

Fort Collins City Council Agenda

Regular Meeting

6:00 p.m., Tuesday, January 7, 2025

City Council Chambers at City Hall, 300 Laporte Avenue, Fort Collins, CO 80521

Zoom Webinar link: <https://zoom.us/j/98241416497>

NOTICE:

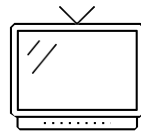
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting:



Meetings are open to the public and can be attended in person by anyone.



Meetings are televised live on Channels 14 & 881 on cable television.



Meetings are available through the Zoom platform, electronically or by phone.



Meetings are livestreamed on the City's website, fcgov.com/fctv

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

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There are in person and remote options for members of the public who would like to participate in Council meetings:

Comment in real time:

During the public comment portion of the meeting and discussion items:



In person attendees can address the Council in the Chambers. The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.



All speakers are required to sign up to speak using the online sign up system available at www.fcgov.com/agendas. Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

Full instructions for online participation are available at fcgov.com/councilcomments.

Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience.

To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using this call in number and meeting ID:

Call in number: 720 928 9299

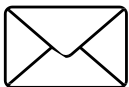
Meeting ID: 982 4141 6497

During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments:



Email comments about any item on the agenda to cityleaders@fcgov.com



Written comments can be mailed or dropped off at the City Manager's Office at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

Documents to Share during public participation: Persons wishing to display presentation materials using the City's display equipment under the Public Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City's display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.



City Council Regular Meeting Agenda

January 7, 2025 at 6:00 PM

Jeni Arndt, Mayor
Emily Francis, District 6, Mayor Pro Tem
Susan Gutowsky, District 1
Julie Pignataro, District 2
Tricia Canonico, District 3
Melanie Potyondy, District 4
Kelly Ohlson, District 5

City Council Chambers
300 Laporte Avenue, Fort Collins
& via Zoom at
<https://zoom.us/j/98241416497>
Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Delynn Coldiron
City Clerk

PROCLAMATIONS & PRESENTATIONS 5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

None scheduled.

REGULAR MEETING 6:00 PM

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

- City Manager Review of Agenda
- Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.

F) COMMUNITY REPORTS - None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS (Including requests for removal of items from Consent Calendar for individual discussion.)

*Individuals may comment regarding any topics of concern, whether or not included on this agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to Council.*

- *Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/*

- *Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.*
- *All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).*
- *The presiding officer will determine and announce the length of time allowed for each speaker.*
- *Each speaker will be asked to state their name and general address for the record, and, if their comments relate to a particular agenda item, to identify the agenda item number. Any written comments or materials intended for the Council should be provided to the City Clerk.*
- *A timer will beep one time and turn yellow to indicate that 30 seconds of speaking time remain and will beep again and turn red when a speaker's time has ended.*

*[**For questions about the development review process or the status of any particular development, consult the City's Development Review Center page at <https://www.fcgov.com/developmentreview> or contact the Development Review Center at 970.221.6760.]*

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

- *Ordinances on First Reading that are routine;*
- *Ordinances on Second Reading that are routine;*
- *Those of no perceived controversy;*
- *Routine administrative actions.*

1. Consideration and Approval of the Minutes of the December 17, 2024 Regular meeting.

The purpose of this item is to approve the minutes of the December 17, 2024 Regular meeting.

2. First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

The purpose of this item is to present a recommendation from the City Planning Development Team to:

1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.

2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
3. Create a performance bond requirement for all small cell facility installations.

3. First Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A.

The purpose of this item is to authorize the conveyance of a Temporary Construction Easement (the "TCE") on 0.469 acres (the "TCE Area") being a portion of City property presently known as Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

4. Resolution 2025-001 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County concerning the Livermore Conservation Project.

The purpose of this item is to seek authorization to enter into an Intergovernmental Agreement (IGA) with Larimer County for the Livermore Conservation Project. The project will conserve four ranches totaling 4,897 acres within the Laramie Foothills/Mountains to Plains Priority Area. The County would be the lead on this project and hold the conservation easements on the properties.

5. Resolutions 2025-002 Finding Substantial Compliance and Initiating Annexation Proceedings for the Heritage Annexation.

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Heritage Annexation, a voluntary annexation located northeast of the intersection of International Boulevard and Mexico Way. The Applicant has submitted a written petition requesting annexation of 24.84 acres and zoning into the Employment (E) zone district, which is consistent with the City of Fort Collins Structure Plan Map and the most recently adopted (December 2023) East Mulberry Plan.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

6. Resolution 2025-003 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and Authorizing an Intergovernmental Agreement with Said District.

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude the property annexed into the City in 2024 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The property affected by this Resolution is the I-25 & Mulberry Annexation. Colorado Revised Statutes Section 32-1-502 requires an order of exclusion from the District Court to remove the annexed property from special district territories. The property has been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

END OF CONSENT CALENDAR

J) ADOPTION OF CONSENT CALENDAR

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

L) STAFF REPORTS - None.

M) COUNCILMEMBER REPORTS

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

The method of debate for discussion items is as follows:

- *Mayor introduced the item number and subject; asks if formal presentation will be made by staff*
- *Staff presentation (optional)*
- *Mayor requests public comment on the item (three minute limit for each person)*
- *Council questions of staff on the item*
- *Council motion on the item*
- *Council discussion*
- *Final Council comments*
- *Council vote on the item*

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all have an opportunity to speak. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

7. First Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

The purpose of this item is to incorporate process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

P) RESUMED PUBLIC COMMENT (if applicable)

Q) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

R) ADJOURNMENT

Every regular Council meeting will end no later than midnight, except that: (1) any item of business commenced before midnight may be concluded before the meeting is adjourned and (2) the Council may, at any time prior to adjournment, by majority vote, extend a meeting beyond midnight for the purpose of considering additional items of business. Any matter that has been commenced and is still pending at the conclusion of the Council meeting, and all matters for consideration at the meeting that have not yet been considered by the Council, will be deemed continued to the next regular Council meeting, unless Council determines otherwise.

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File Attachments for Item:

1. Consideration and Approval of the Minutes of the December 17, 2024 Regular meeting.

The purpose of this item is to approve the minutes of the December 17, 2024 Regular meeting.

January 7, 2025



AGENDA ITEM SUMMARY

City Council

STAFF

Delynn Coldiron, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the December 17, 2024 Regular meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the December 17, 2024 Regular meeting.

STAFF RECOMMENDATION

Staff recommends approval of the minutes.

ATTACHMENTS

1. Draft Minutes, December 17, 2024

December 17, 2024

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

**PROCLAMATIONS AND PRESENTATIONS
5:00 PM**

A) PROCLAMATIONS AND PRESENTATIONS

None Scheduled.

**REGULAR MEETING
6:00 PM**

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Tricia Canonico
- Councilmember Melanie Potyondy
- Councilmember Kelly Ohlson
- Councilmember Julie Pignataro

STAFF PRESENT

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Delynn Coldiron

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- No changes to the published agenda.
- Items 1-24 on the Consent Calendar are recommended for adoption.
- Removing Item No. 14, *Second Reading of Ordinance No. 189, 2024, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney*, from the Consent Calendar to allow for Councilmember Potyondy to recuse herself.
- Motion for an Executive Session to be considered under Other Business.

F) COMMUNITY REPORTS

Item 1.

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS (Including requests for removal of items from Consent Calendar for individual discussion.)

Alex Scott discussed the situation in Gaza, spoke in favor of Council adopting a ceasefire resolution, and encouraged Council not to remove the opportunity for individuals to provide videos as part of public comment.

Kimberly Connor spoke in favor of Council adopting a ceasefire resolution and provided additional information from an Amnesty International report regarding the situation in Gaza.

Elizabeth Hudetz showed slides related to Platte River Power Authority's renewable energy efforts and provided data regarding high ozone days, methane, and the "F" rating given to the City by the American Lung Association. Hudetz expressed concern regarding Platte River's plan to build an additional gas power plant and urged Council to require a third-party review of Platte River's Integrated Resource Plan.

Nicholas Sahwin spoke in favor of the Connexion union and commented on a memo provided by Human Resources related to non-union busting efforts. Sahwin stated that the Mountain States Employer's Council has been involved in non-union education for some time and noted the City has partnered with this entity and has refused to approve the Connexion union request. Sahwin requested a clear process allowing employees to request and form a union without interference and asked the City to work with his group to find a constructive path forward.

Hillary Ping spoke in favor of the Connexion union stating the City is stalling at the expense of employees which shows a clear sign of opposition. Ping urged Council to support employees' right to unionize.

Zachary Brisbin urged Council to break the stalemate between the City and employees looking to unionize. Brisbin stated it is clear the lack of engagement is union busting as it prevents progress from being made. Brisbin stated that the group has unionized and needs to be recognized before things can move forward.

Kaori Keyser thanked City staff for putting together the memo related to the Connexion union which stated that the union was not being recognized so that collaborative and constructive efforts could move forward. Keyser urged Council to support the union and/or an associated ballot initiative.

John Ramstead opposed the proposal to no longer allow the use of audio and video as part of public comment and urged Council to support the Connexion union. Ramstead stated the City has hired the Mountain States Employer's Council for anti-union training and encouraged Council to recognize the union workers immediately. Ramstead also encouraged the placement of a measure on the ballot similar to Proposition 2U that recently passed in Denver.

Casey Johns discussed the memo released by the City regarding the Connexion union and stated it is not fair to make employees wait until the next election for negotiations to occur between a union and the employer. Additionally, Johns opposed disallowing videos and audios as a part of public comment.

Christina Swope requested Council ask the City Manager to recognize the Connexion union stating Fort Collins has a duty to set a positive precedent to uphold civic principles. Swope stated a ballot item related to this is an undemocratic and antiquated process and requested the City reconsider its approach. Additionally, Swope opposed disallowing video and audio aspects of public participation.

Trevor Rothanzl stated he is an incoming labor chair for DSA Fort Collins and questioned whether City’s statement that it can most effectively address employee needs and concerns through ongoing collaboration, flexibility, and proactive measures was in good faith. Rothanzl also discussed the City’s relationship with the Mountain States Employer’s Council and opposed Council banning video and audio aspects of public participation.

Andre DiSibio stated he was a former Connexion employee and stated the goal of the union is to protect the workers and the core mission of Connexion. DiSibio commented on crushing inflation and urged Council to recognize the union to acknowledge the work of individuals who have directly improved the community.

Adam Hirschhorn spoke about several issues and read a Christmas story he had prepared.

Greg Zoda opposed banning videos during public participation and urged the City to recognize the Connexion union. Zoda discussed the memo that was provided from Human Resources and commented on the Mountain States Employer’s Council training and its focus against unions. He noted they would gladly take up the challenge of getting a petition initiative on the ballot; however, thought it would be much better if the City would just move forward with recognizing the union requested.

Jonah Salehi opposed banning videos during public participation and stated the City should have a process for unionizing rather than trying to avoid them. Salehi stated the City should show its workers respect by giving them a say in their working conditions.

Public comment concluded at 6:40 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Ohlson stated he would be pulling the item related to banning videos from the Consent Agenda. Additionally, he commented on the entities which have found the current Israeli government to be guilty of crimes against humanity and stated he shares that concern and wished he could do more about it from a Council perspective.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Councilmember Ohlson withdrew Item Nos. 18, *Resolution 2024-146 Concerning Implementation of Standards Created by Amendments to the Public Utility Regulatory Policies Act of 1978 by the Infrastructure Investment and Jobs Act (“IIJA”)*, and 20, *Resolution 2024-148 Adopting Amended Rules of Procedure Governing the Conduct of City Council Meetings and Council Work Sessions*, from the Consent Calendar.

J) CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the December 3, 2024 Regular meeting.

The purpose of this item is to approve the minutes of the December 3, 2024 Regular meeting.

Approved.

2. Second Reading of Ordinance No. 175, 2024, Appropriating Philanthropic Revenue Received by City Give for the Lincoln Center’s Various Programs and Services as Designated by the Donors.

This Ordinance, unanimously adopted on First Reading on December 3, 2024, appropriates \$33,266.00 for the Lincoln Center in philanthropic revenue received by City Give. These charitable gifts are aligned with both the City’s strategic priorities and the respective donors’ designation.

Adopted on Second Reading.

3. **Second Reading of Ordinance No. 176, 2024, Making a Supplemental Appropriation of Additional Revenue and Appropriating Prior Year Reserves in the Self Insurance Fund for Unanticipated Insurance Expenses.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, appropriates \$462,711 in the City's Self Insurance Fund to be used for unanticipated increases in fourth quarter insurance premiums and various forecasted claim payments.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 177, 2024, Making a Supplemental Appropriation of Additional Revenue Received in the Benefits Fund for the City's Medical, Dental, and Life Insurance Plans.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, appropriates \$1,137,041 from unanticipated revenue collected in the Benefits Fund to cover Medical/Dental claims and various Life Insurance premium expenses that could potentially exceed 2024 budgeted appropriations.

The City's Benefits Plan is a self-funded health plan in which premiums collected from both employees and employers are recorded as revenue in the Benefits Fund to pay for plan administration, medical/dental claims, and insurance premiums. As such, this is a self-funded appropriation request requiring no use of reserves.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 178, 2024, Making a Supplemental Appropriation of Funds Received from the Edward Byrne Memorial Justice Assistance Grant Program for Fort Collins Police Services.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, supports Fort Collins Police Services in work performed as a member of the Northern Colorado Drug Task Force.

The Northern Colorado Drug Task Force is managed by Larimer County Sheriff Department, with both Fort Collins Police Services and Loveland Police being members. These member agencies support a broad range of activities to prevent and control drug-related crimes.

In 2022, Larimer County applied for and was awarded \$53,616 through the Edward Byrne Memorial Justice Assistance Grant (JAG) program in support of operating the Northern Colorado Drug Task Force (Attachment 3). In 2024, the City of Fort Collins, City of Loveland and Larimer County entered an intergovernmental agreement (Attachment 2), demonstrating the allocation of the \$53,616 awarded under JAG in support of the Northern Colorado Drug Task Force. Fort Collins Police Services received \$16,313 to support personnel costs and other operating costs directly attributed to the Northern Colorado Drug Task Force.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 179, 2024, Making Supplemental Appropriations of Prior Year Reserves and Unanticipated Revenue and Authorizing Transfers of Appropriations for the Licensing Permitting and Code Enforcement System.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, implements and modernizes a new licensing, permitting, and code enforcement system. The existing funding for this project was originally allocated as part of the 2023/2024 Budget Cycle's 'Digital Transformation' initiative.

After an almost two-year procurement process, the City has selected Tyler Technologies (Tyler) as the 'Vendor of Choice' (VOC) and is currently in contract negotiation. This appropriation request will provide the anticipated funding needed for software deployment, testing, training, temporary staffing backfill and organizational change management.

The total amount being requested is approximately \$4M. This includes:

- *Software as a Service 19-month Implementation*
- *Software as a Service two-year Subscription Costs*
- *City Staff Backfill for two-year Implementation*
- *Third Party Professional Implementation Services*
- *Change Management*

With this appropriation, the project implementation will begin during the first quarter of 2025 and is anticipated be fully operational by Fall of 2026.

The new system is expected to modernize current business processes, improve efficiency, reduce errors, enhance customer experience, and save staff and customer time.

Adopted on Second Reading.

7. Items Relating to Amending Chapter 17 of City Code to Align with State Statutes.

A. Second Reading of Ordinance No. 180, 2024, Amending Section 17-1 of the Code of the City of Fort Collins to Add Definitions of "Deadly Weapon" and "Firearm".

B. Second Reading of Ordinance No. 181, 2024, Amending Section 17-124(3) of the Code of the City of Fort Collins to Comport with State Law Regarding Disorderly Conduct.

C. Second Reading of Ordinance No. 182, 2024, Amending Section 17-126(a)(4) of the Code of the City of Fort Collins to Remove the Phrase "Intended to Harass" and Amend "He or She" to "Them".

This Ordinance, unanimously adopted on First Reading on December 3, 2024, updates the City Code in order to align with State statute and recent case law.

All Ordinances adopted on Second Reading.

8. Second Reading of Ordinance No. 183, 2024, Declaring a Portion of City-Owned Property at Schoolside Park as Public Right of Way.

This Ordinance, unanimously adopted on First Reading on December 3, 2024, declares 0.141 acres (the "ROW Parcel"), more or less, being a portion of City property presently known as Schoolside Park as public right of way for South Timberline Road and related improvements, including public utilities, pedestrian, transit, and bicycle access and improvements, and landscaping.

The ROW Parcel was part of the Timberline Road Widening Project, which was completed earlier this year. It is now necessary to file formal documentation declaring the ROW Parcel as a public right of way because the approval of Schoolside Park, which is currently in the final phase of the Building Development Review process, requires that this right-of-way be declared.

Adopted on Second Reading.

9. **Second Reading of Ordinance No. 184, 2024, Authorizing the Conveyance of a Permanent Waterline Easement on Cathy Fromme Prairie Natural Area to the Fort Collins-Loveland Water District.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, seeks authorization to approve the conveyance of a permanent waterline easement to Fort Collins-Loveland Water District (FCLWD) on 0.089 acres in the southwestern corner of Cathy Fromme Prairie Natural Area. FCLWD intends to construct a six million (6,000,000) gallon tank on Larimer County's landfill property and a 30" feeder waterline to increase reliability and resilience of FCLWD's existing facilities. The 30" waterline will run east from the new tank and connect in with an existing 36" waterline that runs north-south along Cathy Fromme's western boundary. The project has been processed through Fort Collins' 1041 permit procedures and was issued a Finding of No Significant Impact (FONSI).

Adopted on Second Reading.

10. **Second Reading of Ordinance No. 185, 2024, Adopting the 2025 Larimer County Regional Transportation Capital Expansion Fee Schedule.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, adopts the 2025 Larimer County Regional Transportation Capital Expansion Fee Schedule.

Adopted on Second Reading.

11. **Second Reading of Ordinance No. 186, 2024, Appropriating Prior Year Reserves in the Water Fund and the Wastewater Fund for the Transfer of Fleet Vehicles Between the Water and Wastewater Utilities.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, appropriates prior year reserves in the Water and Wastewater Funds to purchase fleet equipment at fair market value between Operational Divisions of the Water Field Operations Department.

Adopted on Second Reading.

12. **Second Reading of Ordinance No. 187, 2024, Amending Section 2-596 of the Code of the City of Fort Collins and Setting the Salary of the City Manager.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, amends City Code to establish the 2025 salary of the City Manager. Council met in executive session on November 26, 2024, to conduct the performance review of Kelly DiMartino, City Manager, and to consider the salary market analysis for this position.

Adopted on Second Reading.

13. **Second Reading of Ordinance No. 188, 2024, Amending Section 2-606 of the Code of the City of Fort Collins and Setting the Salary of the Chief Judge.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, amends City Code to establish the 2025 compensation of the Chief Judge. A new two-year agreement for her employment was also adopted by Resolution 2024-142. Council met in executive session on November 26, 2024, to conduct the performance review of Jill Hueser, Chief Judge, and to consider the salary market analysis for this position.

14. **Second Reading of Ordinance No. 189, 2024, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney.**

This Ordinance, unanimously adopted on First Reading on December 3, 2024, amends City Code to establish the 2025 compensation of the City Attorney. Council met in executive session on November 26, 2024, to conduct the performance review of Carrie Daggett, City Attorney and to consider the salary market analysis for this position.

Removed from Consent Calendar - Adopted on Second Reading.

15. **Resolution 2024-143 Approving the Design, Creation and Installation of Public Art at the I-25 and Prospect Interchange.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Reserve Account to commission an artist to create art for the I-25 and Prospect Interchange Project. The expenditure of \$64,500 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Stephen Shachtman to create the artworks for the I-25 and Prospect Interchange Project.

Adopted.

16. **Resolution 2024-144 Approving the Design, Creation and Installation of Public Art at the Power Trail and Harmony Road Crossing.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Reserve Account to commission an artist to create art for the Power Trail and Harmony Road Crossing Project. The expenditure of \$50,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Todd Kundla to create the artworks for the Power Trail and Harmony Road Crossing Project.

