
Storm Water Management Facility Easements

Date of Approval by Council: 11/04/2003; 08/30/2011

Resolution No: 812/2003; 581/2011

Lead Role: Chief Commissioner

Replaces: n/a

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.

Policy Statement

The County shall, at its sole discretion, authorize encroachments which have occurred onto County property or a County Easement/Right-of-Way through the execution of a written agreement with the infringing party or the issuance of a Consent Letter.

Definitions

Amending Storm Water Management Facility Encroachment Agreement – Means the County's standard form of Agreement for situations where there are two titled parcels of land or a titled parcel of land and a Utility Right-of-Way (easement) interest and where there is a structure encroaching upon one parcel of land or upon a Utility Right-of-Way (easement) interest.

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 utility drainage purpose.

Applicant - Means any party who has encroached onto a Storm Water Management Facility.

Bio-swale - Means a low gradient open channel with a dense vegetative cover through which run-off is directed during storm events.

Consent Letter for Minor Encroachments - Means the County's standard form of letter for situations in which the Director of Planning and Development Services determines whether an Encroachment requires an Agreement or a Consent Letter.

Constructed Wetland and Man Made Creeks - Means Engineered Wetlands that are built for storm water treatment. Engineered facilities designed to manage a specific amount of storm water. Designed to mimic natural wetland systems by incorporating appropriate wetland vegetation and soils to assist with reducing shock-loading effects of contaminated storm water.

Dry Pond - a pond designed to contain runoff temporarily as off-line storage areas and remain dry most of the time. Pond designed such that any storm runoff in excess of the permitted predevelopment flow shall be stored in the pond. The pond bottom and slopes are top soiled and seeded.

Easement – Means the right held by one property owner to make use of the land of another for a limited purpose, as right of passage.

Encroachments - Means an illegal intrusion onto a Storm Water Management Facility.

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.

High Water Line - Means the engineered design high water level for a specified facility.

Natural Wetland - The structure and function is determined by existing “natural site” conditions, topography, vegetation, soils, runoff, infiltration, recharge and discharge and water depth rather than conditions engineered for the site.

Normal Water Line - Means the engineered design level in a facility associated with dry weather periods of low storm water flows.

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

Overland Drainage System - Means rather than a piped conveyance system, it is an overland drainage system.

Plan of Survey - Means a plan, survey, diagram or document as 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.

Retaining Wall - Means where grades differ, a structure designed to keep in place or keep fixed soil, sand, gravel etc. preventing erosion or movement of material.

Storm Water Management Facility - Means Wetlands, Constructed Wetlands and Man Made Creeks, Storm Water Wetlands, Storm Water Lakes, Wet and Dry Ponds, overland drainage systems and bio-swales located within Utility Rights-of-Way (easement) and/or County owned properties (Public Utility Lots and/or Reserves).

Storm Water Wetland - Means a natural wetland incorporated into a development for the combined purpose of preserving natural form and function and providing for increased urban storm water management.

Utility Right-of-Way (easement) - Means a right granted on, over, or under land to the County for the purpose of constructing and/or maintaining a public utility.

Wet Pond - Means a storm water management facility that is partially inundated on a permanent basis and is built to attenuate peak flows downstream while providing improved water quality.

Guidelines

1.0 The County shall endeavor to authorize encroachments which have occurred onto Storm Water Management Facilities. Encroachments shall be evaluated to determine the necessity and feasibility of an order, executing a written agreement with the infringing party, removal or the issuance of a Letter of Consent Letter to protect the County's rights and obligations with respect to the Subject Lands and to minimize the County's exposure to liability.

1.1 County Storm Water Management Facilities:

- a) 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.
- b) The Applicant shall provide written consent from all Franchisees operating in the general area to the County in consideration of allowing the Encroachment.
- c) 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.
- d) Should the Encroachment be granted, the Director of Planning and Development Services will prepare an Amending (Storm Water Management Facility 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:

- a) 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 with Engineering and Environmental Planning 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.
- b) 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 Council 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 (c).
- c) 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 Council of Strathcona County.

