



COLORADO
Colorado Water Conservation Board
Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Kevin Houck, P.E. CFM - Section Chief
Andrea Harbin Monahan, Watershed Scientist
Watershed & Flood Protection Section

DATE: June 29, 2020

AGENDA ITEM: Agenda Item 9, July 15-16, 2020 Board Meeting
South Platte River Special Use Permit Application - The Pint Room

Background:

As the non-federal sponsor for the Chatfield Downstream Channel Construction Project, the CWCB owns and operates a federally constructed flood control project from the outlet of Chatfield Reservoir to the confluence of Bear Creek. The CWCB has also developed lands management and access processes. The Board has authority to grant requests for easements in the CWCB right-of-way. A 1998 Master Recreation Agreement with South Suburban Parks and Recreation covers most of the activity. However, periodically there are other requests to access the CWCB-owned parcels. The 2001 Easement Guidelines and 2005 Easement Fee Structure are attached and guide fee setting methods.

The CWCB has issued Special Use Event Permits under certain circumstances. These Special Use Permits do not convey an interest in real estate, but permission to use the CWCB right-of-way.

Staff received a Special Use Permit application on 6/18/2020 by the General Manager of The Pint Room, a riverside tavern in the City of Littleton. The Pint Room operates adjacent to the CWCB right-of-way, and due to COVID-19 restrictions, the tavern is requesting to expand on to CWCB property from its opening on 6/26/2020 through 10/1/2020.

Discussion:

The Special Use Permit application is normally required to be received 30 days prior to the event covered by the permit. Non-food establishments were closed by executive order due to COVID-19. In mid-June, there was quickly developed guidance which indicated taverns could reopen under strict social distancing requirements with little lead time. Both The Pint Room management and the City of Littleton (who has already provided approval for this action and granted the necessary permits) determined that expanding into the nearby right-of-way would allow for the tavern to operate more effectively.



Due to the urgency of the request and the desire to comply with the COVID-19 circumstances, staff and the Director made the decision to issue the permit under the condition that it would be brought before the Board at the July board meeting, at which time it could be modified or revoked, if necessary. Staff and the Director have been advised by Jen Mele with the AG's office throughout the process.

Following issuance of the permit, staff have received comments from the State Office of Risk Management, an office within the Department of Personnel and Administration (DPA), with suggested changes. The Special Use Permit as issued and redlined with comments from DPA is attached, along with a map of the site.

Daily use of the property for a period of three and a half months falls outside of the typical activity covered under a Special Use Permit. However, due to the circumstances surrounding the COVID-19 restrictions and the request by the City of Littleton to help get the business back open, Staff and the Director made the decision to use the Permit approach for this summer. Notice has been given to The Pint Room that if a similar action is requested in future years, an easement or lease should be negotiated prior to the outdoor season.

The board-approved easement guidelines are also attached. It is worth noting that staff has received requests regarding easements for three other locations along the river. These will be brought before the Board in future meetings.

Requested Action:

Staff requests board approval of the Special Use Permit to be reissued to The Pint Room with changes recommended by the State Office of Risk Management and any other requested changes by the CWCB Board.



Colorado Water Conservation Board
Special Use Permit Application

In the 1980s, the United States Army Corps of Engineers (Corps) constructed the Chatfield Downstream Channel Improvement Project (“Project”). The Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County, Jefferson County, and Douglas County to provide (1) drainage (2) flood control, and (3) water flow. As part of its participation in the Project, the Colorado Water Conservation Board (“CWCB”) owns and controls approximately 7 miles on the South Platte River channel and floodplain through Littleton, Colorado in Arapahoe County. The CWCB management of this land is subject to the terms of the September 7, 1977 and January 29, 1980 Agreements between the CWCB and the Corps, which obligate the CWCB to operate and maintain the Project improvements. On May 5, 1997, the CWCB entered into a contract for and conveyance of easement with the South Suburban Parks and Recreation District that conveyed an easement to South Suburban for certain recreational facilities. The CWCB works in conjunction with its Project partners, the South Suburban Parks and Recreation District and the Mile High Flood District, to maintain the Project and Project lands.