Adopted.

17. **Resolution 2024-145 Approving Expenditures from the Art in Public Places Stormwater and Water Utility Accounts to Commission an Artist to Create Art for the City's Utilities.**

The purpose of this item is to approve expenditures from the Art in Public Places Stormwater Utility and Water Accounts to commission an artist to create art for the Oak Street Stormwater Improvements Project. The expenditure of \$155,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Mark Aeling to create the artworks for the Oak Street Stormwater Improvements Project.

Adopted.

18. **Resolution 2024-146 Concerning Implementation of Standards Created by Amendments to the Public Utility Regulatory Policies Act of 1978 by the Infrastructure Investment and Jobs Act ("IIJA").**

The purpose of this item is to present for Council consideration the recommendation from the City electric utility and the Energy Board, not to adopt the new revisions to the Public Utility Regulatory Policies Act of 1978 (PURPA) into the electric utility polices. Light & Power (L&P) is a "nonregulated utility" under PURPA, and can make a determination whether or not to implement the amended PURPA standards or establish a rule that differs from the standards. A complete review and evaluation of amended PUPRA standards has been completed and the findings

support the recommendation not to adopt the amended PURPA standards. Staff is recommending that Council adopt the written determinations made by Utility staff establishing local standards that differ from the amended PURPA standards.

Item 1.

Removed from Consent Calendar - Adopted.

19. Resolution 2024-147 Adopting the 2024 Three-Mile Plan Update for the City of Fort Collins.

The purpose of this item is to adopt the annual update of the Three-Mile Plan for the City of Fort Collins. The Three-Mile Plan is a reference document of plans and policies coordinating the general location, character, infrastructure, and land uses for areas of potential annexation within three miles of the municipal boundary.

An annual update of the Three-Mile Plan is required by Colorado Revised Statutes and highlights applicable plans and policies adopted or amended by Council over the preceding year.

Adopted.

20. Resolution 2024-148 Adopting Amended Rules of Procedure Governing the Conduct of City Council Meetings and Council Work Sessions.

The purpose of this item is to consider an update to the Council Meeting Rules of Procedure.

Removed from Consent Calendar - Adopted.

21. Resolution 2024-149 Supporting Grant Application for Local Match Funding in Support of the Midtown Central Corridor Project.

The purpose of this item is to obtain support for the City to apply for the non-federal match requirement included in the Department of Transportation's FY2025 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program.

Adopted.

22. Resolution 2024-150 Approving an Exemption to the Competitive Purchasing Process to Procure Professional Services from Park Consulting Group.

The purpose of this item is to request an exception to the use of a competitive purchasing process to enter into a professional services agreement with Park Consulting Group to support the implementation of the new Licensing, Permitting, and Code Enforcement (LPCE) system. The Park Consulting Group is uniquely qualified to provide the services.

Exception to the Competitive Bid or Proposal Rationale:

Code Section 8-161(d)(1)(a). There exists only one (1) responsible source.

Adopted.

23. Resolution 2024-151 Making an Appointment to the Board of the Downtown Development Authority.

The purpose of this item is to fill a vacancy that currently exists as of October 15, 2024.

Adopted.

24. Resolution 2024-152 Making an Appointment to the Board of Directors of Housing Catalyst.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to approve the recommended actions on items 1-24, minus 14, 18, and 20, on the Consent Calendar.

The motion carried 7-0.

K) CONSENT CALENDAR FOLLOW-UP (This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)

Councilmember Gutowsky recognized Abigail Christensen for her appointment to the Downtown Development Authority.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Mayor Jeni Arndt

- Wished the community happy holidays.

Councilmember Susan Gutowsky

- Read the proclamation at the annual Tuba Christmas celebration and recognized Cecil Gutierrez as the director of the band for the past 19 years.
- Fort Collins Police Services Academy held its graduation ceremony.

Councilmember Julie Pignataro

- Boards and Commissions applications are open until January 10th.

Councilmember Melanie Potyondy

- Human Relations Commission annual awards ceremony recognizing people who make a difference in social justice issues.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

14. Second Reading of Ordinance No. 189, 2024, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney.

This Ordinance, unanimously adopted on First Reading on December 3, 2024, amends City Code to establish the 2025 compensation of the City Attorney. Council met in executive session on November 26, 2024, to conduct the performance review of Carrie Daggett, City Attorney and to consider the salary market analysis for this position.

(Secretary’s Note: Councilmember Potyondy recused herself from the discussion of this item due to a conflict of interest.)

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt Ordinal No. 189, 2024, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney, on Second Reading.

Item 1.

The motion carried 6-0.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Canonico, Gutowsky, Pignataro, Ohlson.

Nays: None.

Recused: Potyondy

18. **Resolution 2024-146 Concerning Implementation of Standards Created by Amendments to the Public Utility Regulatory Policies Act of 1978 by the Infrastructure Investment and Jobs Act (“IIJA”).**

The purpose of this item is to present for Council consideration the recommendation from the City electric utility and the Energy Board, not to adopt the new revisions to the Public Utility Regulatory Policies Act of 1978 (PURPA) into the electric utility policies. Light & Power (L&P) is a “nonregulated utility” under PURPA, and can make a determination whether or not to implement the amended PURPA standards or establish a rule that differs from the standards. A complete review and evaluation of amended PURPA standards has been completed and the findings support the recommendation not to adopt the amended PURPA standards. Staff is recommending Council adopt the written determinations made by Utility staff establishing local standards that differ from the amended PURPA standards.

Councilmember Ohlson requested additional staff explanation regarding the recommendation to not adopt the new revisions to the Public Utility Regulatory Policies Act into the electric utility policies. Brian Tholl, Energy Services Manager, replied a similar approach was taken to the 2007 and 2009 revisions and noted a staff review of the new standards identified by PURPA have shown that the Utility Work Plan either meets or exceeds those standards which are generally intended to advance energy efficiency and renewables in the community. Tholl stated a change in City Code would be required to adopt the PURPA standards and the work would not necessarily be advanced by that use of resources.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt Resolution 2024-146 Concerning Implementation of Standards Created by Amendments to the Public Utility Regulatory Policies Act of 1978 by the Infrastructure Investment and Jobs Act (“IIJA”).

The motion carried 7-0.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Canonico, Gutowsky, Pignataro, Ohlson, and Potyondy.

Nays: None.

20. **Resolution 2024-148 Adopting Amended Rules of Procedure Governing the Conduct of City Council Meetings and Council Work Sessions.**

The purpose of this item is to consider an update to the Council Meeting Rules of Procedure.

Councilmember Ohlson commented on the importance of public participation and various ways of communicating during that time period, including videos.

Mayor Pro Tem Francis stated public participation should be reserved for community members speaking rather than showing videos and noted people can still show images or send videos to Council. Additionally, she noted Council does not screen materials prior to them being shown at a meeting.

Councilmember Pignataro stated it is sometimes difficult to understand what is being supported when videos are shown, but also stated Councilmember Ohlson's comments are valid. She asked if there are risks to the system when videos or sound files are downloaded. Kevin Wilkins, Chief Information Officer, replied there are inherent risks when video files are being received and tested initially, and that script is occasionally being maliciously included in videos that is not triggered until the video is played. Additionally, playing those videos on a connected network could potentially expose many other computers. He also noted that QR codes that are presented on videos could also expose community members beyond the City network.

Mayor Arndt noted community members are not allowed to speak for someone else and videos tend to cross over that line.

Councilmember Canonico stated she understands Councilmember Ohlson's concerns; however, after the conversation, she stated she would support the item.

Councilmember Potyondy concurred and noted maps, graphs, and photos are not being restricted and the goal of public participation is to hear from community members directly.

Councilmember Ohlson thanked Council for the discussion and stated he would not support the item.

Councilmember Gutowsky stated she would support the item as the goal of public participation is to hear from community members in their words.

Mayor Pro Tem Francis moved, seconded by Councilmember Potyondy, to adopt Resolution 2024-148 Adopting Amended Rules of Procedure Governing the Conduct of City Council Meetings and Council Work Sessions.

The motion carried 6-1.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Potyondy, Canonico, Gutowsky, and Pignataro.

Nay: Councilmember Ohlson.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

None.

P) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

OB 2. Consideration of a motion to go into executive session:

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, that the City Council go into executive session pursuant to:

- City Charter Article Roman Numeral Two, Section 11(2)

- City Code Section 2-31(a)(2) and

for the purpose of discussing with the City’s attorneys and appropriate management staff the following:

- 1. specific legal questions related to the police liability litigation; and**
- 2. the manner in which the provisions of the City Charter may be affected by existing or proposed provisions of federal, state or local law.**

The motion carried 7-0.

Council left the dais for executive session at 7:05 p.m.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 8:39 p.m.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

2. First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

The purpose of this item is to present a recommendation from the City Planning Development Team to:

1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
3. Create a performance bond requirement for all small cell facility installations.

January 7, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Ken Zetye, Engineering Construction Inspection Manager
Brad Buckman, City Engineer

SUBJECT

First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

EXECUTIVE SUMMARY

The purpose of this item is to present a recommendation from the City Planning Development Team to:

1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
3. Create a performance bond requirement for all small cell facility installations.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes.

On October 20, 1998, Council adopted Ordinance No. 180, 1998, which created an overall license to be known as a "Right-of-Way Contractors License," which license must be supplemented with an endorsement for the specific type of construction work proposed to be performed by the contractor.

The Right-of-Way Contractors License was designed to fully cover the City's administrative costs in processing the applications and includes a bonding requirement to adequately protect the City in City Code Section 15-363 Bond required.

The bond requirements for a contractor performing work in the City right-of-way has not been updated to address repairs to City property caused by small cell providers or their contractors when they abandon a project and fail to repair existing damages. The City encountered this exposure when a cellular service provider was going through a process of financial and contractual changes and were unable to complete the contract to build small cell facilities in the public right-of-way in Fort Collins. It was determined that the repair work in the right-of-way would have cost the City approximately \$800,000 if the parties decided not to complete their obligations. The current bonding structure is insufficient and will likely place financial responsibility on the City to repair damaged property. The major telecommunications companies are working in the City right now to upgrade their facilities by providing cellular and fiber optic data service, making it increasingly more likely that there will be unresolved damage and necessary repairs to City property. The potential exposure is an unmanaged financial risk. The proposed code changes will help decrease the potential of the City being left with damaged infrastructure if a telecommunications company does not honor their obligations to repair the damage they have created in installing their facilities.

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 001, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTERS 15 AND 23 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO SMALL CELL
CONTRACTORS AND PROVIDER BOND REQUIREMENTS FOR
OPERATING IN THE PUBLIC RIGHT-OF-WAY

A. The City of Fort Collins, as a home-rule municipality, is authorized by Article XX, Section 6 of the Colorado Constitution, the provisions of state statutes, and its City Charter to develop and implement policies and ordinances regulating the development of land within the City.

B. The City Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes.

C. On October 20, 1998, the City Council adopted Ordinance No. 180, 1998, which created an overall license to be known as a "Right-of-Way Contractors License," which license must be supplemented with an endorsement for the specific type of construction work proposed to be performed by the contractor.

D. The Right-of-Way Contractors License was designed to fully cover the City's administrative costs in processing the applications and includes a bonding requirement to adequately protect the City in City Code Section 15-363 Bond required.

E. In 2017 in response to Federal Communications Commission ("FCC") rulemaking and state statutory revisions affecting local control over wireless communication facilities, the City Council adopted Ordinance No. 143, 2017 adding Chapter 23, Article VII of the City Code to create a permitting process for small cell telecommunications facilities located in public highways.

F. The number of telecommunications companies working in the City right-of-way is increasing and the risk of unresolved damages and necessary repairs to City property is likely.

G. The bond requirements for a contractor performing work in the City right-of-way has not been updated to address repairs to City property since 1998 and the current bond requirement is insufficient to adequately protect the City.

H. The proposed code changes will help decrease the City's be exposure to a significant financial risk to repair damaged infrastructure caused by contractors.

I. Based on the foregoing, it is the desire of the City Council to amend Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

J. The proposed City Code amendments are the best interest of the citizens of Fort Collins.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. Section 15-363 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-363. – Bond required.

All license applications shall be accompanied by a license and permit bond executed by a reliable surety company with a rating of "A-" or better. The bond certificate provided to the City shall be an original (not a copy) or an electronic file electronically sealed by the surety. Except for applications to bore in the public right-of-way, the bond shall be in the amount of ~~twenty~~ one hundred thousand dollars (\$20,000-\$100,000) with an additional and separate bond in the amount of ten thousand dollars (\$10,000) for each license endorsement as provided in § 15-365 or as otherwise set forth in a Supplemental Site License as provided in § 23-177(d). Applicants applying to bore for utilities in the public right-of-way shall provide a bond of two hundred fifty thousand dollars (\$250,000). All bonds shall be continuous, with a minimum cancellation notice of sixty (60) days. In the event a bond is canceled, the license and any related permitting will be immediately revoked and no further work will be allowed to occur; however, the bond, even though canceled, must remain effective through the warranty period associated with all previously completed work items.

Section 2. Section 23-172 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-172. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings below:

...

Supplemental Site License (SSL) shall mean a site-specific sub-license issued under the general authority granted in the MLA, containing authorization for installation and operation of an identified SCF at a specific address.

...

Section 3. Section 23-175 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-175 - Operational standards.

...

(d) *Legal access.* The applicant shall warrant and represent for all SCF permit applications that the applicant **has entered into** a master license agreement for any public highway affected by the application providing legal access to/from the SCF and the utilities necessary to operate and maintain the facility, and, where applicable, permission to attach the SCF from the owner of the pole.

(e) *Operation and maintenance.*

...

(7) In the event of conflict between the requirements of this subsection (e), ~~and~~ a master license agreement, **and/or an SSL**, the master license agreement shall have priority.

...

Section 4. Section 23-177 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-177- Application, review procedures and requirements for small cell facilities in the public highways.

...

(d) *Submittal requirements and review procedures for SCFs* permit applications shall be reviewed pursuant to the following procedures:

(1) Elements

...

h. Proof of bonding and insurance satisfying the requirements of § 23-19 for any SCF installation that entails excavation of a public highway, **in an amount determined in the Engineer's judgment under § 23-175(g)**; and

...

Section 5. Section 23-178 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-178. - Standards for approval.

- (a) *Administrative approval.* An applicant for a SCF permit shall be subject to administrative review as set forth in §§ 23-177.
- (b) Notwithstanding the approval of an application for collocation or a new non-city-owned structure as described herein, all work performed on SCFs must be completed in accordance with applicable building and safety requirements of the City.
- (c) As required in the Engineer’s judgment under § 6-175(g), any application for an SCF permit and at the time of requesting an SSL, an applicant shall be required to carry adequate insurance and establish performance bond(s) for the entire scope of make-ready work it will perform, including work it will perform on facilities owned by existing cellular providers, as required in the same manner for other right-of-way, utility, and excavation projects under this Code.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 31, 2025
Approving Attorney: Yvette Lewis-Molock

File Attachments for Item:

3. The purpose of this item is to authorize the conveyance of a Temporary Construction Easement (the "TCE") on 0.469 acres (the "TCE Area") being a portion of City property presently known as Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

January 7, 2025



AGENDA ITEM SUMMARY

City Council

STAFF

Raime Lanham, Business Support III
Jonathan Piefer, Lead Real Estate Specialist
Missy Nelson, Senior Technical Project Manager

SUBJECT

First Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the conveyance of a Temporary Construction Easement (the "TCE") on 0.469 acres (the "TCE Area") being a portion of City property presently known as Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

CITY PROPERTY

Poudre River Whitewater Park ("Whitewater Park") is comprised of approximately 11.12 acres, more or less, being all of Lot 1 of the Plat of Poudre River Whitewater Park recorded July 17, 2018, at Reception No. 20180043314, Clerk and Recorder's Records, Larimer County, Colorado, save and except 4.091 acres known as the Main Parcel of the Powerhouse Energy Campus Lease.

Whitewater Park was initially acquired by the City in several transactions throughout multiple decades to be used by City Light and Power. The land comprising a majority of the TCE Area was conveyed to the City by Clarence Darras, Administrator for C.J. Darras, Deceased, in the Deed dated October 6, 1955, as recorded at Book 1004, Page 65, Clerk and Recorder's Records, Larimer County, Colorado. The remaining lands within the TCE Area were dedicated to the City by Public Service Company of Colorado in that certain Deed of Dedication dated August 10, 2017, recorded at Reception No. 20170056675, Clerk and Recorder's Records, Larimer County, Colorado.

The land was eventually transferred to the City Parks Department in 1987 to be included as part of the Gustav Swanson Natural Area. However, it was subsequently converted to Whitewater Park and developed as part of the Poudre River Downtown Master Plan. The TCE area is a portion of Reach Three

of this Master Plan which was completed in October of 2019. Whitewater Park is managed by the City's Parks Department.

XCEL PROPERTY

The Poudre River Regulator Station H-111-A (the "Regulator Station") is located entirely on Lot 3 of the Plat of Poudre River Whitewater Park recorded July 17, 2018, at Reception No. 20180043314, Clerk and Recorder's Records, Larimer County, Colorado, and is entirely surrounded by Whitewater Park.

The Regulator Station parcel was conveyed to Colorado-Wyoming Gas Company, being a predecessor to Xcel, by LeEtta May Marshall in the Quit Claim Deed dated January 21, 1964, recorded at Book 1234, Page 586, Clerk and Recorder's Records, Larimer County, Colorado.

As the Regulator Station is entirely surrounded by Whitewater Park, there are five easements across Whitewater Park that service the Regulator Station; three underground gas transmission easements, one underground electric transmission easement, and one shared access easement.

Xcel intends to access the TCE Area and Regulator Station via the easement conveyed by the City to Public Service Company of Colorado, in that certain Shared Access Easement Deed and Agreement dated August 22, 2017, recorded at Reception No. 20170056673, Clerk and Recorder's Records, Larimer County, Colorado, which provides for the repair and restoration of any damaged areas on City Property.

Xcel also intends to conduct a portion of the work for the Project within the boundaries of that certain Right of Way Easement from the City to Colorado-Wyoming Gas Company dated September 25, 1962, recorded at Book 1183, Page 485, Clerk and Recorder's Records, Larimer County, Colorado (the "Intake Easement").

THE PROJECT

The purpose of the Project is to comply with US Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) "Mega Rule" regulations, which requires that natural gas operators ensure pipelines in their system meet specific guidelines to improve record keeping activity and safety. The updates would not increase capacity or supply of the current natural gas distribution system.

The Regulator Station operates to reduce pressures of the incoming natural gas utility line that feeds the City of Fort Collins. The facility operates autonomously and, due to redundancy of the natural gas system, can be taken off-line without loss of service to the community. The proposed Project would allow for a continued supply of safe and reliable energy to existing customers.

The majority of work for the Project, including any excavation, shall be conducted within the boundaries of the Regulator Station and the Intake Easement. The primary purpose of the TCE is for the storage and staging of materials and equipment.

The main components of the Project are the removal and replacement of natural gas utility infrastructure, including approximately 210 linear feet of above-ground piping, 145 linear feet of below ground piping, an in-line heater, valves, fittings, and other operational components. The Project also includes removal of approximately 420 square feet of unused concrete foundations, the depths of which are unknown. Removal of the foundations include backfilling to match existing, surrounding grades. Approximately 230 linear feet of new below-ground piping and 75 linear feet of above-ground piping will be installed along with valves, fittings, insulating kits, and other operational components. Most of the existing fence surrounding the Regulator Station will remain in place. A portion of the fence will be removed temporarily during construction and will be re-erected upon completion.

THE TCE

The TCE Area surrounding the Regulator Station will be used to store equipment and materials throughout construction of the Project. However, portions of the TCE Area may require vegetation removal and stripping as well as segregation of topsoil for use in reclamation. The TCE will provide that any damaged surface areas, including any trees or shrubs, will be restored in accordance with City plans, specifications, and requirements. Xcel has provided a Reclamation Plan Draft (“Reclamation Plan”) that has been approved by Forestry and Parks staff, which will be finalized prior to the commencement of construction.