1.3 Storm Water Management Facility Alterations – Existing prior to this Policy SER-012-009)

- a) Where the High Water Line is located inside the private property line, the following improvements may be permitted in the Storm Water Management Facility within the Utility Right-of-Way (easement) area of the Storm Water Management Facility:
 - Original grading as approved by the Director, Planning and Development Services and Alberta Environment to be maintained.
 - Firepits
 - Patios

- Trees, shrubs and ground cover. Recommend natural wetland vegetation plantings to prevent soil erosion.
 - Gravel, cobble stone, shale, rip-rap
 - Ponds, fountains or engineered structures (decks) on piles that do not reduce or impact the Storm Water Management Facility storage capacity or impact shoreline grade or vegetation. A survey and/or engineers report and landscape design is required.
 - Chain link fencing
 - Natural plant material fringe, where applicable, to be maintained as originally designed. Any alterations to be approved by Strathcona County.
 - Retaining walls
- b) The following improvements are not permitted within Storm Water Management Facilities:
- Floatable material: eg. Wood chip mulch, peat moss, and small floatable structures
 - Docks, buildings, sheds
 - Gates or alterations to chain link fencing
 - Alterations outside fence
 - Electrical outlets
 - Chemicals such as pesticides and paints
 - Culverts
- c) Wetlands
- No alterations are permitted in Natural Wetlands
 - Enhancements to ensure ecological integrity of the wetland ecosystems are maintained may be permitted on approval by Strathcona County.
- d) Where the High Water Line is located on public property, no encroachments are permitted within the Public Utility Lots and/or Reserves without the prior written approval of the Director, Planning and Development Services must be documented by Strathcona County.
- e) From and after the date of this Policy, no further encroachments will be allowed in Public Utility Lots and/or Reserves.

1.4 Storm Water Management Facility Alterations - Subsequent to Policy SER 012-009

- a) Where the High Water Line is located inside the private property line, the following improvements may be permitted in the Storm Water Management Facility within the Utility Right-of-Way (easement) area of the Storm Water Management Facility:
- Original grading as approved by Planning and Development Services, other Departments as required and Alberta Environment to be maintained.
 - Firepits
 - Patios
 - Trees, shrubs and ground cover. Recommend natural wetland vegetation plantings to prevent soil erosion.
 - Gravel, cobble stone, shale, rip-rap
 - Ponds, fountains or engineered structures (decks) on piles that do not reduce or impact the Storm Water Management Facility storage capacity or impact shoreline grade or vegetation. A survey and/or engineers report and landscape design is required.
 - Chain link fencing
 - Natural plant material fringe, where applicable, to be maintained as originally designed. Any alterations to be approved by Strathcona County.

- b) The following encroachments are not permitted on Storm Water Management Facilities:
- Retaining walls
 - Floatable material: Wood chip mulch, peat moss, and small floatable structures
 - Docks, buildings, boats, sheds, bridges, boardwalks
 - Gates or alterations to chain link fencing
 - Alterations outside fence
 - Electrical outlets
 - Chemicals such as pesticides and paints
 - Culverts
- c) Wetlands
- No alterations are permitted in Natural Wetlands
 - Enhancements to ensure ecological integrity of the wetland ecosystems are maintained may be permitted on approval by Strathcona County.
 - No encroachments are permitted within the Public Utility Lots without the prior written consent of the Director, Planning and Development Services. Cutting of native vegetation: eg bulrush/cattails within the Public Utility Lots and/or Reserve is not permitted.

1.6 Non-Approval of Encroachment or Encroaching Use

- a) 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.
- b) 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 the Director of Utility Services and Bylaw Enforcement Services, may seek alternate measures including available legal remedies to ensure compliance with this policy.
- c) Enforcement will be ranked in order of priority utilizing the following criteria:
- i) Liability and risk to the County
 - ii) Prior issues of flooding
 - iii) Safety protection
 - iv) Form and function of storm water management facility
 - v) Benefit/cost analysis
 - vi) Resource availability

1.7 Minor Encroachments

- a) 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.

1.8 Fees

- a) If the County allows the Encroachment or Encroachment Use, the Applicant will be responsible for the fees established by the Council of the County from time to time.

Roles and Responsibilities

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 Storm Water Management Facilities.
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. obtain a recommendation from Utility Services prior to authorization of any Storm Water Management Facility Easements.
5. advise any Applicants of the County's process regarding the evaluation of Encroachments and provide a listing of Franchisees for the Applicant to contact.
6. prepare, execute and register at Alberta Land Titles all necessary documentation to allow the encroachment.
7. in coordination and recommendation of Environmental and Open Space Planning and Enforcement Services, order as required to ensure compliance with this policy and Strathcona County Bylaw No. 8-2007 as amended.
8. maintain an inventory of all documentation relating to Encroachments evaluated by the County.
9. ensure the County is in compliance with the licenses as provided by Alberta Environment and establish criteria to reduce the need for written agreements or Letter of Consent.