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## Encroachments onto County Lands in which the County holds an interest

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Date of Approval by Council: 04/15/03; 08/30/2011

Resolution No: 393/2003; 581/2011

Lead Role: Chief Commissioner

Replaces:

Last Review Date: August 30, 2011

Next Review Date: 08/2014

Administrative Responsibility: Planning & Development Services

**Special Notes:** Reference the Municipal Government Act, RSA 2000 Section 61 (1) (2), as amended from time to time, authorizes a Municipality to grant rights with respect to its property and Strathcona County Bylaw No. 8-2007; Unauthorized Use of County Property Bylaw, County Bylaw No. 68-2005; Unauthorized Use of Conservation Easements, Policy No. SER-009-031; Dedication of Conservation Easement.

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### Policy Statement

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The County may, at its sole discretion, authorize encroachments which have occurred onto County property or a County Easement/Right-of-Way through an order to remove the encroachment or the execution of a written agreement or the issuance of a Consent Letter.

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### Definitions

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**Amending (Encroachment) Agreement-** Means the County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations in which a structure may be permitted over an existing right-of-way area.

**Amending (Utility Right-of-Way) Agreement-**Means the County's standard form of Agreement, to permit a structure over an existing easement or utility right-of-way constructed or utilized for utility purposes.

**Amending (Utility Right-of-Way Drainage) Agreement-**Means the County's standard form of Agreement, to permit a structure over an existing easement or utility right-of-way constructed or utilized for drainage purposes.

**Applicant-**Means any party encroaching onto lands in which the County holds an interest or is subject to the direction, control, and management of the County.

**Consent Letter for Minor Encroachments-**Means the County's standard form of consent letter granting an encroachment of a minor nature at the discretion, of the Director of Planning and Development Services.

**Encroachments-**Means an illegal intrusion onto lands (including a structure, improvement, or use); in which the County holds an interest or is subject to the direction, control, and management of the County.

**Franchisee-**Means any utility or service company authorized by agreement with the County or by statute to use and/or occupy utility right-of-ways held by the County which include, but are not limited to Telus, Shaw Cable, Atco and Aquila.

**License Agreement**-Means the County's standard form of Agreement, to grant the right to use land designated as municipal reserve, public utility lots, or municipally owned land without becoming entitled to exclusive possession of the land.

**Order**-Means an order issued pursuant to Bylaw No, 8-2007, and in accordance with the Municipal Government Act.

**Plan of Survey**-Means such plan, survey, diagram or document as may be acceptable to the Director of Planning and Development Services, including, but not limited to, a Real Property Report prepared by a registered Alberta Land Surveyor.

**Restoration Plan**-Means a plan prepared by a qualified professional with a background in land reclamation and/or restoration.

**Road Encroachment Agreement**-Means the County's standard form of Agreement, to grant the right for a structure over a road.

**Road License Agreement**-Means the County's standard form of Agreement, to grant the right for a particular use over a road which is under the direction, control and management of the County.

**Traditional Amending Agreement**-Means the County's standard form of Agreement, to grant permission for a structure to encroach upon a parcel of land or utility right-of-way.

**Utility Right-of-Way**-Means a right granted for the purpose of constructing and/or maintaining a public utility on, over, or under land which is under the direction, control and management of the County

## Guidelines

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1.0 The County shall endeavor to authorize encroachments which have occurred onto County property or a County Easement/Right-of-Ways to protect the County's rights and obligations with respect to the Subject Lands and to minimize the County's exposure to liability. Encroachments onto lands in which the County holds an interest or is subject to the direction, control, and management of the County shall be evaluated to determine the necessity and feasibility of an order, executing a written agreement with the infringing party, removal or the issuance a Letter of Consent.

### 1.1 County Easements or Utility Right-of-Ways

1.1.1 The Applicant will submit to the Director of Planning and Development Services particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information required for review by the Director of Planning and Development Services.

1.1.2 The Applicant shall provide written consent from all Franchisees operating in the general area to the County in consideration of allowing the Encroachment.

1.1.3 The Director of Planning and Development Services shall review the Application and may grant its consent to the Encroachment. Failure to obtain the consent of the Franchisee for the Encroachment, then the process as outlined in section 1.2 will be followed.

1.1.4 Should the County grant the encroachment, the Director of Planning and Development Services will prepare an Amending (Encroachment) Agreement to be forwarded to the applicant for review, execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

**1.2 Non-Consent to Encroachment by Franchisee**

- 1.2.1 Should a Franchisee not grant consent to an Encroachment, then the Director of Planning and Development Services may discuss the matter with the Franchisee and consult the Director of Utilities and/or the Director Capital Planning and Construction with regards to the objection of the Encroachment. If resolution cannot be determined, the Director of Planning and Development Services, will prepare a recommendation and background report to the Executive Team on the granting of the Encroachment.
- 1.2.2 Notwithstanding the non-consent of the Franchisee, the Executive Team may make a decision to grant the Encroachment, the Director of Planning and Development Services will notify the Franchisee of the County's decision to grant the Encroachment and advise that they have seven (7) days from the date of notification to appeal the decision to the Order Review Committee of Strathcona County. At the expiration of seven (7) days, if no appeal is received, the Director of Planning and Development Services will follow the process in sections 1.2.3.
- 1.2.3 Should the Executive Team not allow the Encroachment, the Director of Planning and Development Services will notify the Applicant of the County's decision. The Applicant will have seven (7) days from the date of notification to appeal the decision to the Order Review Committee of Strathcona County.