Applicant, the Pint Room, located at 2620 W. Belleview Avenue, in Littleton, Colorado has requested use of CWCB property depicted in the diagram attached here as Exhibit A.

The Pint Room requests use of this property for outdoor dining and other associated activities due in part to in-restaurant dining restrictions and the encouragement of outside dining resulting from COVID-19. The Pint Room represents that it will abide by all applicable executive orders issued by Governor Polis, including requiring social distancing when appropriate. The applicant recognizes that any CWCB grant of permission to use this property may be modified or revoked at any time for any reason, including that the permit may be modified or revoked at the discretion of the CWCB at the July 15, 2020 board meeting, and additionally is subject to the following permit conditions:

1. Safety fencing must be erected between the place of use by the Pint Room and the Mary Carter Greenway Trail and the South Platte River so as to prevent access to both by patrons of the Pint Room.
2. Applicant will ensure that patrons of the Pint Room will not access the Mary Carter Greenway Trail or the South Platte River.
3. Applicant will abide by all applicable executive orders issued by Governor Polis.

PERMIT CONDITIONS

- A. No use of CWCB property shall occur unless the permit application is approved and a \$100 processing fee is rendered to the CWCB.
- B. CWCB maintains the right and authority to amend or cancel the permit at any time should the applicant fail to abide by conditions agreed to or if public health, safety, and welfare issues so dictate, or for any other reason.
- C. The applicant shall indemnify, defend, and hold harmless the CWCB and the State of Colorado against any and all rights, actions, claims, demands, liabilities, or damage which may accrue against the applicant or any of its employees or agents for any injuries or damages to persons or property, and any claims pertaining to COVID-19, as well as costs or expenses sustained or received as a result of or in connection with the use or preparation for use of the CWCB property for the event or the presence of any persons, property or invitees of the applicant on or about the CWCB property. The applicant acknowledges that the CWCB and the State of Colorado specifically disclaims all liability for any loss of personal property of the applicant, its employees, agents, or invitees.
- D. The applicant hereby releases, waives, discharges, and covenants not to sue the State of Colorado, the CWCB, or CWCB officers, officials, or representatives on account of injury to person or property caused by negligence of the applicant, as well as for any claims pertaining to COVID-19, while the applicant is utilizing the CWCB property for any purpose. The applicant assumes full responsibility for any property damage caused by the negligence of the applicant.
- E. The applicant ~~must agree to~~ obtain and/or maintain commercial general liability insurance covering its use of the CWCB's property, with said insurance policy naming the CWCB and the State of Colorado as an additional insured, with limits of not less than \$1 million (\$1,000,000) per occurrence and \$1 million (\$1,000,000) general aggregate. The applicant must obtain and/or maintain liquor liability coverage. All insurance policies must (1) include indemnification of the CWCB and the State of Colorado; (2), apply to the CWCB and the State of Colorado as primary insurance and must be noncontributory; and (3) include a waiver of subrogation for claims against the CWCB and the State of Colorado.
- F. Approval of the permit application does not confer any title or interest in the CWCB property.
- G. The applicant agrees to surrender the CWCB property immediately after the use in the same condition as at the commencement of use of the property. The applicant shall be responsible at all times for the immediate repair or replacement of, or reimbursement for, any damage to CWCB property due to the applicant's use of the property.
- H. The applicant acknowledges that it has inspected the CWCB property to be used and finds the property suitable for its anticipated use. The applicant releases the CWCB from all liability for any and all damages or claims arising from any defects in the property or unsuitability of the property for the anticipated use.
- I. The applicant will notify South Suburban Parks and Recreation, the U.S. Army Corps of Engineers Tri-lakes Office, the Mile High Flood District, and the City and County in which the use occurs of the intent to use the subject property for the anticipated use.
- J. The applicant will abide by any and all rules, regulations, and laws that apply within the City, County, and State.

