his designee will establish procedures for reviewing applications for easements and rights-of-way that affect City-owned natural areas and conserved lands. These procedures shall establish the fees, necessary steps and information requirements for the timely consideration of requests for easements or rights-of-way. The City Manager or his or her designee will ensure that easement requests are presented to City Council for decision in a timely manner.