Although the construction phase of the Project is currently estimated to be 10-12 weeks, the initial TCE term will be for twelve (12) months, with an option to extend for an additional twelve (12) months, and the TCE will contain provisions permitting entry for any additional time necessary to ensure compliance with the Reclamation Plan.

Although portions of park pathways will be closed only during the construction period, all parking spaces and secondary access routes throughout the park will remain open throughout the entire term of the TCE.

ENVIRONMENTAL IMPACT

The overall impact to Whitewater Park would be relatively minimal and temporary. Temporary impacts are anticipated to be minor and mainly limited to revegetation activities and infrequent maintenance. However, other potential temporary impacts include surface water runoff during precipitation events, groundwater discharge during construction, avian habitat disruption, and restoration of Whitewater Park to its pre-construction condition. The site will be routinely inspected following application of seed and mulch to ensure reclamation success.

SURFACE WATERS: Potential impacts to the Poudre River will be minimized using best management practices during construction and through reclamation. Conditions outlined in the Floodplain Use Permit and Erosion Control Materials required by the City will be followed to further protect water quality.

VEGETATION: Temporary construction staging will likely disturb existing vegetation, but disturbances will be contained to the proposed TCE Area. Large trees will be protected from construction impacts. Smaller trees and shrubs installed by Parks have been inventoried and Xcel will repair or replace any damages in accordance with the Reclamation Plan. Following construction, the disturbed areas will be restored with vegetation to match the existing species on site. The Reclamation Plan includes requirements for seed mix, application rates, and soil preparations or amendments.

WETLANDS: An informal wetland delineation was performed by a wetland scientist in the Spring of 2024. Construction staging will not occur within any areas that were identified as potential wetlands.

WILDLIFE: Impacts to protected wildlife are expected to be negligible.

If vegetation removal will occur within the nesting season for migratory songbirds, a qualified avian biologist will conduct nest surveys. During a preliminary raptor and eagle survey conducted in 2024, no raptor/eagle nests were encountered. Another raptor/eagle nest survey will be conducted prior to construction in 2025 to ensure there are no active nests within the Colorado Parks and Wildlife recommended buffer distances of the Project. Additional wildlife surveys may be performed if deemed necessary by the City of Fort Collins.

CITY PERMITTING AND COORDINATION

FORESTRY: Xcel and Parks have coordinated with Forestry on inventory of vegetation and restoration plans.

Applicable Permits

FLOODPLAIN USE PERMIT: Required for temporary construction activities within the 100-year floodplain of the Poudre River. Xcel has discussed the Project with the City's floodplain management team throughout the design process and is working toward applying for and securing a Floodplain Use Permit.

ELECTRICAL PERMIT: Xcel plans on updating existing exterior and internal light fixtures which does not require an electrical permit, but the lighting plan will be confirmed by the Zoning Department that it meets current Land Use Code lighting standards.

PARKS PERMIT: Xcel has worked closely with Parks during the design of the Project, and Parks will also issue a permit for the Project, as required by City Code.

TRAFFIC CONTROL PERMIT: Xcel will obtain a Traffic Control Permit for the construction of the Project. For the duration of construction, a portion of the paved interior walkways located within Whitewater Park will be closed to accommodate construction equipment and vehicles. However, all parking spaces and secondary access routes throughout the park will remain open during construction. A map of the proposed closure locations is included as an attachment hereto.

Permits, Not Applicable

The following permits and approvals were reviewed and determined by the City to be not applicable based on the proposed scope of Xcel's work:

BUILDING PERMIT: The Building Department advised that no building permits are required for the Project. There will be no construction or deconstruction of the existing utility buildings on site. Portions of the existing fence will be removed temporarily to accommodate construction. Removed sections of fence will be reinstalled unless infeasible, and if replacement is required, it will be done so with the same material and height and in the same location.

EROSION CONTROL MATERIALS: This project is within the City's Municipal Separate Storm Sewer System (MS4) Permit Area and subject to all applicable rules and regulations. Currently this Project requires no erosion control material submittal. In accordance with City Code Section 26-498, the construction areas must be swept and maintained to prevent dirt, saw cuttings, concrete wash, trash & debris, landscape materials and other pollutants from the potential of leaving the site and entering the storm sewer during the duration of the project. If complaints are received or site observation of the project indicates that pollutants are discharged off site, the City may require the project to install erosion and sediment control measures.

LOCATION & EXTENT OR DEVELOPMENT REVIEW: City of Fort Collins Planning Department reviewed the Project scope and advised that neither a formal development review nor the L&E review would be required as the scope of the work does not meet the definition of development.

VARIANCE APPROVALS: Existing fencing is to remain in place, and no variance is required.

AIR QUALITY: City and County air quality specialists have concluded that no air quality concerns will result as part of the Project.

ALTERNATIVE LOCATION ANALYSIS

No alternative location was considered due to the nature of the Project.

CITY FINANCIAL IMPACTS

Other than staff time and other expenses reimbursable to the City by Xcel, there is no cost to the City associated with the TCE. However, the City will be charging Xcel for the fair market value of the TCE (the "Easement Value") and a flat fee to address expenses incurred as a direct result of this Project (the "Cost Recovery Fee"). The Easement Fee and the Cost Recovery Fee will be paid prior to the City's execution of the TCE.

Real Estate Services staff completed an internal Reconnaissance Valuation to determine the Easement Value, with price per square foot at the lower end of the recent sales range due Flood Plain and Flood Way designations. City staff estimates the Easement Value to total \$8,169, and the Cost Recovery Fee will be set at \$4,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Approval or review by the Parks and Recreation Board is not required, but the Parks Department has reviewed and approved the Project. The City's Planning and Zoning Departments have reviewed the Project and determined that the Project does not rise to the level of Development Review.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration
2. Exhibit A to Ordinance
3. Overall Site Plan
4. Photos of Regulator Station
5. Reclamation Plan
6. Trail Closure Map
7. Vicinity Map

ORDINANCE NO. 002, 2025
 OF THE COUNCIL OF THE CITY OF FORT COLLINS
 AUTHORIZING THE CONVEYANCE OF A TEMPORARY
 CONSTRUCTION EASEMENT ON WHITEWATER PARK TO
 PUBLIC SERVICE COMPANY OF COLORADO FOR
 CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS AT
 THE POUDBRE RIVER REGULATOR STATION H-111-A

A. The City's Whitewater Park is comprised of approximately seven acres, spanning the Poudre River east of College Avenue and south of East Vine Drive.

B. The Public Service Company of Colorado ("Xcel Energy") owns a parcel of land entirely contained within the City's Whitewater Park that is used for its Poudre River Regulator Station H-111-A (the "Regulator Station"). The Regulator Station operates to reduce pressures of the incoming natural gas utility line that provides natural gas to the community.

C. Xcel Energy seeks one temporary construction easement ("the Easement") from the City over a portion of City's Whitewater Park property. Xcel Energy will use the Easement to store and stage materials and equipment as it removes and replaces above-ground and in-ground piping and other infrastructure that serves the Regulator Station. The Easement will provide that any damaged surface areas, including any trees or shrubs, will be restored in accordance with City requirements.

D. The Easement consists of 0.469 acres. A legal description for the Easement is attached hereto as Exhibit "A" and incorporated herein by this reference.

E. City staff estimate that the fair market value of the Easement is \$8,169. The City will charge Xcel Energy \$8,169 for the Easement, in addition to a \$4,000 fee for work by City staff to develop and execute the Easement.

F. Section 23-111 of the City Code authorizes the City Council to dispose of interests in real property owned in the name of the City provided that the City Council first finds, by ordinance, that such disposition is in the best interests of the City.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council finds that granting the Easement to Xcel Energy on the terms and conditions described herein is in the best interests of the City.

Section 2. The City Council authorizes the Mayor to execute such documents as are necessary to convey the Easement to Xcel Energy on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or

appropriate to protect the interests of the City, including, but not limited to, any necessary changes to the legal descriptions of the Easement, as long as such changes do not materially increase the size or change the character of the interests to be conveyed.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 31, 2025
Approving Attorney: Ted Hewitt



Legal Descriptions and Depictions of the TCE Area
(Page 1 of 3)

Sheet 1 of 3

**EXHIBIT B – H-111 REG. STATION
TEMPORARY CONSTRUCTION EASEMENT**

A parcel of land lying in the northwest one-quarter (NW1/4) of Section 12, Township 7 North, Range 69 West, of the 6th Principal Meridian, County of Larimer, State of Colorado, being a portion of Lot 1, plat of POU DRE RIVER WHITEWATER PARK, County of Larimer Records, described as follows:

Beginning at the northeast corner of Lot 3, said plat of POU DRE RIVER WHITEWATER PARK;

Thence S00°22'09"W, 76.99 feet, along the east line of said Lot 3;
 Thence S89°42'52"W, 86.81 feet, along the south line of said Lot 3;
 Thence N49°07'17"W, 17.35 feet, along the southwest line of said Lot 3;
 Thence N00°22'09"E, 66.71 feet, along the west line of said Lot 3;
 Thence N89°37'51"W, 1.87 feet, along the south line of that 20 foot wide Shared Access Agreement as described in Reception Number 20170056673, Larimer County Records;
 Thence N00°20'37"E, 4.37 feet, along the west line of said Shared Access Agreement;
 Thence along a curve to the left, having a radius of 12.23, a central angle of 54°00'44", a length of 11.53 feet and a chord that bears N25°39'53"W, 11.11 feet, along said south line;
 Thence along a curve to the left, having a radius of 33.00 feet, a central angle of 58°19'47", a length of 33.60 feet and a chord that bears N80°06'38"W, 32.16 feet, along said south line;
 Thence along a curve to the right, having a radius of 127.03 feet, a central angle of 14°04'00", a length of 31.19 feet and a chord that bears S77°45'42"W, 31.11 feet, along said south line;
 Thence N80°05'17"W, 29.52 feet;
 Thence S39°50'02"E, 145.53 feet;
 Thence N88°44'10"E, 123.50 feet, to the southeast line of said Lot 1;
 Thence N56°43'09"E, 165.50 feet, along said southeast line;
 Thence N33°16'51"W, 50.00 feet;
 Thence S56°43'09"W, 84.60 feet;
 Thence N61°07'32"W, 137.55 feet, to the east line of that 30 foot wide Utility Easement as described in Reception Number 20170056676, Larimer County Records;
 Thence S00°20'37"W, 45.67 feet, along said east line, to the east line of said Share Access Agreement;
 Thence along a non-tangent curve to the right having a radius of 77.00 feet, a central angle of 12°25'39", a length of 16.70 feet and a chord that bears S05°49'08"E, 16.67 feet, along said east line, to the north line of said Lot 3;
 Thence S89°37'51"E, 59.97 feet, along said north line, to the Point of Beginning.

469387 acres) more or less.

As shown and described on Exhibit B Sheet 3 of 3 attached hereto and made a part hereof.

All lineal distance units are represented in U.S. Survey Feet.

For the purposes of this description, bearings are based on said plat of POU DRE RIVER WHITEWATER PARK

The author of this description is Monte L. Sudbeck, PLS 38503, prepared on behalf of SEH, 2000 S Colorado Blvd, Suite 6000, Denver, CO 80222, on December 16, 2024, under Job No. 178293-20.0, for Public Service Company of Colorado, and is not to be construed as representing a monumented land survey.

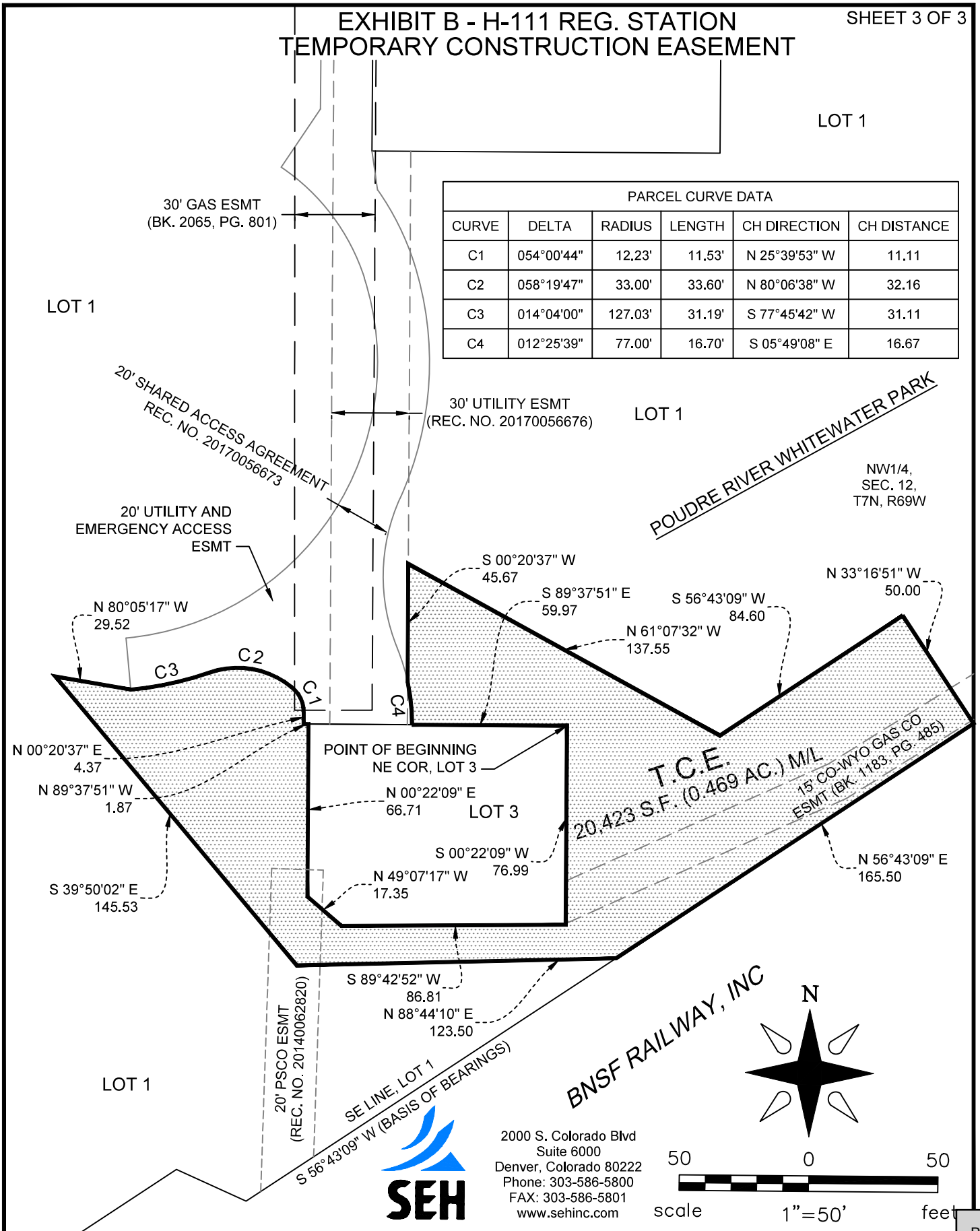


Monte L. Sudbeck, PLS 38503

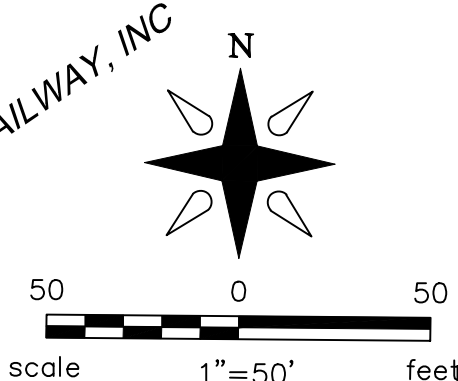
EXHIBIT B - H-111 REG. STATION
TEMPORARY CONSTRUCTION EASEMENT

SHEET 3 OF 3

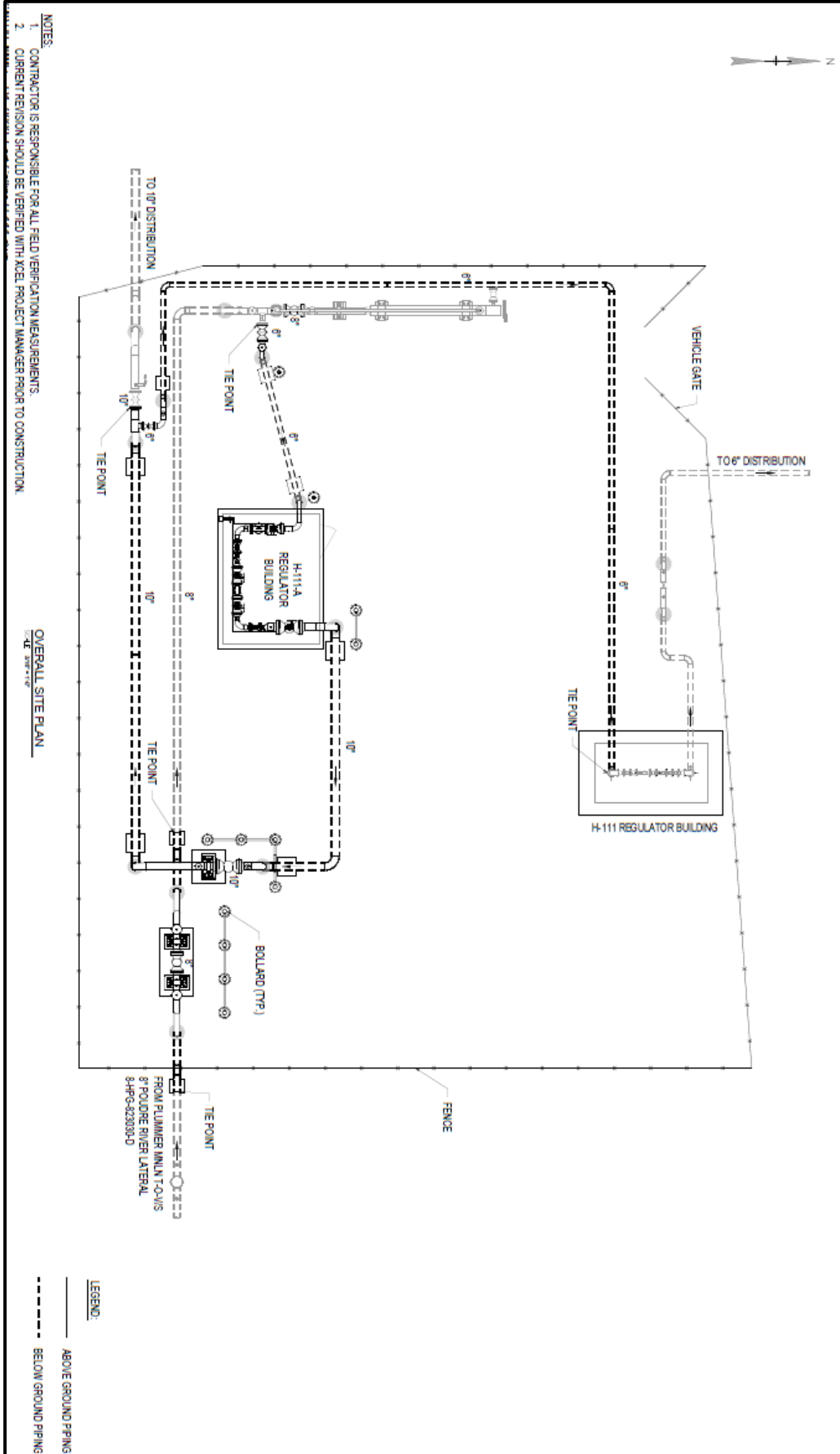
PARCEL CURVE DATA					
CURVE	DELTA	RADIUS	LENGTH	CH DIRECTION	CH DISTANCE
C1	054°00'44"	12.23'	11.53'	N 25°39'53" W	11.11
C2	058°19'47"	33.00'	33.60'	N 80°06'38" W	32.16
C3	014°04'00"	127.03'	31.19'	S 77°45'42" W	31.11
C4	012°25'39"	77.00'	16.70'	S 05°49'08" E	16.67