PERMIT CONDITIONS (Continued)

- K. Notwithstanding any other provision of this permit application to the contrary, no term or condition of any permit granted by the CWCB shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §24-10-101, et seq., CRS as now or hereafter amended. The applicant understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of §24-10-101, et seq., CRS, as now or hereafter amended and §24-30-1501, et seq., CRS as now or hereafter amended.
- L. The applicant may not use the CWCB property for any purpose other than is stated in this application. If the CWCB property is used by the applicant for any other purpose, the permit is automatically revoked.
- M. It shall be the sole responsibility of the applicant to obtain all necessary and applicable local, state, and federal approvals and permits. Applicant agrees to comply with all rules, regulations, and policies authoritatively promulgated pertaining to the use of the CWCB property, including but not limited to local, state, and federal floodplain regulations.
- N. The applicant releases the CWCB from all liability for any and all damages or claims arising from any defects in the property or unsuitability of the property for use by the applicant. The applicant hereby releases, waives, discharges, and covenants not to sue the CWCB, or the CWCB's officers, officials, or representatives, on account of injury to person or property caused by negligence of the applicant while the applicant is utilizing the CWCB property for any purpose. The applicant assumes full responsibility for any property damage caused by the negligence of the applicant.

As a representative of the Pint Room, I have read and understand the conditions listed in the application and agree to the conditions listed in this application and if the permit is granted will abide by the conditions without exception.

Signature

Date

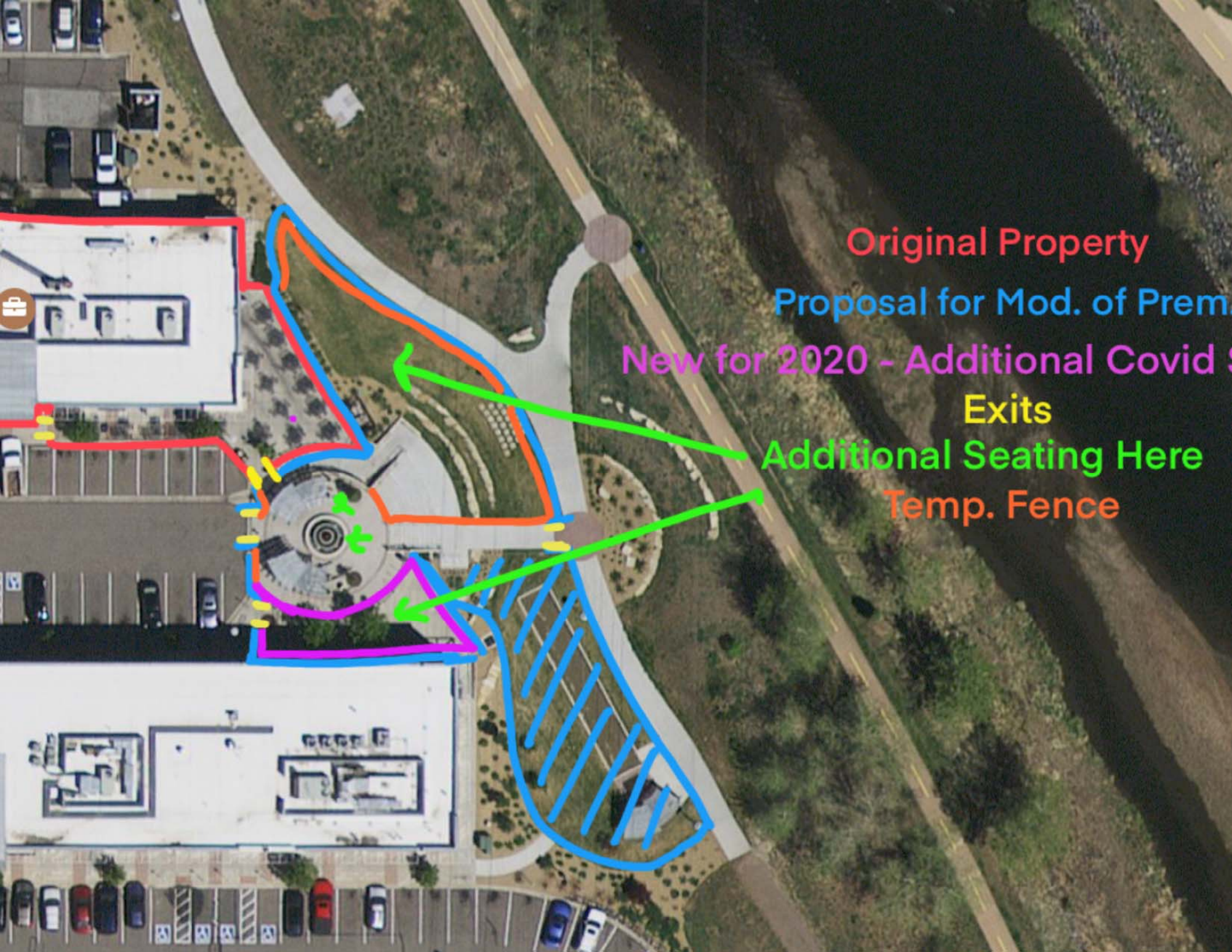
Title:

