



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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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 22 - Revisions to Easement Guidelines for the South Platte Downstream Channel Improvement Project

Staff Recommendation:

Staff recommends Board approval of the revisions to the easement guidelines for the South Platte Downstream Channel Improvement Project.

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.

Discussion:

Staff routinely receives requests for easements on the land owned and controlled by the CWCB as part of the Project. Such requests are guided by the Easement Guidelines for the Chatfield Downstream Channel Improvement Project ("Guidelines").

Currently, the guidance stated in the Guidelines is that the CWCB will not approve easement requests for permanent structures such as buildings, storage facilities, or decks. Occasionally the CWCB receives requests for permanent structures. In certain situations, for example when requests are for land within CWCB ownership but outside of the regulatory floodplain, the CWCB may be willing to grant an easement for a permanent structure.

If the CWCB wishes to be able to approve requests for permanent structures evaluated on a case-by-case basis, the following revision is recommended:



10. The CWCB will typically not approve easement requests for permanent structures such as buildings, storage facilities, or decks; however, it will consider such requests on a case-by-case basis.

Attachments:

Easement Guidelines for the Chatfield Downstream Channel Improvement Project

Proposed revisions to the Easement Guidelines for the Chatfield Downstream Channel Improvement Project



Colorado Water Conservation Board
Flood Protection Section
Easement Guidelines for the Chatfield Downstream
Channel Improvement Project
November 2001¹

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.

¹ [Guideline consideration #10 revised March 2023.](#)

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 typically not approve easement requests for permanent structures such as buildings, storage facilities, or decks; however, it will consider such requests on a case-by-case basis.
 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.