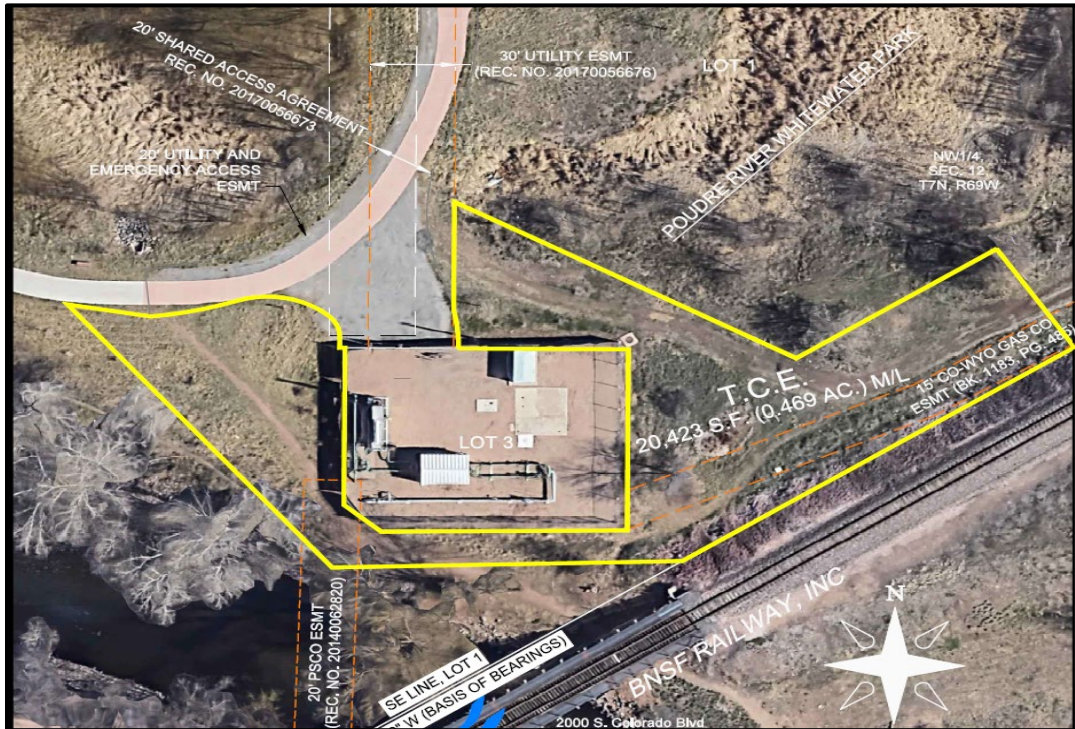


2000 S. Colorado Blvd
Suite 6000
Denver, Colorado 80222
Phone: 303-586-5800
FAX: 303-586-5801
www.sehinc.com



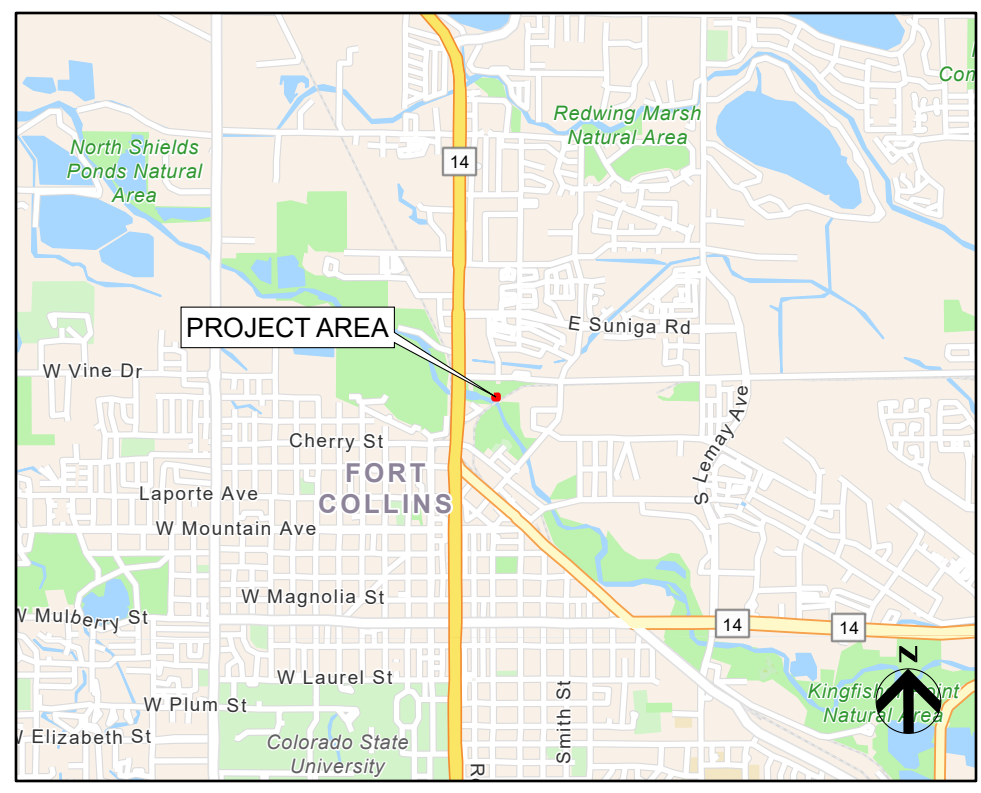
Overall Site
Plan (Page 1 of
1)



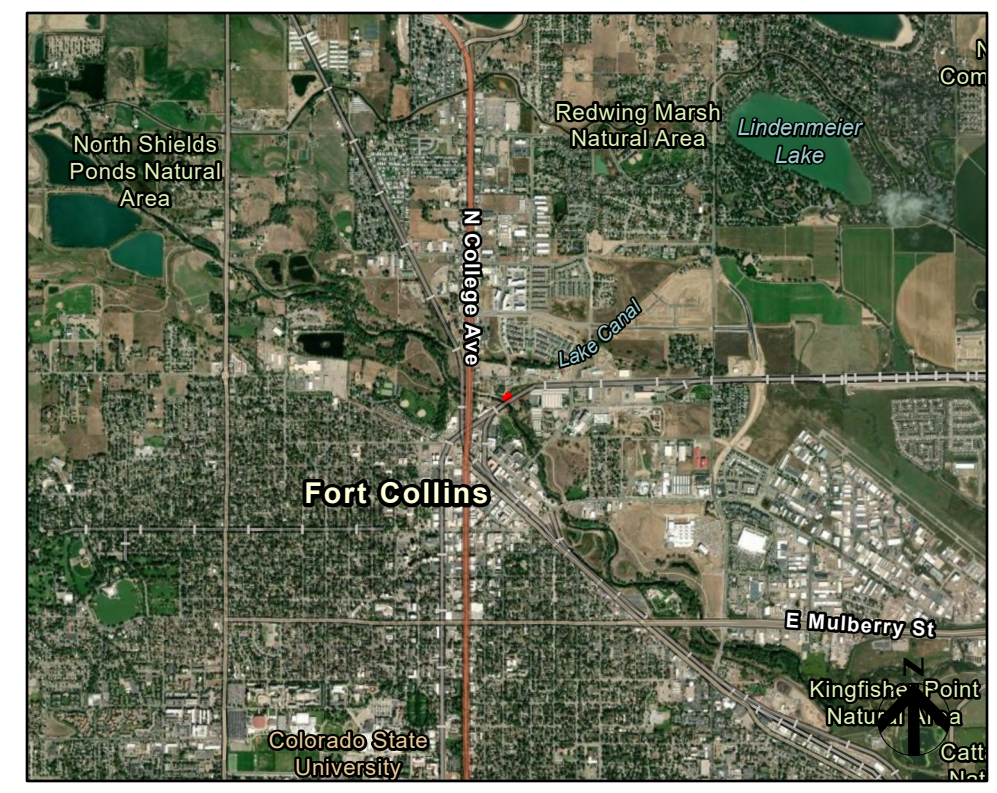
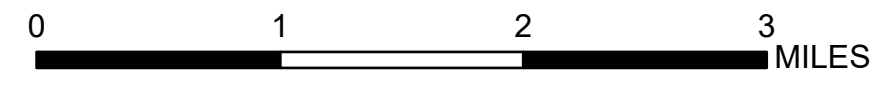


INDEX OF DRAWINGS

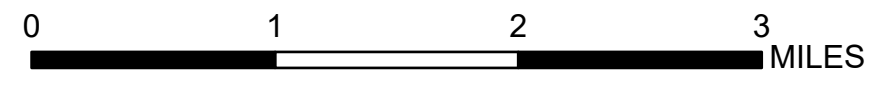
SHEET #	SHEET TITLE
1	COVER PAGE
2	NOTES: GENERAL / TREE PROTECTION
3	NOTES: REVEGETATION / WEED CONTROL
4	MAP: ACTIVE CONSTRUCTION PHASE
5	MAP: RECLAMATION PHASE
6	MAP: SHRUB /TREE INVENTORY



VICINITY MAP



LOCATION MAP



XCEL ENERGY TVC: H-111 REGULATOR STATION REBUILD FORT COLLINS, CO 80521

RECLAMATION PLAN

DECEMBER 2024

PROJECT OWNER:
Xcel Energy
Project Manager : Jay Bauer
1123 West 3rd Avenue
Denver, CO 80223
P: 303.638.9558
E: jeffrey.j.bauer@xcelenergy.com

EROSION CONTROL MATERIALS PREPARER:
HDR Engineering, Inc.
Project Manager : Kaitlin Rainsberger
PE Supervision : Brian Brown, P.E., CPESC
419 Canyon Ave., Suite 316
Fort Collins, CO 80521
P: 970.416.4427
E: kaitlin.rainsberger@hdrinc.com

**DRAFT PLAN FOR
CITY OF FORT COLLINS
REVIEW**

CALL UTILITY NOTIFICATION CENTER OF COLORADO (UNCC) AT 811 BEFORE DIGGING. ALLOW MINIMUM 48-HOURS FOR UTILITY LOCATION SERVICES.

REV	DATE	PROJ. No.	REVISION DESCRIPTION	DWN	DSN	ENG	CHK	FILM



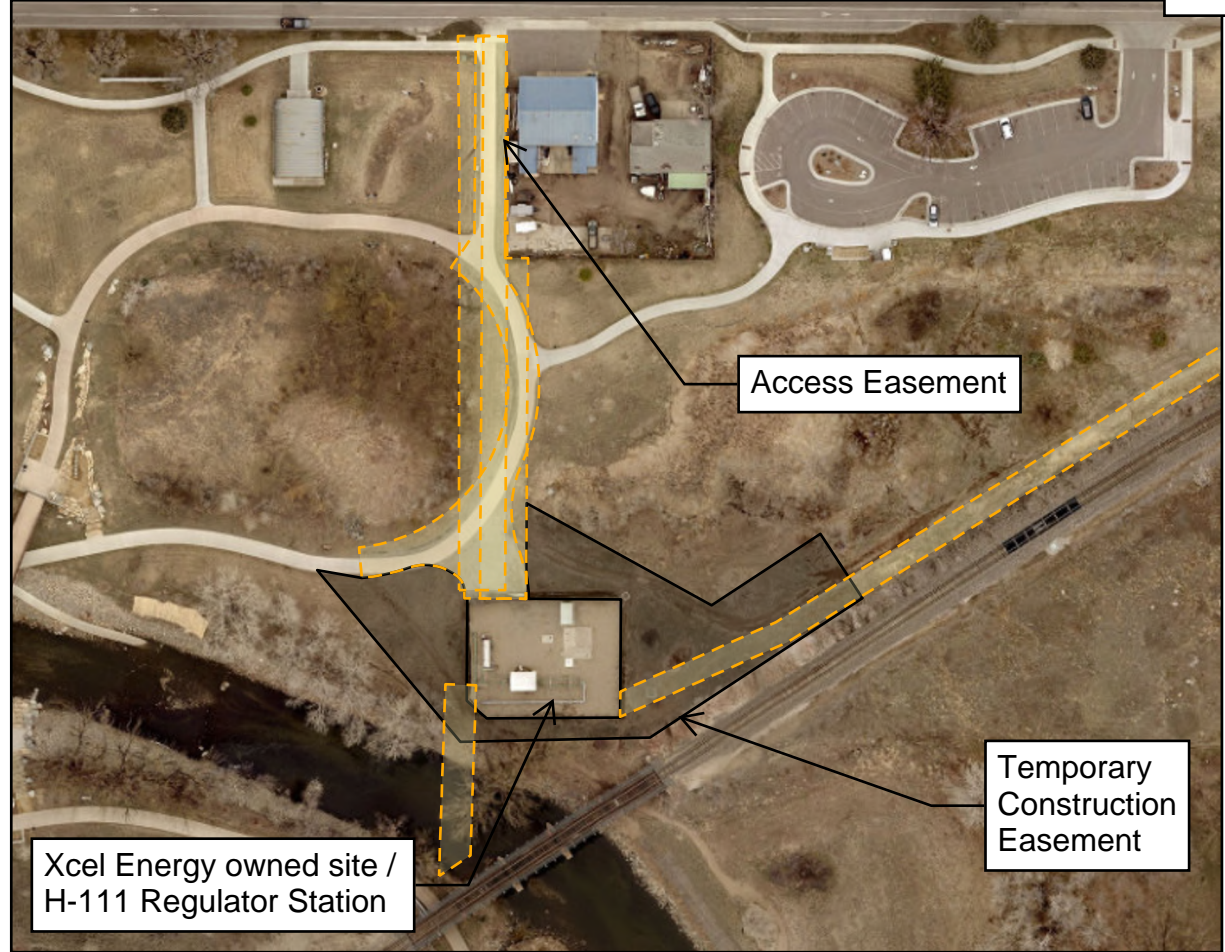
**XCEL ENERGY TVC
H-111 REGULATOR STATION REBUILD
RECLAMATION PLAN**

COVER PAGE

FILE NAME	H-111	SCALE	AS SHOWN
Sheet No.	1 OF 6	MICROFILM No.	
SIZE	B	DWG No.	

GENERAL NOTES

1. CONTRACTORS WILL USE EXISTING UTILITY ACCESS EASEMENT AND PROPOSED TEMPORARY CONSTRUCTION EASEMENT. ALL OTHER AREAS OF THE PARK ARE TO REMAIN UNDISTURBED.
2. VEGETATED AREAS THAT ARE DISTURBED BY CONSTRUCTION RELATED ACTIVITIES ARE TO BE RECLAIMED PER SPECIFICATIONS INCLUDED IN THIS PLAN, UNLESS OTHERWISE APPROVED BY THE CITY.
3. FORT COLLINS PARKS DEPARTMENT HAS ACTIVE IRRIGATION AT THE WEST SIDE OF THE TEMPORARY CONSTRUCTION EASEMENT. IRRIGATION LINES, INFRASTRUCTURE, OR RELATED EQUIPMENT THAT IS DISTURBED, DAMAGED, DESTROYED, OR MOVED BY CONSTRUCTION RELATED ACTIVITIES, WILL BE PROMPTLY REPLACED AND/OR REPAIRED AT NO COST TO THE CITY. SEE NOTES ON SHEET 2 OF THIS RECLAMATION PLAN FOR INFORMATION REGARDING DAMAGE TO EXISTING TREES AND/OR SHRUBS.
4. TEMPORARY IRRIGATION WILL BE INSTALLED AND MAINTAINED AT THE EAST SIDE OF THE TEMPORARY CONSTRUCTION EASEMENT DURING ESTABLISHMENT PERIOD.
5. CONSTRUCTION FENCING WILL BE INSTALLED AT THE LIMITS OF DISTURBANCE DURING CONSTRUCTION. FOR THE PROTECTION OF NATURAL HABITATS AND FEATURES, INCLUDING BUT NOT LIMITED TO TREES AND CLUMPS OF TREES TO BE PRESERVED WITH A BUFFER ZONE THAT IS TO BE DISTURBED, TREE PROTECTION SPECIFICATIONS AS OUTLINED IN THIS PLAN WILL BE FOLLOWED.
6. THE PROJECT WILL CONFORM TO ALL APPLICABLE LOCAL, STATE AND FEDERAL AIR QUALITY REGULATIONS AND STANDARDS, INCLUDING, BUT NOT LIMITED TO, THOSE REGULATING ODOR, DUST, FUMES OR GASES WHICH ARE NOXIOUS, TOXIC OR CORROSIVE, AND SUSPENDED SOLID OR LIQUID PARTICLES. THE PROJECT WILL BE DESIGNED AND CONSTRUCTED TO COMPLY WITH THE DUST CONTROL MEASURES CONTAINED IN THE DUST CONTROL MANUAL TO THE EXTENT REQUIRED THEREIN.
7. CONTRACTOR IS REQUIRED TO FOLLOW EROSION CONTROL STANDARDS. DUE TO PROXIMITY OF PROJECT RELATED DISTURBANCES TO THE CACHE LA POUDDRE RIVER, EROSION CONTROL MATERIALS MUST BE APPROVED BY THE CITY OF FORT COLLINS AND IMPLEMENTED THROUGHOUT CONSTRUCTION.
8. CITY WILL BE COMPENSATED FOR LOSS OF TREES AND SHRUBS, AT A VALUE ASSESSED BY THE PARKS DEPARTMENT AND/OR CITY ARBORIST. TREE OR SHRUB REPLACEMENT WILL NOT OCCUR FOR TREES IDENTIFIED FOR REMOVAL OR ANY SHRUBS DAMAGED OR LOST DURING CONSTRUCTION. WARRANTY WILL NOT BE PROVIDED FOR SUCH PLANT MATERIALS.
9. PRIOR TO MOBILIZATION, EXISTING TREES AND SHRUBS WITHIN THE PROJECT LIMITS WILL BE INVENTORIED: NUMBERED AND IDENTIFIED BY SPECIES, SIZE, CONDITION, AND INTENT TO SAVE OR REMOVE. INVENTORY WILL BE CONDUCTED BY XCEL ENERGY CONTRACTOR WITH CONCURRENCE FROM CITY PARKS DEPARTMENT STAFF. SEE TREE PROTECTION NOTES FOR DETAILS.



OVERVIEW FIGURE

TREE PROTECTION SPECIFICATIONS

10. WITHIN THE DRIP LINE OF ANY PROTECTED EXISTING TREE, THERE SHALL BE NO CUT OR FILL OVER A FOUR-INCH DEPTH UNLESS A QUALIFIED ARBORIST OR FORESTER HAS EVALUATED AND APPROVED THE DISTURBANCE.
11. IF PRUNING IS REQUIRED FOR PROTECTED EXISTING TREES, IT MUST BE DONE SO SHALL BE PER THE CITY OF FORT COLLINS FORESTRY DIVISION STANDARDS.
12. PRIOR TO AND DURING CONSTRUCTION, BARRIERS SHALL BE ERECTED AROUND ALL PROTECTED EXISTING TREES WITH SUCH BARRIERS TO BE OF ORANGE CONSTRUCTION OR CHAIN LINK FENCING A MINIMUM OF FOUR (4) FEET IN HEIGHT, SECURED WITH METAL T-POSTS, NO CLOSER THAN SIX (6) FEET FROM THE TRUNK OR ONE-HALF (1/2) FOOT OF THE DRIP LINE, WHICHEVER IS GREATER. CONCRETE BLANKETS, OR EQUIVALENT PADDING MATERIAL, WRAPPED AROUND THE TREE TRUNK(S) IS RECOMMENDED AND ADEQUATE FOR ADDED PROTECTION DURING CONSTRUCTION. THERE SHALL BE NO STORAGE OR MOVEMENT OF EQUIPMENT, MATERIAL, DEBRIS OR FILL WITHIN THE FENCED TREE PROTECTION ZONE.
13. DURING THE CONSTRUCTION STAGE OF DEVELOPMENT, THE APPLICANT SHALL PREVENT THE CLEANING OF EQUIPMENT OR MATERIAL OR THE STORAGE AND DISPOSAL OF WASTE MATERIAL SUCH AS PAINTS, OILS, SOLVENTS, ASPHALT, CONCRETE, MOTOR OIL OR ANY OTHER MATERIAL HARMFUL TO THE LIFE OF A TREE WITHIN THE DRIP LINE OF ANY PROTECTED TREE OR GROUP OF TREES.
14. NO DAMAGING ATTACHMENT, WIRES, SIGNS OR PERMITS MAY BE FASTENED TO ANY PROTECTED TREE.
15. LARGE PROPERTY AREAS CONTAINING PROTECTED TREES AND SEPARATED FROM CONSTRUCTION OR LAND CLEARING AREAS, ROAD RIGHTS-OF-WAY AND UTILITY EASEMENTS MAY BE "RIBBONED OFF," RATHER THAN ERECTING PROTECTIVE FENCING AROUND EACH TREE AS STATED ABOVE. THIS MAY BE ACCOMPLISHED BY PLACING METAL TEE-POST STAKES A MAXIMUM OF FIFTY (50) FEET APART AND TYING RIBBON OR ROPE FROM STAKE-TO-STAKE ALONG THE OUTSIDE PERIMETERS OF SUCH AREAS BEING CLEARED.