A Special Use Permit for the Pint Room is hereby issued, subject to the terms and conditions set forth in the application and this approval. The CWCB grant of permission to use this property is in effect only during the below listed effective dates and may be modified or revoked at any time for any reason.

Effective dates: June 19, 2020 – October 1, 2020

Director, Colorado Water Conservation Board

Date



Original Property

Proposal for Mod. of Prem

New for 2020 - Additional Covid S

Exits

Additional Seating Here

Temp. Fence

Colorado Water Conservation Board
Flood Protection Section
Easement Guidelines for the Chatfield Downstream
Channel Improvement Project
November 2001

Background

The Colorado Water Conservation Board has been receiving and acting on requests for easements on land owned by the CWCB as part of the Chatfield Downstream Channel Improvement Project. The Board requested that staff develop guidelines to assist with the administration of easement requests for the property owned by CWCB.

In the 1980s, the United States Army Corps of Engineers (Corps) constructed the Chatfield Downstream Channel Improvement Project (Project). The Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County to provide (1) drainage (2) flood control, and (3) water flow. As part of its participation in the Project, the CWCB currently owns and controls approximately 7 miles on the South Platte River floodplain and Channel Lands through Littleton, Colorado in Arapahoe County. The CWCB's management of this land is subject to the terms of the September 7, 1977 and January 29, 1980 Agreements (Corps Agreements) between the CWCB and the Corps, which obligate the CWCB to operate and maintain the Project improvements. On May 5, 1997, the CWCB entered into a Contract for and Conveyance of Easement with the South Suburban Park and Recreation District ("South Suburban Contract") that conveyed an easement to South Suburban for certain recreational facilities.

The Board receives easement requests from utility companies, special districts, developers, engineers, municipalities, environmental and recreational groups and individuals. In evaluating such easement requests, the CWCB will use the following guidelines.

Guideline considerations

1. No easement shall be granted to any party except by action of the Board in a regularly scheduled Board Meeting.
2. The CWCB shall evaluate all easement requests in conformance with its obligations under the Corps Agreements. No easement may interfere with flood protection and public safety.
3. For all easement requests, the CWCB shall consider impacts to its obligations under the South Suburban Contract. CWCB staff should be contacted to obtain a map that shows the management areas for the Recreation Lands and Flood Conveyance Lands under the South Suburban Contract.
4. Upon receipt of an easement request, the CWCB staff will acknowledge the request by sending a confirmation letter to the applicant, scheduling a field inspection and preparing a field report that will be attached to staff's request to the Board for action on the request.

