

Storm Water Management Facility Easements

Date Approved by Council: **11/04/2003**

Resolution No: **812/2003**

Lead Role: **Chief Commissioner**

Replaces: **n/a**

Last Review Date: **11/2003**

Next Review Date: **12/2008**

Administrative Responsibility: **Planning &
Development Services**

Policy Statement

The County shall have in place a formal policy and procedure outlining the non-County use of storm water management facilities, easements and the management of easement interests.

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 (where appropriate).

Definitions, Guidelines and/or Procedures

1.0 Purpose

The County shall evaluate encroachments onto Storm Water Management Facilities (the "Subject Lands") to determine the necessity and feasibility of executing a written agreement with the infringing party or issue a Letter of Consent (where appropriate) to protect the County's rights and obligations with respect to the Subject Lands and to minimize the County's exposure to liability with respect to these encroachments failing which the County may require removal of the encroachments(s).

The County shall endeavor to maintain a records system regarding such encroachments onto the Subject Lands. The County shall have in place a policy to ensure the County is in compliance with the licenses as provided by Alberta Environment. The policy is to establish criteria to reduce the need for written agreements or Letter of Consent.

2.0 Authorization

2.1 Section 61 of the Municipal Government Act authorizes a municipality to grant rights over its property as follows:

61(1) A municipality may grant rights, exclusive or otherwise, with respect

to its property, including property under the direction, control and management of the municipality.

61(2) A municipality may charge fees, tolls and charges for the use of its property, including property under the direction, control and management of the municipality.

2.2 The Council hereby delegates the authority to implement this Policy to the Chief Commissioner and his delegate, the Coordinator, Land Management Services.

3.0 Definitions

3.1 "Amending Storm Water Management Facility Encroachment Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, 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.

3.2 "Applicant" - Any party who has encroached onto a Storm Water Management Facility.

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

3.4 "Consent Letter for Minor Encroachments" - The County's standard form of letter attached, as amended from time to time in accordance with this Policy, for situations in which the Coordinator, Land Management Services, or his designate, determines, at his sole discretion, whether an Encroachment is of a minor nature such that an Agreement is not required.

3.5 "Constructed Wetland and Man Made Creeks"- 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.

3.6 "Dry Pond" - Is 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.

3.7 "Encroachments" - An illegal intrusion onto a Storm Water Management Facility.

3.8 "Franchisee" - 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.

3.9 "High Water Line" - Is the engineered design high water level for a specified

facility.

3.10 "Natural Wetland" - Its 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.

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

3.12 "Overland Drainage System" - Rather than a piped conveyance system, it is an overland drainage system.

3.13 "Plan of Survey" - such plan, survey, diagram or document as may be acceptable to the Coordinator, Land Management Services including, but not limited to, a Real Property Report prepared by a registered Alberta Land Surveyor.

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

3.15 "Storm Water Management Facility" - includes 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).

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

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

3.18 "Wet Pond" - 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.

4.0 Responsibilities

4.1 The Chief Commissioner or his delegate, the Coordinator, Land Management Services are hereby authorized to revise the standard form of Agreements and Letters referred to in this Policy as may be required from time to time.

4.2 The responsibilities of the Coordinator, Land Management Services include:

4.2.1 To receive, evaluate and respond to all requests for encroachments onto Storm Water Management Facilities.

4.2.2 To evaluate these requests in accordance with this Policy.

4.2.3 To prepare and execute all necessary documentation to allow the Encroachment (where applicable).

4.2.4 To ensure that the appropriate documentation is registered at the Land Titles Office (where applicable).

4.2.5 To maintain an inventory of all documentation relating to Encroachments evaluated by the County.

4.3 The responsibilities of the County's Planning and Development Services Department include:

4.3.1 To advise any Applicants of the County's process regarding the evaluation of Encroachments and provide a listing of Franchisees for the Applicant to contact.

4.3.2 To consider the execution of encroachment agreements or other authorizing documentation in this Policy as part of its review process with respect to the issuance of letters of compliance and development permits on properties where Encroachments exist.

4.4 The responsibilities of the Council of Strathcona County include:

4.4.1 To approve any amendments to this Policy if necessary.

4.4.2 To consider appeals referred to in this Policy.

5.0 For Encroachments onto County Storm Water Management Facilities:

5.1 The Applicant will submit to the 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 the Planning and Development Services Department requires.

5.2 The Applicant shall contact all Franchisees operating in the general area to obtain their written comments or written consent to the County to allow the Encroachment onto the County's Utility Right-of-Way (easement).