Exhibit E-Reclamation Plan (Page 2 of 6)

REV	DATE	PROJ. No.	REVISION DESCRIPTION	DWN	DSN	ENG	CHK	FILM



**XCEL ENERGY TVC
H-111 REGULATOR STATION REBUILD
RECLAMATION PLAN**

NOTES: GENERAL / TREE PROTECTION

FILE NAME H-111	SCALE AS SHOWN
SHEET No. 2 OF 6	MICROFILM No.
SIZE B	DWG No.

NATIVE SEED MIX NOTES

16. NATIVE SEED SHALL BE ORDERED ACCORDING TO APPROVED PLANS. IF CHANGES ARE TO BE MADE TO SEED MIX BASED ON SITE CONDITIONS APPROVAL MUST BE PROVIDED BY CITY ENVIRONMENTAL PLANNER.
17. TREAT NATIVE SEED MIX AREA PRIOR TO INSTALLATION OF SEED WITH APPROPRIATE HERBICIDE TO HELP CONTROL HERBACEOUS WEED SPECIES. ONLY AFTER APPROPRIATE TIME PERIOD APPLY NATIVE SEED AS CALLED FOR ON APPROVED PLANS.
18. PRIOR TO SEEDING SOIL WILL BE AERATED AS NECESSARY. APPROPRIATE NATIVE SEEDING EQUIPMENT WILL BE USED (STANDARD TURF OR AGRICULTURE SEEDING EQUIPMENT SHALL NOT BE USED).
19. THE GROUND SHALL BE CULTIVATED LIGHTLY THEN SEEDED IN TWO DIRECTIONS TO DISTRIBUTE SEED EVENLY OVER ENTIRE AREA.
20. DRILL SEED APPLICATION RECOMMENDED PER SPECIFIED APPLICATION RATE TO NO MORE THAN 1/2 INCH DEPTH. IF BROADCAST SEEDING - DOUBLE THE SPECIFIED APPLICATION RATE. REFER TO NATIVE SEED MIX TABLE ON APPROVED PLANS FOR SPECIES, PERCENTAGES AND APPLICATION RATES.
21. AFTER SEEDING THE AREA SHALL BE COVERED WITH CRIMPED STRAW OR OTHER APPROPRIATE EROSION CONTROL METHODS. CONTRACTOR SHALL MONITOR SEEDED AREA FOR PROPER EROSION CONTROL, GERMINATION AND RESEEDING AS NEEDED TO ESTABLISH COVER.
22. THE APPROVED SEED MIX AREA IS INTENDED TO BE MAINTAINED IN A NATURAL-LIKE LANDSCAPE AESTHETIC. IF AND WHEN MOWING OCCURS IN NATIVE GRASS SEED MIX AREAS, DO NOT MOW LOWER THAN SIX TO EIGHT INCHES IN HEIGHT TO AVOID INHIBITING NATIVE PLANT GROWTH.
23. NATIVE SEED AREA WILL BE CONSIDERED ESTABLISHED WHEN 70% TOTAL COVER IS REACHED WITH NO LARGER THAN SIX INCH SQUARE BARE SPOTS AND/OR UNTIL DEEMED ESTABLISHED BY CITY ENVIRONMENTAL PLANNER.

24. SEED MIX USED SHALL BE:

MIX A – UPLAND SEED

SCIENTIFIC NAME	COMMON NAME	LBS/PLS.ACRE
<i>Gaillardia aristata</i>	Indian blanketflower	5.94
<i>Ratibida columnifera</i>	Mexican Hat	0.65
<i>Bouteloua curtipenula</i>	Side Oats Grama	3.69
<i>Bouteloua gracilis</i>	Blue Grama	0.81
<i>Panicum virgatum</i>	Switchgrass	2.27
<i>Pascopyrum smithii</i>	Western Wheatgrass	5.17
Mix total		18.54

25. CONTRACTOR IS RESPONSIBLE FOR SOURCING AND PURCHASING ALL SPECIES LISTED AND MIX. CONTRACTOR IS RESPONSIBLE FOR PROVIDING SEED TAGS TO APPROPRIATE CITY STAFF. THIS MIX INCLUDES PURE LIVE SEED (PLS); CONTRACTOR MUST ORDER IT THAT WAY.
26. MIX REPRESENTS ONE ACRE AT 90 SEEDS/SF. CONTRACTOR IS RESPONSIBLE FOR CALCULATING THE APPROPRIATE SEED AMOUNTS TO PURCHASE.
27. ALL MATERIALS FURNISHED SHALL BE FREE OF COLORADO STATE NOXIOUS WEEDS AS DEFINED IN ARTICLE III, SECTION 21-40 OF THE CODE OF THE CITY OF FORT COLLINS.
28. PLEASE APPROVE ANY CHANGES TO THIS SEED MIX BY CITY OF FORT COLLINS. FOR QUESTIONS OR CONCERNS, PLEASE CONTACT: MISSY NELSON (MNELSON@FCGOV.COM / 970.416.8077).

REVEGETATION SCHEDULE

29. EXCAVATION AND GRADING MY ORDINARILY OCCUR WITHIN ANY MONTH OF THE YEAR; HOWEVER, REVEGETATION ACTIVITIES ARE TYPICALLY MORE LIMITED WITH RESPECT TO THE TIME OF YEAR IN WHICH THEY SHOULD BE COMPLETED AND MUST BE TIMED TO COINCIDE WITH A RECOGNIZED PLANTING SEASON. SEEDBED MATERIAL SAMPLING, FERTILIZATION, SEEDBED PREPARATION, SEEDING, AND MULCHING ARE MOST SUCCESSFUL WHEN COMPLETED IN FALL, PRIOR TO THE FIRST HARD FREEZE.

LOW MAINTENANCE GRASS NOTES

30. MOWING: MOW LOW MAINTENANCE GRASSES AND WETLANDS GRASSES ONLY AFTER THEY HAVE PRODUCED MATURE SEEDS AND/OR GONE DORMANT FOR THE WINTER OR FOR WEED CONTROL.
31. WATERING: WATER AS FREQUENTLY AS NEEDED TO OBTAIN PLANT ESTABLISHMENT (USUALLY 6 TO 8 WEEKS) AND THEREAFTER AS NEEDED TO AVOID DIEBACK. APPLY WATER SLOWLY AND DEEPLY TO PREVENT RUNOFF AND ENCOURAGE DEEP ROOT GROWTH.
32. WEED CONTROL: LANDSCAPE COMPANY SHALL PROVIDE A WEED MANAGEMENT PLAN WHICH IS CRITICAL DURING THE ESTABLISHMENT YEARS.
33. CONTRACTOR IS REQUIRED TO EMAIL PARKSHOP@FCGOV.COM 1 WEEK PRIOR TO SPRAYING FOR WEEDS. (PARK DEPARTMENT IS RESPONSIBLE FOR AND REQUIRED TO NOTIFY THE PUBLIC BY POSTING ON WEBSITE.)
35. SPECIAL CARE AND LICENSING REQUIRED FOR WEED HERBICIDE USE ADJACENT TO RIPARIAN AREAS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO FOLLOW ALL LAWS AND REGULATIONS.

WEED CONTROL NOTES:

35. A WEED CONTROL PLAN WILL BE PREPARED OR OTHERWISE APPROVED BY A LICENSED COMMERCIAL PESTICIDE APPLICATOR (LCPA). ALL SUBSEQUENT WEED CONTROL ACTIVITIES WILL BE CONDUCTED BY AN LCPA. THE PLAN TO BE PREPARED WILL TAKE THE FORM OF AN INTEGRATED PEST MANAGEMENT (IPM) PLAN THAT WILL CONSIDER METHODS OF CONTROL THAT WOULD POTENTIALLY BE APPLICABLE TO THE PROJECT AREA. THESE METHODS INCLUDE MECHANICAL, CHEMICAL, CULTURAL, AND BIOLOGICAL TECHNIQUES.
36. PRIOR TO PLAN PREPARATION, A VISIT TO THE PROJECT AREA WILL BE CONDUCTED BY THE IPM PLAN PREPARER, ACCOMPANIED BY A CITY OF FORT COLLINS STAFF MEMBER, TO ASSESS SITE CONDITIONS, ROUTES OF ACCESS, WEEDY SPECIES PRESENT, THE RELATIONSHIP OF SURROUNDING WATER/WETLAND BODIES TO THE PROPOSED AREAS TO BE TREATED, POTENTIAL SOURCES OF RUN-ON AND RUN-OFF, AND OTHER FACTORS RELEVANT TO THE WEED CONTROL PLANNING PROCESS.
37. GIVEN THE PRESENCE OF WETLANDS ADJACENT THE PROJECT AREA, INITIAL EMPHASIS WILL BE GIVEN TO WEED CONTROL METHODS OTHER THAN THOSE OF A CHEMICAL NATURE, THOUGH CHEMICAL CONTROLS DO EXIST THAT ARE CONSIDERED BY THE CORPS OF ENGINEERS TO BE APPROPRIATE IN SUCH CASES.
38. PLANT SPECIES TO BE CONSIDERED AS WEEDS AND CONTROLLED AND/OR ERADICATED WITHIN THE PROJECT LIMITS, AS PER CITY CODE, ARE THOSE LISTED BY THE LARIMER COUNTY WEED CONTROL DISTRICT AND THOSE LISTED AS NOXIOUS BY THE COLORADO WEED LAW.

REV	DATE	PROJ. No.	REVISION DESCRIPTION	DWN	DSN	ENG	CHK	FILM



**XCEL ENERGY TVC
H-111 REGULATOR STATION REBUILD
RECLAMATION PLAN**

NOTES: REVEGETATION/WEED CONTROL

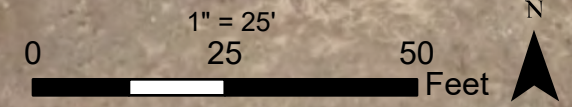
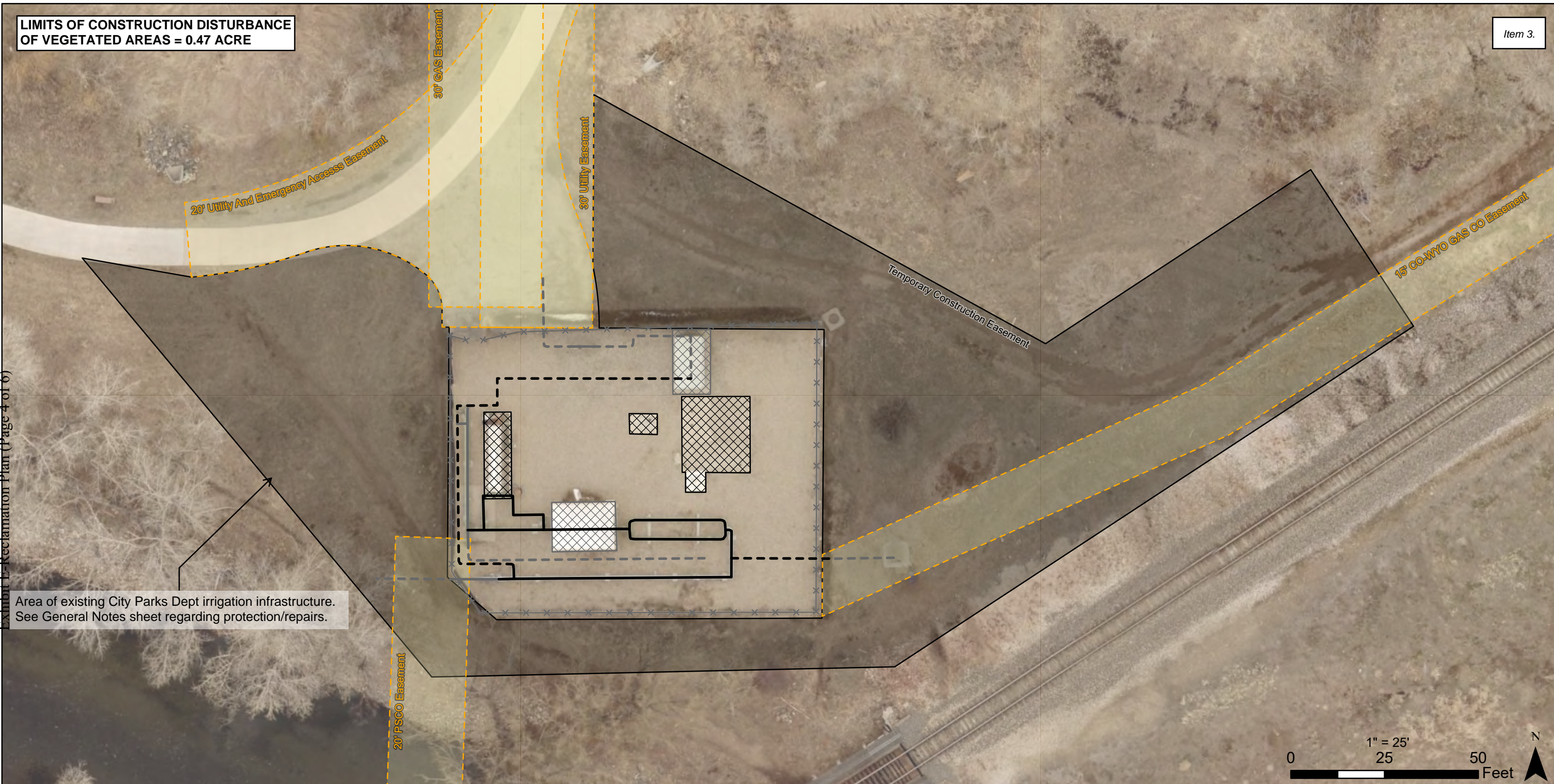
FILE NAME H-111	SCALE AS SHOWN
SHEET No. 3 OF 6	MICROFILM No.
SIZE B	DWG No.

Exhibit E-Reclamation Plan (Page 3 of 6)

LIMITS OF CONSTRUCTION DISTURBANCE OF VEGETATED AREAS = 0.47 ACRE

Item 3.

Exhibit E-Reclamation Plan (Page 4 of 6)



**XCEL ENERGY TVC
H-111 REGULATOR STATION
REBUILD
RECLAMATION PLAN**

MAP: ACTIVE
CONSTRUCTION PHASE

SHEET 4 OF 6

<p>PIPING</p> <p>— FOR REMOVAL, ABOVE GRADE</p> <p>- - - FOR REMOVAL, BELOW GRADE</p> <p>— EXISTING, ABOVE GRADE</p> <p>- - - EXISTING, BELOW GRADE</p>	<p>●—● BOLLARD</p> <p>x—x FENCE</p> <p>▨ REGULATOR BUILDING</p> <p>▩ FOUNDATION FOR REMOVAL</p> <p>- - - UTILITY/SHARED ACCESS EASEMENT</p> <p>■ TEMPORARY CONSTRUCTION EASEMENT</p>
--	--

1. Temporary Construction Easement (TCE) represents maximum expected limits of disturbance (LOD) outside of Xcel Energy fence-line. Total limits of construction activity (LOC) or Project extents include access easements which are stabilized with pavement or aggregate surfacing.
2. Map will be updated following on-site meeting with City Parks. Project team will update map with required extents of tree protective fencing prior to mobilizing to site.
3. Map will be updated to indicate trees and shrubs which will be protected and those which will be removed. Contractor must adhere to protective measures included in this reclamation plan.
4. Where repeated driving, excavation, or disturbances are expected to cause topsoil to be mixed with subsoil, topsoil should be stripped and stockpiled for use in reclamation efforts.

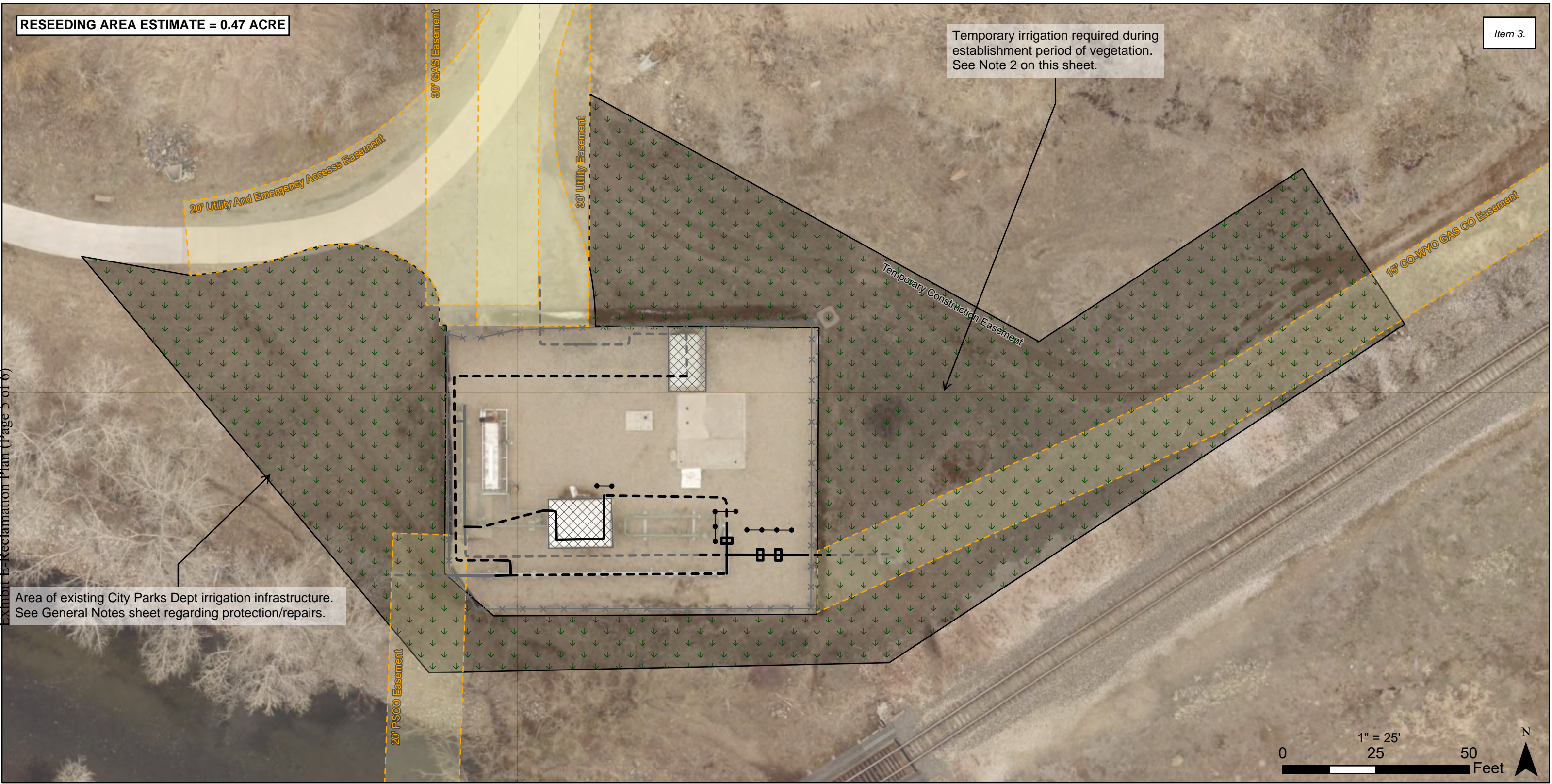
RESEEDING AREA ESTIMATE = 0.47 ACRE

Item 3.