**1.3 Encroachments onto County Easements or Utility Right-of-Ways Involving Drainage Matters**

- 1.3.1 The Applicant will submit to the Director of Planning and Development Services particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information required for review by the Director of Planning and Development Services.
- 1.3.2 Should the Encroachment be granted, the Director of Planning and Development Services will prepare an Amending (Utility Right-of-Way Drainage) Agreement to be forwarded to the Applicant for review, execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

**1.4 Structural Encroachments onto Roads and Road Allowances**

- 1.4.1 The Applicant will submit to the Director of Planning and Development Services, particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information required for review by the Director of Planning and Development Services.
- 1.4.2 Should the encroachment be granted-the Director of Planning and Development Services will prepare a Road Encroachment Agreement to be forwarded to the Applicant for review, execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

**1.5 Encroachments (Use) over a Road or Road allowance**

- 1.5.1 The Applicant will submit to the Director of Planning and Development Services Department particulars of the Encroaching Use including the legal description of the lands upon which the Encroaching Use exists, a Plan of Survey detailing the Encroachment and any other required information for review by the Director of Planning and Development Services.
- 1.5.2 Should the Encroachment be granted, the Director of Planning and Development Services will prepare a Road License Agreement to be forwarded to the Applicant for review,

execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

#### 1.6 **Structural Encroachments onto Municipal Reserves, Public Utility lots or County-owned Land**

1.6.1 The Applicant will submit to the Director of Planning and Development Services Department particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information required for review by the Director of Planning and Development Services.

1.6.2 Should the Encroachment be granted, the Director of Planning and Development Services will prepare a Traditional Encroachment Agreement to be forwarded to the Applicant for review, execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

#### 1.7 **Encroachments (Use) over Municipal Reserves, Public Utility lots or County-owned Land**

1.7.1 The Applicant will submit to the Director of Planning and Development Services Department particulars of the Encroaching Use including the legal description of the lands upon which the Encroaching Use exists, a Plan of Survey detailing the Encroachment and any other required information for review by the Director of Planning and Development Services.

1.7.2 Should the Encroachment be granted, the Director of Planning and Development Services will prepare a License Agreement to be forwarded to the Applicant for review, execution and returned to the County for execution by the County's authorized signing officers and registration at Alberta Land Titles.

#### 1.8 **Non-Approval of Encroachment or Encroaching Use**

1.8.1 Should the Encroachment not be granted, the Director of Planning and Development Services may issue a written notice or order to the property owner to provide a Restoration Plan for immediate and/or removal and restoration of the Encroachment and/or the cessation of the Encroaching Use.

1.8.2 Should the Encroachment not be removed or the use has not ceased within sixty (60) days, or a Restoration Plan has not been provided, the Director of Planning and Development Services, in coordination with Environmental and Open Space Planning services and Bylaw Enforcement Services, may seek alternate measures including available legal remedies to ensure compliance with this policy.

#### 1.9 **Minor Encroachments**

1.9.1 Notwithstanding any other section in this Policy, the Director of Planning and Development Services, shall have the sole discretion to determine if an Encroachment is of such a minor nature that the County will issue a Consent Letter to the Applicant for the encroachment.

#### 1.10 **Fees**

1.10.1 If the Encroachment or Encroachment Use is granted by the County, the Applicant will be responsible for the fees established by the Council of the County from time to time.

## **Roles and Responsibilities**

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The Director of Planning and Development Services is responsible to:

1. revise the standard form of Agreements and Letters referred to in this Policy as may be required from time to time.
2. receive, and respond to all requests for encroachments onto lands in which the County holds an interest or is subject to the direction, control, and management of the County.
3. evaluate and consider the execution of encroachment agreements or other authorizing documentation with respect to the issuance of orders, letters of compliance and development permits.
4. advise any Applicants of the County's process regarding the evaluation of Encroachments and provide a listing of Franchisees for the Applicant to contact.
5. prepare, execute and register at Alberta Land Titles all necessary documentation to allow the encroachment.
6. in coordination and recommendation of Environmental and Open Space Planning and Enforcement Services, provide the applicant with a Restoration Plan and/order as required to ensure compliance with this policy and Strathcona County Bylaw No. 8-2007 as amended and Strathcona County Bylaw No. 68-2005 as amended.
7. maintain an inventory of all documentation relating to Encroachments evaluated by the County.

## **Procedures**

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Procedures have been developed by administration to ensure effective implementation of this policy.