5.3 Once these consents and/or comments are received by Planning and Development Services, the Application will be reviewed by County stakeholder departments and the Coordinator, Land Management Services, or his designate, as to whether the County will grant its consent to the Encroachment. If the Applicant is unable to obtain the consent of the Franchisee for the Encroachment, then the process detailed in Section 6.0 will be followed.

5.4 If the County grants the encroachment, then the Coordinator, Land Management Services will prepare an Amending (Storm Water Management Facility Encroachment) Agreement. This Agreement will then be forwarded to the applicant for review, execution and return to the County for further processing.

5.5 Upon approval of the Amending (Storm Water Management Facility Encroachment) Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Amending (Storm Water Management Facility Encroachment) Agreement.

5.6 Upon the full execution of the Amending (Storm Water Management Facility Encroachment) Agreement, Planning and Development Services will take the necessary steps to register the Agreement at the Land Titles Office.

6.0 Non-Consent to Encroachment by Franchisee:

6.1 If for any reason a Franchisee is not prepared to grant their consent to an Encroachment, then the Coordinator, Land Management Services may discuss the matter with the Franchisee and consult the County Engineer on the substance of the object to the Encroachment. If resolution to the objection cannot be determined, then the Coordinator, Land Management Services, will prepare a recommendation and background report to the Executive Team on the granting of the Encroachment.

6.2 If, notwithstanding the non-consent of the Franchisee, the Executive Team makes a decision to grant the Encroachment, then the Coordinator, Land Management 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, then the Coordinator, Land Management Services will follow the process in Sections 5.4, 5.5 and 5.6.

6.3 If the Executive Team does not allow the Encroachment, then the Coordinator, Land Management 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.

7.0 Storm Water Management Facility Alterations - Existing prior to this Policy (SER-012-009)

7.1 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 County Engineer 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

7.2 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

7.3 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.

7.4 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 County Engineer and must be documented by Strathcona County.

7.5 From and after the date of this Policy, no further encroachments will be allowed in Public Utility Lots and/or Reserves.

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

8.1 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 County Engineer 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.

8.2 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

8.3 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.

8.4 No encroachments are permitted within the Public Utility Lots without the prior written approval of the County Engineer and must be documented by Strathcona County. Cutting of native vegetation: eg bulrush/cattails within the Public Utility Lots and/or Reserve is not permitted.

9.0 Exemption

9.1 Strathcona County shall be exempt from the application of this Policy and may in its sole and unfettered discretion construct and maintain structures and/or facilities within a storm water management facility. This will assist the County in the maintenance, or operation of the storm water management facility and provides for the construction of structures or facilities by the County within the storm water management facility which would not be affected by the operation or maintenance of the storm water management facility

10.0 Enforcement

10.1 If an Encroachment of a structure or an Encroaching Use is not permitted or if permission to Encroach is denied, then the Coordinator, Land Management Services may issue a written notice to the property owner for immediate removal of the Encroachment and/or the cessation of the Encroaching Use.

10.2 If the Coordinator, Land Management Services does not permit the encroachment, the applicant may within thirty (30) days of date of mailing of the written notice, appeal the decision to the Manager of Planning and Development Services and the County Engineer. The Manager of Planning and Development Services and the County Engineer collectively render a final decision as to whether the encroachment will or will not be permitted and must be removed.

10.3 If the Manager of Planning and Development Services and the County Engineer uphold the decision of the Coordinator, Land Management Services and if the Encroachment is not removed or the Encroaching Use has not ceased within sixty (60) days, the Coordinator, Land Management Services may take advantage of whatever legal remedies are available to the County to ensure the removal of the Encroachment or cessation of the Encroaching Use.

10.4 Enforcement will be ranked in order of priority utilizing the following criteria:

- a) Liability and risk to the County
- b) Prior issues of flooding
- c) Safety protection
- d) Form and function of storm water management facility
- e) Benefit/cost analysis
- f) Resource availability

11.0 Documentation

11.1 Notwithstanding any other section in this Policy, the Coordinator, Land Management Services, or his designate, 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 rather than require the execution of an Agreement.

12.0 Fees

12.1 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.

13.0 Liability

13.1 Strathcona County, while undertaking preventative maintenance on or during the normal operation of any Storm Water Management Facility, will not be held liable for any damages incurred to landscaping improvements constructed within the Utility Right-of-Way (easement) area or Storm Water Management Facility.