Temporary irrigation required during establishment period of vegetation. See Note 2 on this sheet.

Exhibit E-Reclamation Plan (Page 5 of 6)

Area of existing City Parks Dept irrigation infrastructure. See General Notes sheet regarding protection/repairs.



**XCEL ENERGY TVC
H-111 REGULATOR STATION
REBUILD
RECLAMATION PLAN**

MAP: RECLAMATION PHASE

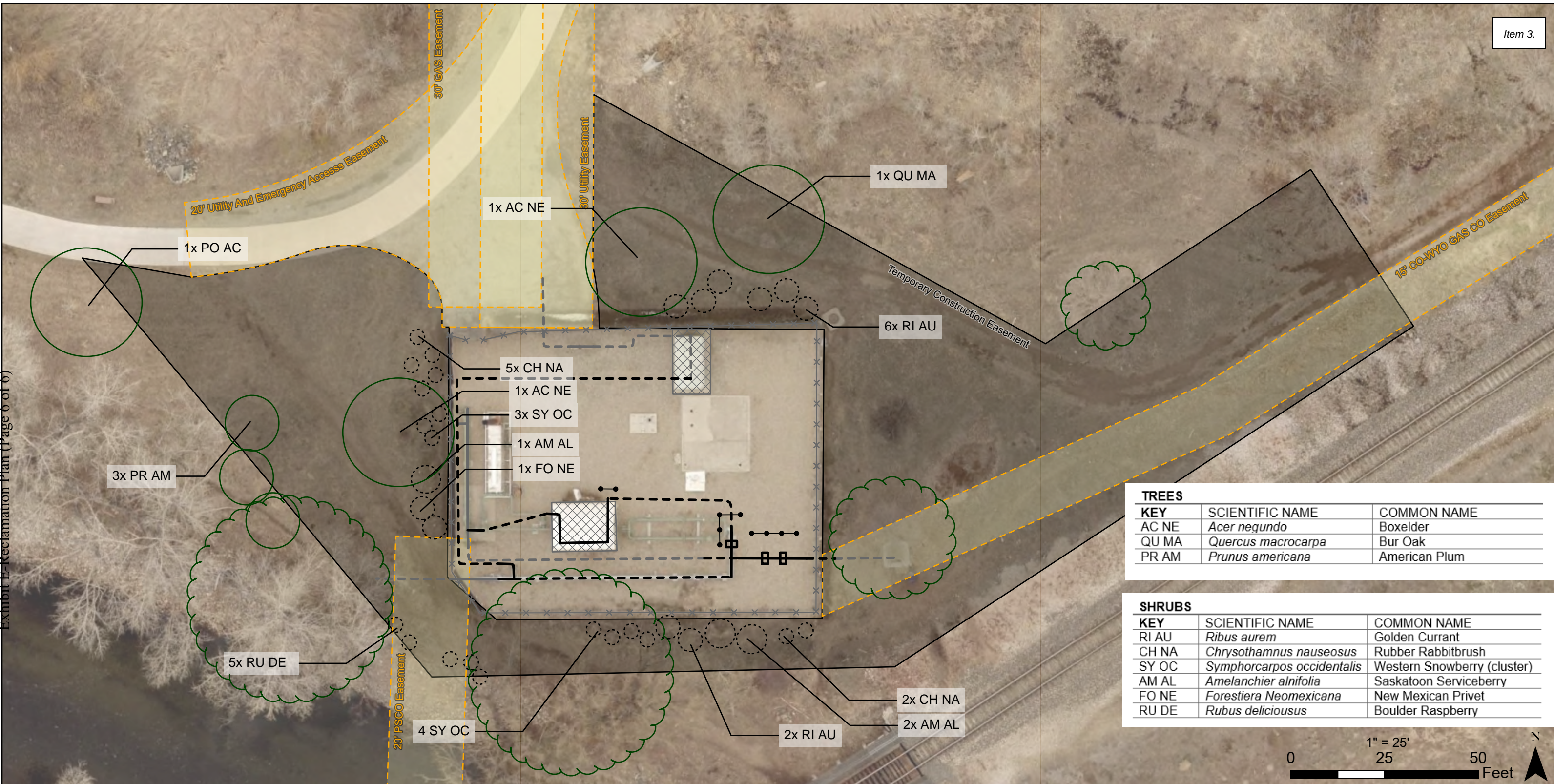
SHEET 5 OF 6



PIPING		●—● BOLLARD
— PROPOSED, ABOVE GRADE	×—× FENCE	□ PIPING SUPPORT
- - - PROPOSED, BELOW GRADE	□ REGULATOR BUILDING	□ UTILITY/SHARED ACCESS EASEMENT
— EXISTING, ABOVE GRADE	□ TEMPORARY CONSTRUCTION EASEMENT	↓ SEED / MULCH APPLICATION AREA
- - - EXISTING, BELOW GRADE		

1. Calculated reseeded area: 0.47 acre. Contractor will reseed per notes included on Sheet 3 of this Reclamation Plan.
2. Temporary irrigation to be installed and maintained at east side of Temporary Construction Easement. See Note 31 on Sheet 3 regarding watering frequency.
3. Fencing and other physical protective measures for trees may be removed following demobilization of construction crews and heavy equipment (typically following application of seed and mulch).
4. Weed mitigation must follow IPM Plan, additional notes included on Sheet 3 of this reclamation Plan.

Exhibit E-Reclamation Plan (Page 6 of 6)



TREES		
KEY	SCIENTIFIC NAME	COMMON NAME
AC NE	<i>Acer negundo</i>	Boxelder
QU MA	<i>Quercus macrocarpa</i>	Bur Oak
PR AM	<i>Prunus americana</i>	American Plum

SHRUBS		
KEY	SCIENTIFIC NAME	COMMON NAME
RI AU	<i>Ribes aurem</i>	Golden Currant
CH NA	<i>Chrysothamnus nauseosus</i>	Rubber Rabbitbrush
SY OC	<i>Symphoricarpos occidentalis</i>	Western Snowberry (cluster)
AM AL	<i>Amelanchier alnifolia</i>	Saskatoon Serviceberry
FO NE	<i>Forestiera Neomexicana</i>	New Mexican Privet
RU DE	<i>Rubus deliciosus</i>	Boulder Raspberry



**XCEL ENERGY TVC
H-111 REGULATOR STATION
REBUILD
RECLAMATION PLAN**

MAP: SHRUB /TREE
INVENTORY

SHEET 6 OF 6

- PIPING**
- PROPOSED, ABOVE GRADE
 - - - PROPOSED, BELOW GRADE
 - EXISTING, ABOVE GRADE
 - - - EXISTING, BELOW GRADE
- × × × FENCE
- UTILITY/SHARED ACCESS EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT

- PRE-EXISTING TREES
- FC PARKS INSTALLED TREES
- FC PARKS INSTALLED SHRUBS

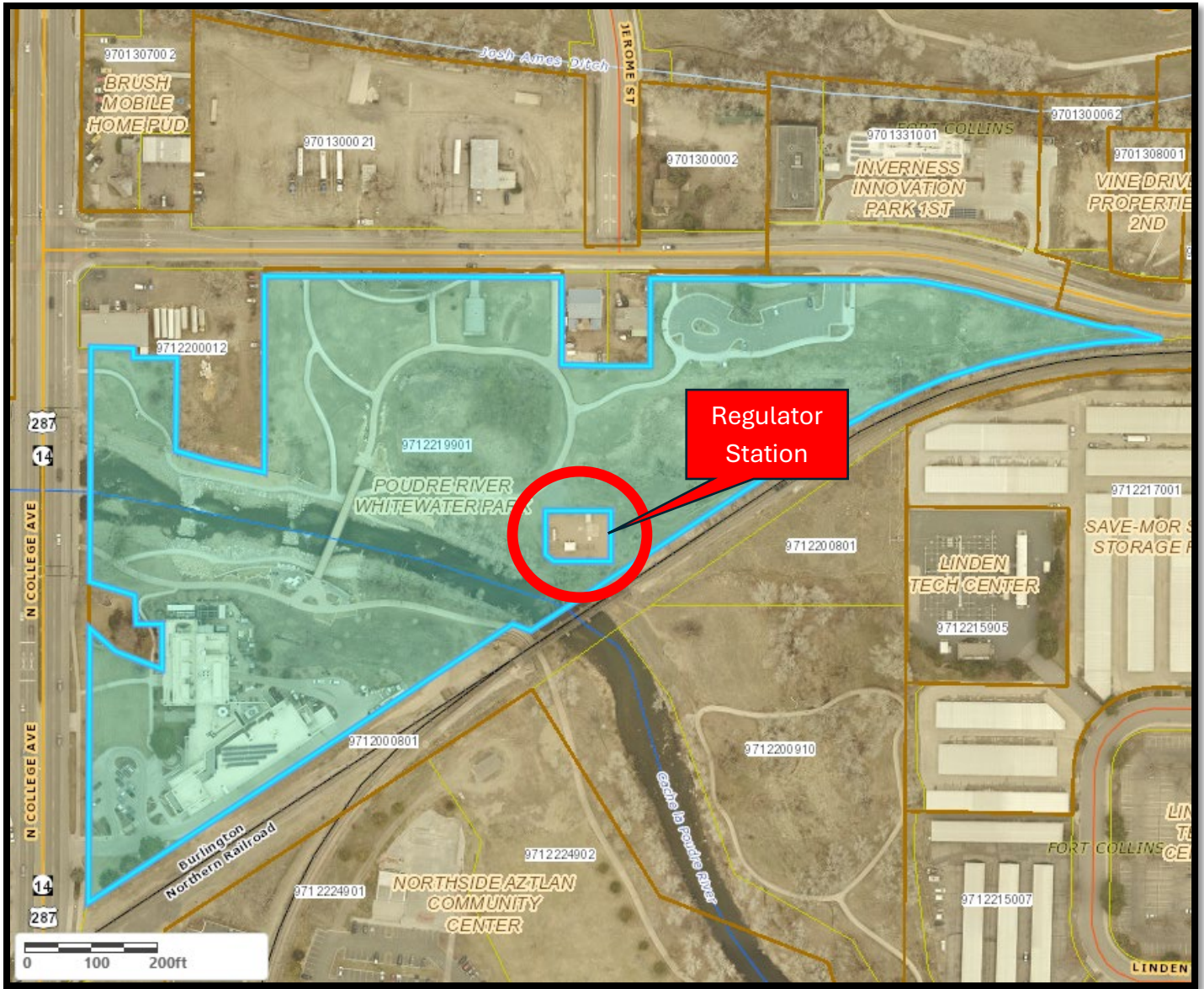
1. Existing tree/shrubs depicted based on City provided landscaping plan and must be verified during site visit with PSCo (or their contractors) and City staff. FC Parks installed trees depicted at mature crown size.
2. Pre-existing trees will be protected per Tree Protection Notes on Sheet 2 of this reclamation plan.
3. FC Parks installed trees to be inventoried per Tree Protection Notes, those which are expected to be damaged by construction indicated as such in the inventory and those which can be protected will be done so per specifications included on Sheet 2 of this reclamation plan.
4. FC Parks installed shrubs within the TCE will be inventoried, PSCo to compensate Parks Department for loss of shrubs per Note 8 on Sheet 2 of this reclamation plan.

Trail Closure Map
(Page 1 of 1)



Vicinity
Map (Page 1
of 1)

Item 3.



File Attachments for Item:

4. Resolution 2025-001 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County concerning the Livermore Conservation Project.

The purpose of this item is to seek authorization to enter into an Intergovernmental Agreement (IGA) with Larimer County for the Livermore Conservation Project. The project will conserve four ranches totaling 4,897 acres within the Laramie Foothills/Mountains to Plains Priority Area. The County would be the lead on this project and hold the conservation easements on the properties.

January 7, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Donahue, Natural Areas Director
Julia Feder, Environmental Program Manager
Tawnya Ernst, Land Conservation Lead Specialist

SUBJECT

Resolution 2025-001 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County concerning the Livermore Conservation Project.

EXECUTIVE SUMMARY

The purpose of this item is to seek authorization to enter into an Intergovernmental Agreement (IGA) with Larimer County for the Livermore Conservation Project. The project will conserve four ranches totaling 4,897 acres within the Laramie Foothills/Mountains to Plains Priority Area. The County would be the lead on this project and hold the conservation easements on the properties.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In 2022, Natural Areas partnered with Larimer County Open Lands to conserve 428 acres of the Quarter Circle Lazy H Ranch via conservation easement. The success of that transaction served as the catalyst for conservation of four other ranches. The ranches lie west of the intersection of County Road 74E (aka Red Feather Lakes Road) and Highway 287. The properties' ranch steads are quintessential of Colorado's agricultural heritage. Conservation of these properties supports Natural Areas Goal 1: Conserve & Protect Land and Water and the priorities noted in the 2014 Natural Areas Master Plan: Laramie Foothills Conservation Focus Area, as well as the 2019 Fort Collins City Plan Principle ENV 1: Conserve, preserve, protect, create, and enhance ecosystems and natural spaces with Fort Collins, the GMA, and the Region.

The properties contain diverse, intact, connected wildlife habitats: foothills grasslands, shrublands, montane forest, and riparian corridors. The Colorado Natural Heritage Program designates the ranches as having high biodiversity significance. The properties are part of an iconic 4-mile viewshed and serve as a buffer and connection between USFS lands, Cherokee Park State Wildlife Area – Lower Unit, State Land Board parcels, Larimer County's Eagle's Nest Open Space, and numerous conservation easements (CE). Approximately 1.5 miles of Lone Pine Creek run through one of the properties which includes a mature riparian system that supports critical habitat for the Preble's Meadow Jumping Mouse. The properties have been in the one ranching family for decades. The family runs sustainable livestock grazing and haying operations which will be further preserved by senior water rights tied to the conservation easements.

The total amount to acquire the conservation easements will be approximately \$15,000,000. The City will contribute \$3,000,000 to that total amount and will receive certain rights in exchange. The IGA and the conservation easements will provide that if the County ever seeks to assign its rights as holder of the conservation easements, the County must first offer those rights to the City. Additionally, the IGA and the conservation easements will provide that if any portion of the conservation easements are sold, exchanged, transferred or otherwise extinguished, or taken by eminent domain, the net proceeds from such disposition will be divided between the County and the City in the same proportion as their respective contributions to the initial purchase payments for acquiring the conservation easements. While the City will not be a signatory to the conservation easements and could not enforce these rights directly through the conservation easements, the City could enforce these rights under the IGA. Management staff of the Natural Areas Department is comfortable that the expenditure of these \$3,000,000 is a good investment and is confident that the City's interests will be protected in the long term.

CITY FINANCIAL IMPACTS

The total cost to the County to acquire the conservation easements is estimated to be \$15,000,000 plus closing and due diligence costs.

- Natural Areas will contribute \$3,000,000 towards the acquisition of the four conservation easements.
- Great Outdoors Colorado is contributing \$2.5 million toward the transactions.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

At its December 11, 2024 meeting, the Land Conservation and Stewardship Board voted unanimously to recommend that City Council approve the IGA with Larimer County concerning the Livermore Conservation Project.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration
2. Resolution Exhibit A.
3. Natural Areas Administrative Policy- Land Acquisition Partnership Guidelines
4. Land Conservation and Stewardship Board Minutes, December 11, 2024

RESOLUTION 2025-001
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE AN
INTERGOVERNMENTAL AGREEMENT WITH LARIMER
COUNTY CONCERNING THE LIVERMORE CONSERVATION
PROJECT

A. To meet shared land conservation goals, the City and Larimer County (“County”) have been collaborating for more than two decades on funding partnerships to acquire various open space properties and conservation easements.

B. The County has been working toward the purchase of Conservation Easements (“CEs”) on four ranches totaling 4,897 acres in the area west of the intersection of County Road 74E and Highway 287 (the “Properties”). The acquisition of the CEs would be jointly funded by the City, the County, and Great Outdoors Colorado. The County would own the CEs and the City would have the right to assume ownership of the CEs if the County were ever to seek to sell or assign ownership of the CEs.

C. The Properties contain diverse, intact, connected wildlife habitats: foothills grasslands, shrublands, montane forest, and riparian corridors. The Colorado Natural Heritage Program designates the Properties as having high biodiversity significance. The Properties are part of an iconic 4-mile viewshed and serve as a buffer and connection between Forest Service lands, Cherokee Park State Wildlife Area – Lower Unit, State Land Board parcels, Larimer County’s Eagle’s Nest Open Space, and numerous conservation easements. Approximately 1.5 miles of Lone Pine Creek runs through one of the four ranches and includes a mature riparian system that supports critical habitat for the Preble’s Meadow Jumping Mouse.

D. The cost to acquire the CEs is approximately \$15,000,000. The City will contribute \$3,000,000. The County will contribute \$9,500,000. Great Outdoors Colorado will contribute \$2,500,000, through the County.

E. The City and the County are negotiating a proposed intergovernmental agreement regarding the proposed transaction, the form of which is attached hereto as Exhibit A (the “IGA”) and incorporated in by this reference.

F. At its December 11, 2024, meeting, the Land Conservation and Stewardship Board voted unanimously to recommend that Council approve an Intergovernmental Agreement with Larimer County to acquire CEs on the Properties.

G. Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies.

H. Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve.

I. Approval of intergovernmental agreements by City Council is required under Section 1-22 of the City Code, unless an exception applies.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby authorizes the Mayor to execute the IGA, attached hereto as Exhibit A, together with such modifications, deletions and additions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or further the purposes of this Resolution.

Passed and adopted on January 7, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 7, 2025
Approving Attorney: Ted Hewitt

INTERGOVERNMENTAL AGREEMENT
CONCERNING THE LIVERMORE CONSERVATION PROJECT

This Intergovernmental Agreement (Agreement) is made this ___ day of _____, 2025, by and between the CITY OF FORT COLLINS, COLORADO (the "City") and LARIMER COUNTY, COLORADO (the "County").

WHEREAS, part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

WHEREAS, the County has imposed a sales and use tax via the "Help Preserve Open Spaces Initiative" for the purchase and maintenance of open space, natural areas, wildlife habitat, parks and trails and a portion of the funds generated by said sales tax are distributed to municipalities located within Larimer County, including the City; and

WHEREAS, the City has imposed a dedicated 0.25% sales and use tax known as "Open Space Yes!", portions of the revenues from which are intended and available for the purchase and maintenance of open space, natural areas, and trails; and

WHEREAS, the parties recognize through the Larimer County Open Lands Master Plan and Fort Collins Natural Areas Master Plan that certain lands in the County's Livermore Priority Area and greater Laramie Foothills – Mountains to Plains Conservation Area ("Conservation Area") are important to be conserved through various means such as fee acquisition, conservation easements, and regulatory measures; and

WHEREAS, the parties have historically worked cooperatively to conserve lands within the Conservation Area, provide limited public recreation, and protect and promote the quality of life, wildlife, the natural environment and the character of the region; and

WHEREAS, the Larimer County Natural Resources Department and the City of Fort Collins Natural Areas Department share common goals in conserving land in the Conservation Area, and by this IGA intend to form a partnership to carry out a land conservation project to protect approximately 4,897 acres, comprised of the properties described in **Exhibit A**; and

WHEREAS, Larimer County was awarded in 2024, \$2,500,000.00 in Great Outdoors Colorado (GOCO) grant funds to acquire, in partnership with the City, conservation easements on the properties described in **Exhibit A** ("Livermore Area Properties"); and

WHEREAS, the parties desire to cooperate and contract with one another concerning the sharing of costs and responsibilities for the conservation of the Livermore Area Properties.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

A. Subject Properties/Easements

1. The County will make reasonable efforts to acquire conservation easements on each of the Livermore Area Properties (the "Conservation Easements"), subject to final approval by the Larimer County Board of County Commissioners in its discretion.