5. Formal Easement requests submitted to the CWCB must include the following items which must be received by CWCB staff no later than 30 days prior to the scheduled Board meeting at which the applicant seeks Board consideration:

- A) A completed easement application form.
 - B) A detailed explanation of the proposed purpose and use(s) of the easement.
 - C) A site-survey prepared by a licensed surveyor of the property covered by the proposed easement.
 - D) The proposed grantee shall transmit a copy of an easement request letter and full application packet to the following parties: 1) The U.S. Army Corps of Engineers-Omaha District, 2) the Urban Drainage and Flood Control District, and 3) The South Suburban Parks and Recreation District. Mailing addresses can be obtained from the CWCB.
 - E) For all drainage easement requests, a site drainage study and plan must be completed.
 - F) Easement requests within the 100-year floodplain of the Chatfield Downstream Channel Improvement Project must include a hydraulic analysis. The analysis will show any flood conveyance impacts of the proposed feature within the requested easement.
 - G) A written statement demonstrating awareness of and compliance with the applicable local, state and federal environmental and floodplain regulations pertaining to the property covered by the proposed easement.
6. Any and all easements granted shall be for a maximum term of 25 years but are eligible for to be renewed upon Board approval.
7. The CWCB may charge fees for easements in accordance with the easement fee structure, which may be amended by the CWCB from time to time.
8. In determining whether to grant an easement and in determining the fee charged for an easement, the CWCB may consider, but is not limited to consideration of, the following factors:
- A. Whether the requesting party is a:
 - 1) Governmental body,
 - 2) Private governed utility, or
 - 3) Private entity.
 - B. Whether the area under, upon, or over which the easement is requested is:
 - 1) An undeveloped area that will never be developed,
 - 2) An undeveloped area held primarily for future development,
 - 3) A developed area with minimal usage, or

- 4) A developed area with heavy usage.
 - C. Whether use of the easement by the requesting party would:
 - 1) Restrict or require a change in the current use of property, or
 - 2) Require maintenance and repairs that would interfere with other uses of property by the CWCB or other entities.
 - D. Whether the granting of the easement will adversely affect CWCB activities, functions or programs directly or indirectly related to the proposed easement property.
 - E. Whether the granting of the easement is in the best interest of the CWCB and the State of Colorado.
 - F. Whether there is a viable alternative for the easement on adjacent or nearby property not owned by the CWCB.
 - G. Whether the requesting party will agree to be responsible for maintaining improvements on or under the proposed easement property such as underground pipe, etc. for the term of the easement.
9. All easement documents shall be reviewed by the Attorney General's Office prior to the execution of such documents by the Director.
 10. The CWCB will not approve easement requests for permanent structures such as buildings, storage facilities, or decks.
 11. The CWCB will review easement requests that involve facilities such as drainage structures, parks, trees, benches, trails, and other public amenities on a case-by-case basis.
 12. The CWCB may waive all or part of the fees usually charged for an easement if it determines that an easement would benefit the State and /or the public.

Other considerations

The CWCB may grant approval for temporary construction and access easements that have no permanent impact on the property involved. The CWCB may consider factors other than those listed herein when reviewing easement requests.

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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Chatfield Downstream Channel Improvement Project Easement Fee Structure May 13, 2005 (Revised November 1, 2005)

Bill Owens
Governor

Russell George
Executive Director

Rod Kuharich
CWCB Director

Rick Brown
Acting Deputy Director

BACKGROUND

At the November 6-7, 1995 and January 24-25, 1996 Board Meetings, several easements across CWCB Rights-Of-Way along the Chatfield Downstream Channel Improvement Project were approved by the Board. Following the approvals, the Board directed staff to develop a fee structure to be used as consideration for CWCB granting of easement. At the March 23, 2005 Board meeting, staff was requested to review and make a recommendation on the fee structure for the “Chatfield Downstream Channel Improvement Project Easement Fee Structure” dated March 6, 1996.

