

**POLICY FOR GRANTING EASEMENTS ON COUNTY-OWNED
OR COUNTY-MANAGED OPEN SPACE
(DRAFT 10-13-08)**

PURPOSE:

The purpose of the policy statement is to clarify the policies and procedures of Larimer County with respect to requests for easements that affect open spaces owned and/or managed by the Larimer County Department of Natural Resources.

APPLICABILITY:

The policy applies to requests for new easements for a wide variety of purposes, including but not limited to streets, water, sewer, drainage, flood control, electric power, access, and telecommunications facilities. The policy applies to projects of Larimer County as well as those proposed by other private, quasi-public and public entities. The policy does not apply to trails, parking lots, interpretive features or other facilities that are proposed as a part of the management of public open spaces.

GENERAL POLICY:

The open space properties affected by this policy were acquired by Larimer County for the specific purpose of protecting these properties and the natural resources on them. These lands are part of the fabric of the Larimer County landscape, and are viewed as a type of “community facility” intended to meet specific land preservation goals.

Many of these open space properties were acquired by Larimer County with dedicated funds from the Help Preserve Open Space sales tax that was approved by the voters of Larimer County. The goal of the open space tax is to “preserve and protect significant open space, natural areas, wildlife habitat, and develop parks and trails for present and future generations. These open lands provide opportunities for leisure, human renewal, and protection of our natural and cultural resources.” (Larimer County Open Lands Master Plan, 2001)

Requests for easements that affect open spaces must be considered within this context. Accordingly, the general policy is to avoid, to the maximum extent feasible, granting easements for activities that will adversely affect the resource and open space values and their protection. Where easements are determined to be acceptable, the general policy is to minimize the impact on the open space by limiting the size, scope, and visibility of the area affected, by managing construction or other human activities with respect to their timing, duration, and frequency of occurrence, and by restoring affected areas to a condition that is equal to or better than the condition at the time the easement is granted.

SPECIFIC TYPES OF FACILITIES:

Public Streets. In situations where a transportation project involves construction of new streets, or expansion of existing streets on open space properties, the alignment and design should be planned to avoid or minimize the effect on the open space.

Private Streets or Other Private Access. Requests by private parties for private streets or access easements to cross open spaces in order to gain access to a private parcel of land will not be considered unless crossing the open space is the only feasible means for providing access to a legal parcel of land. Consideration of such requests shall be at the sole discretion of Larimer County. Compensation and restoration measures will be required, as described below.

Overhead Electric Power, Telephone or Cable Lines. New overhead cable lines will not be considered within any county open space. Replacement of existing overhead lines with underground facilities will

generally be encouraged unless the installation of underground lines will result in adverse impact to the open space that is inconsistent with these policies.

Aboveground Structures. New buildings or other structures, including but not limited to towers, wind turbines, transmitters, receiving stations, tanks, substations, signs, or billboards, will not be allowed on county-owned open spaces.

Underground Utility Transmission Facilities or Pipelines. Consistent with standard practice within Larimer County, underground utility transmission facilities (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 open space. 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 Transportation Master 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 facilities or pipelines are not typically placed beneath streets due to reliability or safety concern. In instances where the facility or pipeline cannot 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 and not on county open space. Easements for conveyance facilities will be considered on a case-by-case basis when the county open space is located between the private parcel and the historic receiving channel or stream. Flow conveyance will utilize existing swales and drainages to the maximum extent feasible, and will 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 open spaces to facilitate development of land by removing privately-owned land 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 open space must be the only reasonable alternative (at the sole discretion of the County) to address the flood hazard and the structure or measure must be designed to minimize the impact to the open space.

Public Flood Control and Drainage Facilities. To the maximum extent feasible, planning for storm drainage, water quality and open space land acquisition shall be coordinated so that lands needed for all of these uses are purchased jointly. The expenditure of open space funds for such projects shall be determined by the project's goals as they relate to the adopted goals of the Open Space Program. Innovative approaches shall continue to be used so that flood control and water quality facilities are designed, constructed and managed to maintain or enhance open space values while meeting flood control, stream stability, and water quality needs. Easements for flood control structures or drainage facilities will be considered on open space properties when the facility is part of the implementation of an adopted basin-wide master plan, or where there are obvious health and safety issues which must be immediately addressed.

ALTERNATIVE ANALYSIS:

In general, easements across county open spaces will only be approved if they are the only reasonable alternative, considering environmental impacts, impacts to the use of the open space by the community, financial costs, engineering feasibility, public health and safety, and other appropriate factors. Applications for easements must identify and evaluate the environmental impact, engineering feasibility, and the cost of alternatives that do not affect the county open space. Depending on the type of the 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 the nature of the proposal, but must be sufficient to allow the Open Lands staff, the Open Lands Advisory Board, and the Board of County Commissioners to evaluate the costs 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 the Open Lands staff or outside consultants retained by the county to assess the easement request.

LAND USE CONSISTENCY:

Applicants for easements must demonstrate that any development to be served by the proposal is consistent with the Larimer County Master Plan. Where the purpose of the easement is to provide utility services to areas outside the land use jurisdiction of Larimer County, the applicant must demonstrate consistency with the adopted plan of the governing jurisdiction, and with any applicable growth management policies of Larimer County. Application for easements that facilitate development or growth that are contrary to the policies of Larimer County will not be approved.

COORDINATION WITH OTHER ENTITIES:

The county 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 open space. Applicants must provide copies of the written request 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 open spaces of Larimer County. 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 county.

RESOURCE PROTECTION STANDARDS:

As a condition of approval of any easement, Larimer County will impose appropriate measures to assure adequate resource protection for the open space. 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 and on intact natural habitat; 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 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 as a result of the project; and requirements to minimize the impact to the open space of ongoing operation and maintenance of the facility. The Open Lands Manager or his/her designee shall develop and maintain a general list of resource protection standards that are applicable to open spaces. This list may be modified from time to time based on the experience gained in managing easements, developing knowledge about resource values of the county's open spaces, and improved knowledge about the appropriate measures needed to protect the natural values of Larimer County's properties.

Larimer County may require that the applicant submit an escrow or bond to assure satisfactory completion of the required reclamation.

COMPENSATION:

As a condition of approval of any easement, Larimer County will require compensation for the easement and for the costs 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.

THIRD PARTY APPROVAL

In many cases, it will be necessary for the applicant to also seek approval of a “third party” who has an ownership or management interest in the subject property. The County is not obligated to facilitate the review or approval of third parties, and has no control over the outcome of such review.

ADVISORY BOARD AND COUNTY COMMISSIONER REVIEW

Granting an easement conveys a property right, and must be approved by the Board of County Commissioners. The Open Lands Advisory Board will also review the easement proposal and make a recommendation in its advisory role to the Board of County Commissioners. Open Lands 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 Open Lands Advisory Board and the Board of County Commissioners. If an easement is granted by the County Commissioners, staff will be responsible for overseeing and managing the easement and ensuring the conditions of the grant are met.

APPLICATION REQUIREMENTS AND REVIEW PROCESS:

In addition to this Policy Statement, the Open Lands Manager or his/her designee will establish procedures for reviewing applications for easements that affect County owned or managed open spaces. These procedures shall establish the fees, necessary steps and information requirements for the timely consideration of requests for easements. The Open Lands Manager or her/his designee will ensure that easement requests are presented to the Board of County Commissioners for decision in a timely manner.