2. The total purchase price for all of the Conservation Easements is estimated to be approximately \$15,000,000.00. The purchase price for each Conservation Easement is shown in **Exhibit B**, attached hereto and incorporated herein by reference.

3. The parties are responsible for paying the costs designated to each of them as shown in **Exhibit B**.

4. The County will prepare the deed of conservation easement instruments ("Deeds"). The County shall submit the Deeds, upon completion of the transaction, to the Larimer County Clerk and Recorder for recording in the real property records of the County and shall provide a copy of each recorded Deed to the City upon completion of recording.

5. Until such time as the closing and conveyance of the Conservation Easements, Larimer County shall remain the primary negotiator with the landowners. Additionally, the County shall have the discretion to make decisions related to the negotiations including choice of surveyor, title company, and other administrative matters, consistent with this Agreement. The parties shall promptly communicate with each other on any new developments in the negotiations and new material information related to the subject properties and the Conservation Easement acquisitions.

B. Management of the Livermore Area Properties

1. The private properties will remain under the management of their respective owners. Larimer County will steward and monitor the Conservation Easements.

C. Assignment of the Conservation Easements

1. The City agrees to be the contingent Conservation Easement holder for all of the Livermore Area Property Conservation Easements. If the County seeks to assign its rights and obligations under any of the Conservation Easements for the Livermore Area Properties, it first must offer the assignment to the City, in a manner that is consistent with the terms and conditions of the Conservation Easement and any GOCO-related grant requirements (the "Right of First Refusal"). The County agrees to not amend or eliminate the Right of First Refusal from any of the Conservation Easements without the written permission of the City. If the County amends or eliminates the Right of First Refusal from any of the Conservation Easements without the written permission of the City, the Parties agree that such action constitutes a default under Section D.6. of this Agreement.

2. In the event all or any portion of the Conservation Easements are sold, exchanged, transferred or otherwise extinguished, or taken by eminent domain, the net proceeds from such disposition shall be divided between the County and the City in the same proportion as their respective contributions to the initial purchase payments for acquiring the Conservation Easements as defined in **Exhibit B**. This division of proceeds is described in each Conservation Easement (the "Division"). The County agrees to not amend or eliminate the Division from any of the Conservation

Easements without the written permission of the City. If the County amends or eliminates the Division from any of the Conservation Easements without the written permission of the City, the Parties agree that such action constitutes a default under Section D.6. of this Agreement.

D. General Provisions.

1. Each party agrees to execute all additional instruments and documents necessary to effectuate the transactions and purposes described herein, subject to any necessary approvals.

2. This Agreement shall be binding upon and inure to the benefit of the parties’ respective successors and permitted assigns.

3. Financial obligations of the parties payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating funds sufficient and intended for such purposes.

4. Each party is responsible for its own negligence and that of its officers, employees and volunteers. Nothing in this Agreement waives the immunities, limits of liability, or other terms and conditions of the Colorado Governmental Immunity Act as now in force or hereafter amended.

5. Any notices required or permitted to be given shall be in writing and personally delivered to the office of the parties hereof, or sent by first class mail, postage prepaid, or by overnight commercial courier, addressed as follows:

Katie Donahue	Daylan Figgs
Natural Areas Director	Natural Resources Director
City of Fort Collins – Natural Areas Department	Larimer County Natural Resources Department
PO Box 580, Fort Collins, CO 80522	1800 S County Rd 31, Loveland, CO 80537
kdonahue@fcgov.com	dfiggs@larimer.org

Any such notice shall be effective (i) in the case of personal delivery or by overnight courier, when the notice is actually received, or (ii) in the case of first-class mail, the third day following deposit in the United States mail, postage prepaid, addressed as set forth above. Any party may change these persons or addresses by giving notice as required above.

6. If either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof. If a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself

of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

7. Nothing in this Agreement shall imply any partnership, joint venture, or other association between the City and the County. Each party shall have sole responsibility for the content and the conduct of its activities. Neither party shall use the other's name or logo to suggest co-sponsorship or endorsement of any activity without the other's prior written approval.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement concerning the Livermore Conservation Project, on the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: _____
Jeni Arndt, Mayor

ATTEST:

APPROVED AS TO FORM:

Title:

Assistant City Attorney

(print name)

(print name)

BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

By: _____
Chair

ATTEST:

APPROVED AS TO FORM:

Deputy Clerk

County Attorney

EXHIBIT A

(Page 1 of 4)

Legal Descriptions of each Conservation Easement

Ranch A

PARCEL A:

IN TOWNSHIP 9 NORTH, RANGE 71 WEST OF THE 6TH P. M.

- SECTION 1: W1/2W1/2;
- SECTION 2: S1/2SW1/4, SW1/4SE1/4, NE1/4, N1/2SE1/4, SE1/4SE1/4, N1/2SW1/4, S1/2NW1/4;
- SECTION 3: SE1/4SE1/4, N1/2SE1/4;
- SECTION 10: E1/2;
- SECTION 11: NW1/4, S1/2NE1/4, NW1/4NE1/4, N1/2SW1/4, SW1/4SW1/4, N1/2SE1/4, NE1/4NE1/4;
- SECTION 12: NW1/4NW1/4;
- SECTION 14: W1/2NW1/4;
- SECTION 15: NE1/4;

ALL IN THE COUNTY OF LARIMER, STATE OF COLORADO

PARCEL B:

IN TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P. M.

SECTION 36: W1/2SW1/4; NW1/4 LYING WEST OF THE FOLLOWING DESCRIBED LINE: A LINE LYING IN THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P. M., COUNTY OF LARIMER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: CONSIDERING THE EAST LINE OF SAID SECTION 36, AS MONUMENTED BY A 1 1/2" DIAMETER ALUMINUM CAP, P.L.S. 9911 AT THE SOUTHEAST CORNER OF SAID SECTION 36 AND BY A 1 1/2" ALUMINUM CAP, P.L.S. 14647 AT THE NORTHEAST CORNER OF SAID SECTION 36, TO BEAR AN ASSUMED BEARING OF NORTH, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO. THE BEGINNING COURSE AND THE TERMINAL COURSE SHALL BE PROLONGED OR FORESHORTENED SO AS TO BEGIN ON THE NORTH RIGHT OF WAY LINE OF LARIMER COUNTY ROAD 74E AND SO AS TO TERMINATE ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36. BEGINNING AT A POINT ON THE EXISTING CENTERLINE OF LARIMER COUNTY ROAD 74E FROM WHENCE THE NORTHEAST CORNER OF SAID SECTION 36 BEARS NORTH 59 DEGREES 07 MINUTES 09 SECONDS EAST 5,816.87 FEET AND FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 36 BEARS SOUTH 65 DEGREES 20 MINUTES 26 SECONDS EAST, 5,493.21 FEET; THENCE NORTH 08 DEGREES 02 MINUTES 43 SECONDS EAST 1,372.96 FEET; THENCE NORTH 79 DEGREES 21 MINUTES 45 SECONDS WEST 102.82 FEET; THENCE NORTH 07 DEGREES 42 MINUTES 00 SECONDS EAST TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36, EXCEPT TRACT IN BOOK 1591 AT PAGE [438](#);

SECTION 35: E1/2SE1/4; NE1/4; SW1/4SE1/4 AND A TRACT IN THE N1/2NW1/4 DESCRIBED AS FOLLOWS: BEGINNING AT N1/4 CORNER OF SAID SECTION, THENCE WEST 475 FEET, THENCE SOUTH 49 DEGREES 26 MINUTES WEST 886.79 FEET, THENCE SOUTH 45 DEGREES 59 MINUTES WEST 499.26 FEET, THENCE NORTH 85 DEGREES 55 MINUTES WEST 1,225 FEET TO WEST LINE OF SAID SECTION, THENCE SOUTH 02 DEGREES 50 MINUTES WEST 385.04 FEET TO SW CORNER OF NW1/4NW1/4 OF SAID SECTION, THENCE EAST ALONG SOUTH LINE OF SAID N1/2NW1/4 TO SOUTH LINE OF NW1/4 OF SAID SECTION, THENCE NORTH ALONG THE EAST LINE OF SAID NW1/4 TO POINT OF BEGINNING.

ALL IN THE COUNTY OF LARIMER, STATE OF COLORADO.

EXCEPTING FROM THE ABOVE PARCELS ANY LAND AS DESCRIBED IN DEED RECORDED FEBRUARY 22, 2024 AT RECEPTION NO. [20240006465](#)

EXHIBIT A**(Page 2 of 4)****Legal Descriptions of each Conservation Easement****Ranch B**

THE E 1/2 OF THE W 1/2 AND THE E 1/2 OF SECTION 1, TOWNSHIP 9 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

THE E 1/2 OF THE NW 1/4 AND THE SW 1/4 OF THE NW 1/4 AND THE SW 1/4 AND THE NE 1/4 OF SECTION 12, TOWNSHIP 9 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

THE W 1/2 AND THE W 1/2 OF THE E 1/2 OF SECTION 6, TOWNSHIP 9 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

THE SE 1/4 AND THE E 1/2 OF THE SW 1/4 IN SECTION 36, TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO LYING SOUTH OF COUNTY ROAD 74E

A TRACT OF LAND SITUATE IN THE WEST 1/2 OF SECTION OF SECTION 31, TOWNSHIP 10 NORTH, RANGE 70 WEST OF THE SIXTH P.M., COUNTY OF LARIMER, STATE OF COLORADO, WHICH CONSIDERING THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 31 AS BEARING S 00°05'38" W AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 31, AND RUN THENCE ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 N 00°38'22" E 2638.83 FEET TO THE WEST 1/4 CORNER OF SAID SECTION 31; THENCE ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 31, N 00°38'22" E 104.75 FEET TO A POINT ON THE EXISTING CENTERLINE OF COUNTY ROAD 74E; THENCE ALONG SAID CENTERLINE, S 86°15'54" E 491.57 FEET AND AGAIN N 88°40'25" E 450.01 FEET, AND AGAIN S 85°24'44" E 447.88 FEET, AND AGAIN S 85°57'26" E 469.78 FEET AND AGAIN N 88°19'16" E 452.92 FEET, AND AGAIN S 86°45'21" E 414.88 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 31; THENCE ALONG SAID EAST LINE, S 00°05'38" W 2604.07 FEET TO THE SOUTH 1/4 CORNER OF SAID SECTION 31, THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4, S 89°11'45" W 2749.04 FEET TO THE POINT OF BEGINNING

THAT PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO LYING SOUTH OF LARIMER COUNTY ROAD 74E AND EAST OF THE FOLLOWING DESCRIBED LINE:

A LINE LYING IN THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE EAST LINE OF SAID SECTION 36 TO BEAR AN ASSUMED BEARING OF NORTH, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, THE BEGINNING COURSE AND THE TERMINAL COURSE SHALL BE PROLONGED OR FORESHORTENED SO AS TO BEGIN ON THE NORTH RIGHT OF WAY LINE OF LARIMER COUNTY ROAD 74E AND SO AS TO TERMINATE ON THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 36.

BEGINNING AT A POINT ON THE EXISTING CENTERLINE OF LARIMER COUNTY ROAD 74E FROM WHEN THE NORTHEAST CORNER OF SAID SECTION 36 BEARS N 59°07'09" E A DISTANCE OF 5,816.87 FEET AND FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 36 BEARS S 65°20'26" E FOR A DISTANCE OF 5,493.21 FEET;

THENCE N 08°02'43" E FOR A DISTANCE OF 1,372.96 FEET;

THENCE N 79°21'45" W FOR A DISTANCE OF 102.82 FEET;

THENCE N 07°42'00" E TO THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 36,

AND,

THAT PART OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 71 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO LYING SOUTH OF COUNTY ROAD 74E,

EXHIBIT A

(Page 3 of 4)

Legal Descriptions of each Conservation Easement

Ranch C

PARCEL A:

TOWNSHIP 9 NORTH, RANGE 70 WEST OF THE 6TH P. M. COUNTY OF LARIMER, STATE OF COLORADO

SECTION 6: E1/2 E1/2;

SECTION 5: W1/2 NW1/4, SW1/4, AND AN UNDIVIDED 1/2 INTEREST IN A TRACT OF LAND DESCRIBED AS COMMENCING AT A POINT ON THE WEST LINE OF THE NE1/4 NW1/4, 174 FEET SOUTH OF THE NORTHWEST CORNER OF NE1/4 NW1/4, THENCE EAST 337 FEET TO A STONE AND STAKE, THENCE SOUTHWESTERLY TO THE SW CORNER OF NE1/4 NW1/4, THENCE NORTH TO POINT OF BEGINNING.

PARCEL B:

TOWNSHIP 10 NORTH, RANGE 70 WEST OF THE 6TH P. M. COUNTY OF LARIMER, STATE OF COLORADO

SECTION 31: E1/2 SE1/4 EXCEPT THOSE PORTIONS CONVEYED IN DEEDS RECORDED DECEMBER 23, 1980 IN BOOK 2094 AT PAGE [280](#) AND MARCH 7, 2019 AT RECEPTION NO. [20190011259](#); W1/2 SE1/4, LESS A PORTION IN COUNTY ROAD 74E; EXCEPT ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY OF COUNTY ROAD 74E

SECTION 32: W1/2S W1/4, EXCEPT TRACTS IN DEEDS RECORDED SEPTEMBER 14, 1953 IN BOOK 956 AT PAGE [492](#) AND FEBRUARY 25, 1976 IN BOOK 1687 AT PAGE [138](#) AND DECEMBER 23, 1980 IN BOOK 2094 AT PAGE [280](#) ; EXCEPT ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY OF COUNTY ROAD 74E

EXHIBIT A**(Page 4 of 4)****Legal Descriptions of each Conservation Easement****Ranch D**

A TRACT OF LAND SITUATE IN THE SOUTHEAST 1/4 OF SECTION 31, TOWNSHIP 10 NORTH, RANGE 70 WEST OF THE SIXTH P.M., COUNTY OF LARIMER, STATE OF COLORADO, WHICH, CONSIDERING THE NORTH LINE OF SAID SOUTHEAST 1/4 AS BEARING S 90°00'00" E AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT A POINT ON THE EAST LINE OF SAID SOUTHEAST 1/4 WHICH BEARS S 02°22'01" W 731.76 FEET FROM THE EAST 1/4 CORNER OF SAID SECTION 31, AND RUN THENCE ALONG SAID EAST LINE, S 02°22'01" W 1259.66 FEET; THENCE DEPARTING SAID EAST LINE, N 78°37'59" W 1317.06 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF SAID SOUTHEAST 1/4; THENCE ALONG SAID WEST LINE, N 01°54'32" E 1433.01 FEET TO A POINT ON THE ASSUMED SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 74E; THENCE ALONG SAID ASSUMED SOUTH RIGHT-OF-WAY LINE, ALONG THE ARC OF A 5251.20 FOOT RADIUS CURVE CONCAVE TO THE NORTH A DISTANCE OF 83.72 FEET, WHOSE CENTRAL ANGLE IS 00°54'48", THE LONG CHORD OF WHICH BEARS S 67°31'56" E 83.72 FEET, AND AGAIN ALONG THE ARC OF A 1905.00 FOOT RADIUS CURVE CONCAVE TO THE NORTH A DISTANCE OF 452.47 FEET, WHOSE CENTRAL ANGLE IS 13°36'32", THE LONG CHORD OF WHICH BEARS S 76°40'02" E 451.41 FEET, AND AGAIN S 83°28'25" E 808.86 FEET TO THE POINT OF BEGINNING

EXHIBIT B
Conservation Easement Acquisition Costs

Livermore Area Property	Larimer County	Fort Collins	GOCO	Additional Grants	Total
Ranch A	\$5,107,500.00	\$1,250,000.00	\$1,000,000.00	\$142,500.00	\$7,500,000.00
Ranch B	\$3,107,500.00	\$1,250,000.00	\$1,000,000.00	\$142,500.00	\$5,500,000.00
Ranch C	\$857,500.00	\$500,000.00	\$500,000.00	\$142,500.00	\$2,000,000.00
Ranch D	-	-	-	-	-
TOTALS		\$3,000,000.00	\$2,500,000.00	\$427,500.00	

Natural Areas Department
 1745 Hoffman Mill Road
 PO Box 580
 Fort Collins, CO 80522

970.416.2815
 970.416.2211 - fax
fcgov.com/naturalareas



Natural Areas – Administrative Policy Land Acquisition Partnership Guidelines

Background

As requested by City Council during the December 11, 2018 work session, staff developed criteria and associated guiding questions to address Council's suggestions related to external land conservation partnerships. The criteria and guiding questions will be utilized well in advance of formalizing a partnership. If staff believes the partnership to be justified based upon the criteria and guiding questions, a memo detailing staff's recommendation will be presented to Council prior to moving forward. Thus, if Council has any concerns they can be addressed well in advance of a potential transaction.

Criteria

- The acquisition must align with the land conservation priorities set forth by the Council Adopted - City of Fort Collins 2014 Natural Areas Master Plan.
- Visitation must be free of charge if public access is allowed.
 - If access fees are proposed, a staff recommendation to move forward must be explained and justified in the report to council.
- The partner/s must have a positive track record of partnerships with the City and/or other organizations.
- The partnership must enhance the conservation protections of the project.
- The land conservation project must leverage the parties' resources in a manner that leads to additional land conservation by one, or both, parties.

Guiding Questions

- Does the land conservation project align with the land conservation priorities set forth by the Council Adopted - City of Fort Collins 2014 Natural Areas Master Plan?
- Does the partner have a positive track record of partnership with the City and or other organizations?
- Is the project of mutual interest due to previous investments by the partners or due to its location?
- How will the land conservation project benefit citizens of Fort Collins?
- How can/should the land conservation project be funded?
 - Are there grants available to help fund the project?
 - Do the partners have the financial ability to participate?
- Will the financial partnership positively affect a grant application?
 - Which partner is best suited to apply for and manage the grant?
- Would the land conservation project be possible without the partnership?
 - If so, does the partnership leverage resources for additional conservation or partnership opportunities?
- If the property is purchased:
 - Which partner is best suited to manage the property?
- If the land is conserved with a conservation easement?
 - Which partner is best suited to hold and monitor the conservation easement?

This Policy was Administratively Adopted by:

John Stokes

Digitally signed by John
 Stokes
 Date: 2019.11.12
 16:24:58 -07'00'

November 12 2019

John Stokes, Natural Areas Department Director

Date

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



Land Conservation & Stewardship Board December 11, 2024 Regular Meeting – Excerpt

Members:

Ross Cunniff, Chair	Holger Kley, Member
Scott Mason, Vice Chair	Elena Lopez, Member
Denise Culver, Member	River Mizell, Member
Andrea Elson, Member	Mark Sears, Member
Jennifer Gooden, Member	

1. CALL TO ORDER: Meeting was called to order at 5:32 pm.

2. ROLL CALL:

LCSB: Holger Kley, Mark Sears, Andrea Elson, River Mizell, Scott Mason, Ross Cunniff, Denise Culver, Jennifer Gooden, Elena Lopez

NAD Staff: Julia Feder, Tawnya Ernst, Crystal Strouse, Matt Parker, Mary Boyts

Excerpt related to this Council Meeting Agenda Item: Intergovernmental Agreement (IGA) with Larimer County to purchase four conservation easements within the Livermore Conservation Project

6. ACTION ITEMS

Larimer County Partnership on the Livermore Conservation Project

Tawnya Ernst, Land Conservation Lead Specialist stated she was seeking a recommendation from the LCSB to enter into an IGA with Larimer County to purchase conservation easements on four ranches totaling 4,897 acres within the Laramie Foothills/Mountains to Plains Priority Area. Larimer County would be the lead on the project and hold the conservation easements on the properties.