DISCUSSION

CWCB staff consulted with five entities which have experience in granting easements and charging fees for said easements: 1) City of Fort Collins (Stormwater Utility); 2) City of Littleton; 3) Urban Drainage and Flood Control District (UD&FCD); 4) Colorado State Land Board; and 5) Colorado Attorney General’s Office. Based on those discussions, the following fee determination methods were developed. In May 2005, the staff communicated with a number of entities that have to address the CWCB’s real estate easement fee issues. These communications have aided the staff in making additions and changes to the existing easement fee structure.

Procedure for the Computation of Easement Fees for the CWCB’s South Platte River Right-Of-Way.

Method I – Market Value Method

This method shall consider the fair market value of the subject site. It will require an appraisal by a licensed appraiser to determine the fair market value for the property in question. The appraisal may be based on comparable land values in the area at the time of negotiations, but it must also take into account the best and highest use of the property. The applicants must provide the appraisal to the CWCB in order to establish the fair market value for the subject property.

The cost of said appraisal shall be the sole responsibility of the applicant, and the CWCB shall have the right to independently verify the results of the appraisal at its own discretion.

The maximum term of easement is twenty-five (25) years.

The easement value is computed as follows:

Step 1 – Determine the fair market value of the subject property (unit value).

Step 2 – Determine size (area) of the impacted CWCB Right-Of-Way for the easement.

Step 3 – Compute the easement value as (market value/area) X (easement area)

Step 4 – Adjust the easement value by using the % impact table shown below in Method II.

The adjusted easement value shall equate to a total dollar value for a one-time lump sum payment to the CWCB. The easement is renewable in (25) years and the consideration for renewal will be the computed amount adjusted for inflation.

Method II – Impact Method

This method shall consider what percent impact value that will be realized to the CWCB lands for the proposed use area. The Base Real Estate Value of the CWCB right-of-way lands will be multiplied by the percent impact value. The CWCB shall establish the Base Real Estate Value for its lands based on current and recent transactions, discussions with adjacent land owners and communication with interested agencies (Urban Drainage & Flood Control District – UD&FCD, Denver Water, XCEL, Metro Cities and others who perform a similar activity.

Maximum term of easement is twenty-five (25) years.

The Value is computed as follows:

Step 1 – The Base Real Estate Value rate shall be ten dollars (\$10.00) per square foot.

Step 2 – Determine the percent (%) impact value for the requested use per complete application:

% Impact Table

Easement Use	% Impact
Drainage pipes and structural design features	50
Water and sewer line and related structures and systems	50
Recreational structures	50 to 70
Fences and paved surface area	70
Power lines	80
Private use structures (patios, decks, storage facilities, roads, etc.)	90

Value Formula: Value = (Base rate @ 10.00 sq ft.) X (Impact %) X (area in sq. ft.).

The **Value** means the dollar value for a one-time lump sum payment. The easement is renewable in 25 years and the consideration for renewal will be the computed amount adjusted for inflation.

All requests and approvals by the CWCB will have a revocable clause.

Method III – Special Use Easement

The Board may consider a Special Use Easement (Method III) on a case-by-case basis. In the event that Methods I and II do not appropriately fit an individual easement request, or if those methods result in an undue hardship for the applicant, then the Board may implement Method III at its discretion. The minimum fee for this type of easement is five hundred (500) dollars; however, the Board may decrease, increase, or waive the fee based on one or more criteria as outlined below. The criteria that the Board may consider in exercising its discretion in making fee adjustments are:

1. Costs to the CWCB
2. Benefits to the public
3. Type of activity involved
4. Right of way operation & maintenance costs and considerations
5. Positive and/or negative impacts to the environment or to the project
6. Size and physical characteristics of the parcel
7. Time or duration of the easement
8. Appurtenance of the easement to adjacent lands
9. Previous encumbrances
10. Public access