

Department of Natural Resources

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Jared Polis, Governor

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TO: Colorado Water Conservation Board Members

FROM: Andrea Harbin Monahan, Watershed and Flood Protection Section

DATE: March 15-16, 2022

AGENDA ITEM: Agenda Item 17 - South Platte River - DISH Easement Discussion

### Staff Recommendation:

This is an informational item and no board action is needed.

#### Background:

In the 1980's, the United States Army Corps of Engineers (USACE) 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 (1) provide 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 of the South Platte River floodplain and channel lands through Littleton in Arapahoe County. The CWCB's management of this land is subject to the terms of agreements dated September 7, 1977 and January 29, 1980 between the CWCB and the USACE, which obligate the CWCB to operate and maintain the Project improvements.

The CWCB has been receiving and acting on requests for easements on land owned by the CWCB as part of the Project, and the Board approved specific guidelines in November 2001.

For the last couple of years, CWCB staff, along with the Attorney General's office, has been working with DISH, located at 5701 S Santa Fe Drive, Littleton, CO 80210, to draft an easement agreement for use of CWCB-owned land that is adjacent to the DISH building, owned by Echostar BSS Corporation.

The draft easement agreement has had several iterations, which initially included minor improvements within the concrete plaza, including a bicycle storage unit, a basketball hoop, backboard and in-ground stand, planters, and landscaping along the river side of the plaza in June of 2020. As of February 2022, the proposed improvements now include a split-rail fence and planters on the concrete plaza and a landscaping and a 2,000' long split-rail fence along the river side of the plaza. The draft agreement also includes, and has from the beginning, back-payment for the concrete plaza, which was constructed in 1985 on CWCB-owned land, without an easement in place.



#### Discussion:

In October of 2021, DISH proposed adding a fence to the easement agreement that would extend along the Mary Carter Greenway Trail, from the Mary Carter Greenway Trail Bridge, downstream to the intersection of Bowles and Santa Fe, approximately 2,000 ft.

In February 2022, staff received notification from DISH that they had proceeded with the installation of the 2,000 ft fence, which took CWCB staff by surprise, as the easement agreement was not yet in place. Staff has not yet heard back from the USACE with their approval of this easement agreement or the installation of the fence on CWCB-owned property, which is required according to the Board-approved easement guidelines. There is also an existing easement in this area held by South Suburban Parks and Recreation District. They use this easement to maintain the Mary Carter Greenway Trail and they will be undertaking a Greenway Study, commencing in the spring of 2022. Depending on the outcome of this study, they may require that the fence be relocated or temporarily removed for trail improvements.

The installation of the fence without the easement does not impact CWCB operations and is located outside of the 100-year floodplain. Staff plans to continue to interact with DISH to get this easement finalized and formalize the approval of the fence. It is anticipated that staff will present a draft easement agreement for approval to the board at the May or July meeting, subject to agreement between staff and DISH and pending USACE and DPA approval.

#### Attachments:

CWCB Flood Protection Section Easement Guidelines for the Chatfield Downstream Channel Improvement Project, November 2001.

RIV PROPERTY FENCE W SET

RIV\_Split Rail Fence Photos



# 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.

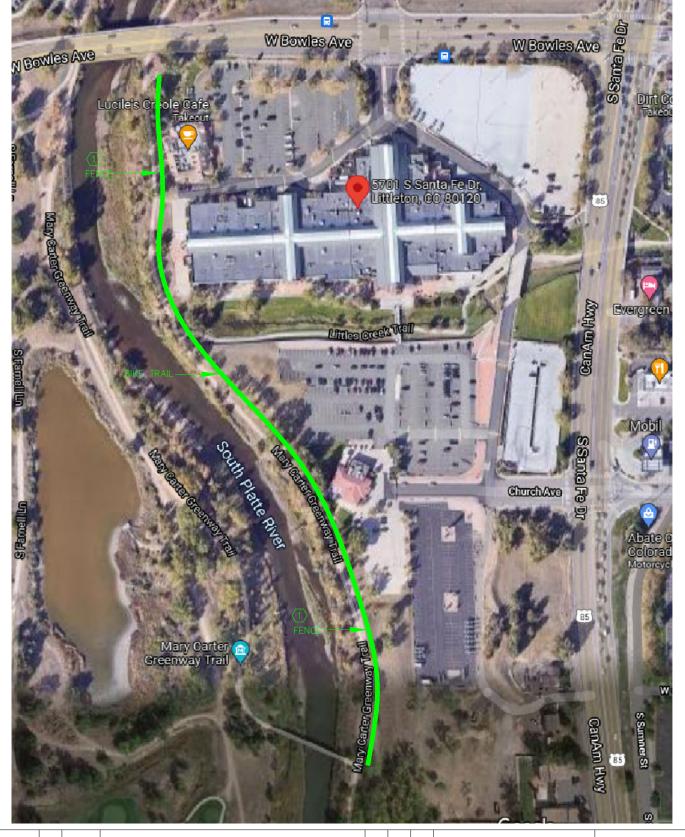
- 5. Formal Easement requests submitted to the CWCB must include the following items which must be received by CWCB staff no later than 30 days prior to the scheduled Board meeting at which the applicant seeks Board consideration:
  - A) A completed easement application form.
  - B) A detailed explanation 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 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.

DRAWING IS NOT TO SCALE IF NOT 11x17.



# KEY NOTES:

1) INSTALL NEW SPLIT RAIL 3 POST FENCE, 5 FEET HIGH, 6' EAST OF BIKE TRAIL, APPROXIMATELY 2,000 FEET

# SCOPE OF WORK:

- 1. CALL 811 FOR UTILITY LOCATE BEFORE ANY DIGGING.
- 2. PROPERTY WILL HAVE TO BE SURVEYED TO DETERMINE EXACT PROPERTY LINE LOCATION.
- 3. FENCE TO MATCH EXISTING SPLIT RAIL FENCE FOUND IN THE LUCILLE'S BACKYARD AREA. 8 FEET BETWEEN POSTS, 5 FEET HIGH, (3 HORIZONTAL POST FENCE)
- 4. FENCE TO BE INSTALLED FROM EXISTING CONCRETE FOUNDATION JUST UNDER THE BOWLES AVE BRIDGE. TO RIVER WALK BRIDGE APPROXIMATELY 2,000 FEET



OCTOBER 21, 2021

SCALE:

NTS



DRAWING:

FENCE PLAN
DISH NETWORK
LITTLETON, COLORADO 80120-1813

SUITE SQUARE FOOTAGE	PROJECT	REV	SHEET
DRAWN BY: DS	FENCE PLAN		A102

DRAWING IS NOT TO SCALE IF NOT 11x17.



**EXAMPLE FENCE** 



FENCE PATH



- FENCE LINE 6' OFF BIKE TRAIL

FENCE PATH

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			OCTOBER 21, 2021	
			SCALE:	
			NITS	ĺ



RAWING.

SITE PHOTOS DISH NETWORK LITTLETON, COLORADO 80120-1813

1	SUITE SQUARE FOOTAGE	PROJECT	REV	SHEET
		FFNCF PLAN		P100
	DRAWN BY: DS	1 21 4 0 2 1 2 7 11 4		



















