

CITY OF FORT COLLINS
NATURAL AREAS AND OPEN LANDS
EASEMENT POLICY

Adopted by Resolution 2001 – 94, July 17, 2001

PURPOSE:

The purpose of the policy statement is to clarify the policies and procedures of the City of Fort Collins with respect to requests for easements or rights-of-way that affect publicly owned Natural Areas or Open Lands that are managed by the Natural Resources Department, Community Planning and Environmental Services. The policy does not apply to requests for easements or rights-of-way on or across other lands owned by the City of Fort Collins.

APPLICABILITY:

The policy applies to requests for new easements or rights-of-way for a wide variety of purposes, including without limitation, streets, water, sewer, drainage, flood control, electric power, and telecommunications facilities. The policy applies to projects of the City of Fort Collins as well as those proposed by other public entities, for example 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 the public natural area.

GENERAL POLICY:

The natural areas and other open lands addressed by these policies were acquired by the City of Fort Collins 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 open 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 open 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 open 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 permitted by ordinance of the City Council, the general policy is, to the maximum extent feasible to minimize the impact on the natural area or the community 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 open lands owned by the City of Fort Collins occur within an urban context, it is recognized that requests for easements and rights-of-way will be forthcoming in order to allow for the orderly development of the community in accordance with the adopted Comprehensive Plan. Individual requests will be evaluated in accordance with both the general policy and with the specific policies listed in following sections.

SPECIFIC TYPES OF FACILITIES:

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

Private Streets or Other Private Access. Requests by private parties for private streets or access easements to cross natural areas or open lands in order to gain access to a private parcel of land will not be considered unless crossing the natural area is the only feasible means of providing access to a legal parcel of land.

Overhead Electric Power, Telephone, or Cable Lines. New overhead cable lines will not be allowed within any city-owned natural area or open land. Replacement of existing overhead cables with underground cables will generally be encouraged unless the installation of underground lines will result in adverse impact to the natural area that is inconsistent with these policies.

Aboveground Structures. New buildings or other structures, including without limitation, towers, transmitters, receiving stations, tanks, substations, or billboards, will not be allowed on city-owned natural areas or open lands.

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 open 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.

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 open 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. Flow conveyance will utilize existing swales, drainages, to the maximum extent feasible and be designed to blend into the surrounding terrain and enhance the natural habitat features or 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 open lands to create developable land by removing it from the floodplain. 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 open 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 open land 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 open land properties 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).

ALTERNATIVES ANALYSIS:

In general, rights of way and easements across City-owned natural areas and open lands will only be approved if they are the only reasonable alternative, considering environmental impacts, impacts to the use 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 open 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 Natural Resources Advisory 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 City of Fort Collins Comprehensive Plan. Where the purpose of the easement is to provide utility services to areas outside the land use jurisdiction of the City of Fort Collins, the applicant must demonstrate consistency with the adopted Comprehensive Plan of the governing jurisdiction, and with any applicable growth management policies of the City of Fort Collins. Applications for easements that facilitate development or growth that is contrary to the policies of the City of Fort Collins 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:

The City will generally 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 open 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 other easements they possess that affect natural areas or open lands of the City of Fort Collins. 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 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 of Fort Collins will impose appropriate measures to assure adequate resource protection for the natural area or open 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 plant or animal species; siting requirements to minimize the effect on sensitive natural resources; seasonal timing restrictions to avoid impacts to sensitive species or areas 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, etc.; 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 designee shall develop and maintain a general list of resource protection standards that are applicable to natural areas and open lands. This list 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 open lands, and improved knowledge about the appropriate measures needed to protect the natural values of the City's properties.

COMPENSATION:

As a condition of approval of any easement or right of way, the City of Fort Collins will require compensation for the easement and for the cost of processing and managing the easement. Compensation for the value of the land and for damages will be based on fair market value as determined by accepted appraisal techniques. Fees will be assessed for other costs associated with processing the easement request and approval process, overseeing construction activities, and managing the easement following construction. Fees will be based on the estimated actual costs of the service provided.

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 Natural Resources Advisory 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 Natural Resources Advisory 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 Statement, 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 open 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 designee will ensure that easement requests are presented to City Council for decision in a timely manner.