Discussion

In response to Board member questions about the four parcels, location and mineral rights:

- Tawnya confirmed that the four ranches are contiguous and owned by members of one family, who will continue to ranch.
- Julia described the property locations as adjoining portions of other conservation easements, Roosevelt National Forest, State Land Board and a portion of Cherokee Park State Wildlife Area.
- Tawnya explained that while conservation easements don't prohibit mineral extraction (unless the landowner owns all the minerals outright) they do require the landowner to minimize impacts of mining operations so that they don't adversely affect the conservation values.
- Tawnya stated the properties would not be impacted by the Northern Integrated Supply Project.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



Land Conservation & Stewardship Board

Regular Meeting

Several Board members voiced enthusiastic support for the conservation easements and the added protection of the habitat.

Member Sears made a motion that the Land Conservation and Stewardship Board recommends that City Council approve an Intergovernmental Agreement (IGA) with Larimer County to partner on the purchase of four conservation easements as part of the Livermore Conservation Project. Member Elson seconded the motion. The motion was unanimously approved, 9-0.

File Attachments for Item:

5. Resolutions 2025-002 Finding Substantial Compliance and Initiating Annexation Proceedings for the Heritage Annexation.

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Heritage Annexation, a voluntary annexation located northeast of the intersection of International Boulevard and Mexico Way. The Applicant has submitted a written petition requesting annexation of 24.84 acres and zoning into the Employment (E) zone district, which is consistent with the City of Fort Collins Structure Plan Map and the most recently adopted (December 2023) East Mulberry Plan.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

January 7, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Ryan Mounce, City Planner

SUBJECT

Resolutions 2025-002 Finding Substantial Compliance and Initiating Annexation Proceedings for the Heritage Annexation.

EXECUTIVE SUMMARY

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Heritage Annexation, a voluntary annexation located northeast of the intersection of International Boulevard and Mexico Way. The Applicant has submitted a written petition requesting annexation of 24.84 acres and zoning into the Employment (E) zone district, which is consistent with the City of Fort Collins Structure Plan Map and the most recently adopted (December 2023) East Mulberry Plan.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Heritage Annexation, a voluntary annexation located northeast of the intersection of International Boulevard and Mexico Way. The Applicant has submitted a written petition requesting annexation of 24.84 acres and zoning into the Employment (E) zone district, which is consistent with the City of Fort Collins Structure Plan Map and the most recently adopted (December 2023) East Mulberry Plan.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

CITY FINANCIAL IMPACTS

The annexation and zoning will not result in any initial direct significant financial/economic impacts. Annexation will trigger the transition of law enforcement from the Larimer County Sheriff's Office to Fort Collins Police Services, however; a majority of the site is currently undeveloped.

When additional development of the site occurs, water services will be provided by the East Larimer Water

(ELCO) District and wastewater services by Boxelder Sanitation District. Fort Collins Light and Power will provide electric service for the site.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission conducted a public hearing on the annexation and zoning request on December 19, 2024, and voted to recommend the annexation and zoning to City Council. The Commission's recommendation will be forwarded to Council as part of the First Reading of the annexation and zoning ordinances on February 18, 2025.

PUBLIC OUTREACH

There was no public outreach for this initiating Resolution, as this Resolution simply accepts the Annexation Petition and provides a schedule for upcoming Council hearings, with a schedule and notification requirements that comply with State statutes.

A joint neighborhood meeting for the annexation and proposed Overall Development Plan for the site was held on September 5, 2024.

ATTACHMENTS

1. Resolution for Consideration
2. Exhibit A to Resolution
3. Vicinity Map
4. Annexation Petition
5. Applicant Narrative
6. Annexation Map

RESOLUTION 2025-002
OF THE COUNCIL OF THE CITY OF FORT COLLINS
FINDING SUBSTANTIAL COMPLIANCE AND INITIATING
ANNEXATION PROCEEDINGS FOR THE HERITAGE
ANNEXATION

A. A written petition, together with four prints of an annexation map, have been filed with the City Clerk requesting the annexation of certain property to be known as the Heritage Annexation, as more particularly described below.

B. On November 19, 2024, the City Council adopted Resolution 2024-136 initiating this annexation. However, this Resolution herein is necessary due to a Notice publication error. Colorado Revised Statutes (“C.R.S.”) Section 31-12-108 includes certain timeframes during which an annexation petition must be addressed, namely, a hearing must be held not less than thirty days and not more than sixty days after the effective date of the Resolution setting the hearing. The published Notice indicated that the City Council was hearing this annexation on January 7, 2024, not 2025. There were not four consecutive weeks during which to publish a new, correct Notice before the January 7, 2025, Council meeting, and the January 21, 2025, Council meeting was outside of the sixty days.

C. The City Council desires to initiate annexation proceedings for the Heritage Annexation in accordance with the Municipal Annexation Act, C.R.S. Section 31-12-101, et seq.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby accepts the annexation petition for the Heritage Annexation, located northeast of the intersection of International Boulevard and Mexico Way and more particularly described as situate in the County of Larimer, State of Colorado, to wit:

A PARCEL OF LAND BEING A PORTION OF THE WEST 1/2 OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER 1/4 CORNER OF SAID SECTION 8 AND CONSIDERING THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 8 AS BEARING OF N 89°08'54” W AND HAVING ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE N 89°08'54” W A DISTANCE OF 636.52 FEET ALONG SAID SOUTH LINE;

THENCE N 00°51'06" E A DISTANCE OF 56.57 FEET TO THE SOUTHWEST CORNER OF LOT 3 OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D RECORDED AT RECEPTION NO. 423677 (1981) OF THE LARIMER COUNTY RECORDS, SAID POINT BEING THE **POINT OF BEGINNING**;
 THENCE S 89°41'35" E A DISTANCE OF 282.29 FEET ALONG THE SOUTH LINE SAID LOT 3 TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D;
 THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 7 COURSES:
 N 00°24'08" E A DISTANCE OF 170.35 FEET;
 N 41°35'52" W A DISTANCE OF 270.00 FEET;
 N 65°35'35" W A DISTANCE OF 283.06 FEET;
 N 80°23'05" W A DISTANCE OF 255.00 FEET;
 N 65°09'53" W A DISTANCE OF 192.96 FEET;
 N 08°05'13" E A DISTANCE OF 46.10 FEET;
 N 89°36'46" W A DISTANCE OF 12.10 FEET TO A POINT ON THE BOUNDARY LINE OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT, RECORDED AT RECEPTION NO. 20190043996 OF THE LARIMER COUNTY RECORDS;
 THENCE N 89°36'46" W A DISTANCE OF 791.94 FEET ALONG SAID BOUNDARY LINE;
 THENCE N 89°36'46" W A DISTANCE OF 72.00 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE EAST LINE OF LOT 1A, LOT CONSOLIDATION OF LOTS 1 & 2, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
 THENCE S 00°49'21" W A DISTANCE OF 175.11 FEET ALONG SAID EAST LINE;
 THENCE S 00°49'21" W A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST LINE OF LOT3, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
 THENCE S 00°49'01" W A DISTANCE OF 564.16 FEET ALONG SAID EAST LINE;
 THENCE CONTINUING ALONG SAID EAST LINE 86.67 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 124°09'00" AND A CHORD THAT BEARS S 62°53'31" W A DISTANCE OF 70.68 FEET TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
 THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 3 COURSES:
 S 55°01'59" E A DISTANCE OF 137.05 FEET;
 S 89°10'59" E A DISTANCE OF 84.49 FEET;
 S 89°10'59" E A DISTANCE OF 545.55 FEET;
 THENCE S 89°10'59" E A DISTANCE OF 140.00 FEET TO THE BOUNDARY OF THE AMENDED PLAT OF LOTS 11 AND 12, AMENDED PLAT OF ENVELOPE "A" INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 19950040821 OF THE LARIMER COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE 62.83 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 90° AND A CHORD THAT BEARS N 44°10'56" W A DISTANCE OF 56.57 FEET; THENCE N 00°49'04" E A DISTANCE OF 384.74 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE BOUNDARY LINE OF THE AMENDED PLAT OF ENVELOPE A INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECEPTION NO. 562057 (1984) OF THE LARIMER COUNTY RECORDS; THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 5 COURSES:
 N 00°49'04" E A DISTANCE OF 90.47 FEET;
 35.63 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 241.54 FEET, A DELTA ANGLE OF 8°27'09" AND A CHORD THAT BEARS N 05°02'39" E A DISTANCE OF 35.60 FEET;
 91.74 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, A DELTA ANGLE OF 105°07'55" AND A CHORD THAT BEARS N 61°50'10" E A DISTANCE OF 79.41 FEET;
 S 65°35'52" E A DISTANCE OF 523.36 FEET;
 111.98 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 115.69 FEET, A DELTA ANGLE OF 55°27'28" AND A CHORD THAT BEARS S 37°52'08" E A DISTANCE OF 107.66 FEET; THENCE N 79°52'41" E A DISTANCE OF 60.00 FEET TO THE **POINT OF BEGINNING.**

SAID PARCEL CONTAINS 1,081,947 SQ.FT. (24.838 ACRES) MORE OR LESS.

Section 2. The City Council hereby finds and determines that the annexation petition for the Heritage Annexation is in substantial compliance with the Municipal Annexation Act in that the annexation petition contains the following:

- (1) An allegation that it is desirable and necessary that such area be annexed to the municipality;
- (2) An allegation that the requirements of C.R.S. Sections 31-12-104 and 31-12-105 exist or have been met;
- (3) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;
- (4) A request that the annexing municipality approve the annexation of the area proposed to be annexed;
- (5) The signatures of such landowners;

- (6) The mailing address of each such signer;
- (7) The legal description of the land owned by such signer;
- (8) The date of signing of each signature; and
- (9) The affidavit of the circulator of such petition that each signature therein is the signature of the person whose name it purports to be.

Section 3. The City Council hereby finds and determines that the annexation map, four copies total, accompanying the annexation petition for the Heritage Annexation is in substantial compliance with the Municipal Annexation Act in that the map contains the following:

- (1) A written legal description of the boundaries of the area proposed to be annexed;
- (2) A map showing the boundary of the area proposed to be annexed;
- (3) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and
- (4) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

Section 4. The Notice attached hereto as Exhibit A is hereby adopted as a part of this Resolution. Said Notice establishes the date, time and place when a public hearing will be held regarding the passage of annexation and zoning ordinances pertaining to the above-described property. The City Clerk is directed to publish a copy of this Resolution and said Notice as provided in the Municipal Annexation Act.

Section 5. This Resolution supersedes Resolution 2024-136, which is hereby declared null and void and of no further effect.

Passed and adopted on January 7, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 7, 2025
Approving Attorney: Heather N. Jarvis

EXHIBIT A TO RESOLUTION 2025-002

NOTICE

TO ALL PERSONS INTERESTED:

PLEASE TAKE NOTICE that the City Council of the City of Fort Collins has adopted Resolution 2025-002 initiating annexation proceedings for the Heritage Annexation, consisting of approximately 24.84 acres and generally located northeast of the intersection of International Boulevard and Mexico Way, and said Annexation being more particularly described in Resolution 2025-002, a copy of which is available from the City Clerk's Office. The area to be annexed will be concurrently reviewed for zoning to the Employment ("E") zone district. The area to be annexed is more particularly described as:

A PARCEL OF LAND BEING A PORTION OF THE WEST 1/2 OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER 1/4 CORNER OF SAID SECTION 8 AND CONSIDERING THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 8 AS BEARING OF N 89°08'54" W AND HAVING ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE N 89°08'54" W A DISTANCE OF 636.52 FEET ALONG SAID SOUTH LINE; THENCE N 00°51'06" E A DISTANCE OF 56.57 FEET TO THE SOUTHWEST CORNER OF LOT 3 OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D RECORDED AT RECEPTION NO. 423677 (1981) OF THE LARIMER COUNTY RECORDS, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE S 89°41'35" E A DISTANCE OF 282.29 FEET ALONG THE SOUTH LINE SAID LOT 3 TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 7 COURSES:

N 00°24'08" E A DISTANCE OF 170.35 FEET;

N 41°35'52" W A DISTANCE OF 270.00 FEET;

N 65°35'35" W A DISTANCE OF 283.06 FEET;

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N 89°36'46" W A DISTANCE OF 12.10 FEET TO A POINT ON THE BOUNDARY LINE OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT, RECORDED AT RECEPTION NO. 20190043996 OF THE LARIMER COUNTY RECORDS;

THENCE N 89°36'46" W A DISTANCE OF 791.94 FEET ALONG SAID BOUNDARY LINE;

THENCE N 89°36'46" W A DISTANCE OF 72.00 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE EAST LINE OF LOT 1A, LOT CONSOLIDATION OF

EXHIBIT A TO RESOLUTION 2025-002

LOTS 1 & 2, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
 THENCE S 00°49'21" W A DISTANCE OF 175.11 FEET ALONG SAID EAST LINE;
 THENCE S 00°49'21" W A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST LINE OF LOT3, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
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 THENCE CONTINUING ALONG SAID EAST LINE 86.67 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 124°09'00" AND A CHORD THAT BEARS S 62°53'31" W A DISTANCE OF 70.68 FEET TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
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 THENCE S 89°10'59" E A DISTANCE OF 140.00 FEET TO THE BOUNDARY OF THE AMENDED PLAT OF LOTS 11 AND 12, AMENDED PLAT OF ENVELOPE "A" INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 19950040821 OF THE LARIMER COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE 62.83 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 90° AND A CHORD THAT BEARS N 44°10'56" W A DISTANCE OF 56.57 FEET; THENCE N 00°49'04" E A DISTANCE OF 384.74 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE BOUNDARY LINE OF THE AMENDED PLAT OF ENVELOPE A INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECEPTION NO. 562057 (1984) OF THE LARIMER COUNTY RECORDS;
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 S 65°35'52" E A DISTANCE OF 523.36 FEET;
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EXHIBIT A TO RESOLUTION 2025-002

SAID PARCEL CONTAINS 1,081,947 SQ.FT. (24.838 ACRES) MORE OR LESS.

That, on February 18, 2025, at the hour of 6:00 p.m., or as soon thereafter as the matter may come on for hearing in the Council Chambers in the City Hall, 300 LaPorte Avenue, Fort Collins, Colorado, the Fort Collins City Council will hold a public hearing upon the annexation petition and zoning request for the purpose of finding and determining whether the property proposed to be annexed meets the applicable requirements of Colorado law and is considered eligible for annexation and for the purpose of determining the appropriate zoning for the property included in the Annexation. At such hearing, any persons may appear and present such evidence as they may desire.

The Petitioner has requested that the Property included in the Annexation be placed in the Employment (“E”) Zone District.

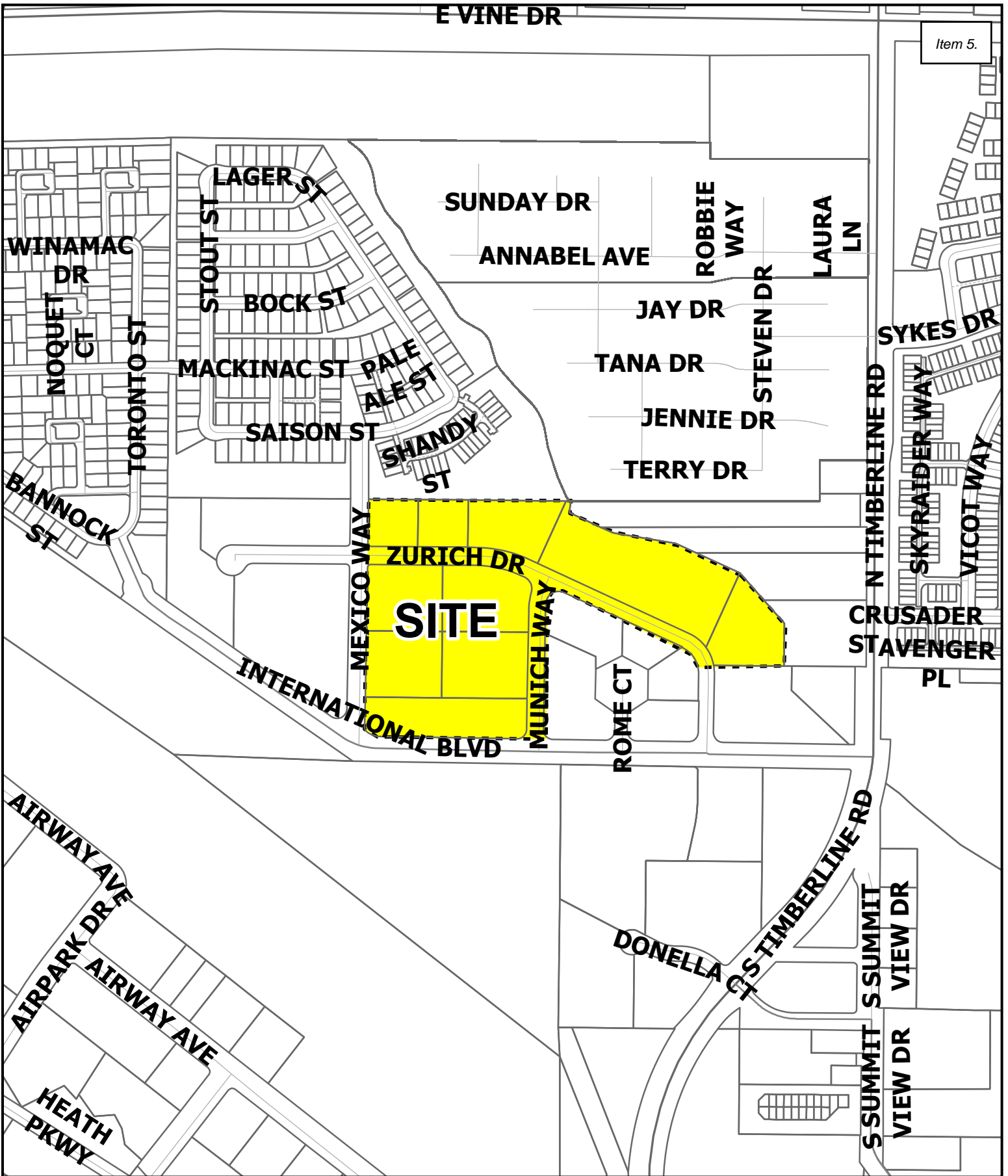
Individuals who wish to address Council via remote public participation can do so through Zoom at <https://zoom.us/j/98241416497>. (The link and instructions are also posted at www.fcgov.com/councilcomments/). Individuals participating in the Zoom session should watch the meeting through that site, and not via FCTV, due to the streaming delay and possible audio interference.

Dated this ____ day of _____, 2025.

City Clerk

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours’ advance notice when possible.

A petición, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.



Heritage Annexation
VICINITY MAP



PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the Heritage Annexation to the City of Fort Collins. Said area, consisting of approximately twenty-four and 838/1000 (24.838) acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.
2. That the requirements of Sections 31-12-104 and 31-12-108, C.R.S., exist or have been met.
3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.
4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.
5. That the area to be annexed is urban or will be urbanized in the near future.
6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.
7. That the Petitioners herein comprise more than fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.
8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §3745-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on other similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.

WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the Employment Zone District pursuant to the Land Use Code of the City of Fort Collins. The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

A tract of land situate in the County of Larimer, State of Colorado, to-wit:

Lots 1 – 3 of Block 2, and Lots 1 – 4 of Block 3, and Tract B of Amended Plat of Envelope D of the Plat of Industrial Business Park International P.U.D. and Lots 1 and 2 of the Amended Plat of Envelopes B & C, Industrial Business Park International P.U.D. and Lots 1 – 5 of the Amended Plat of Lots 5 – 9, Industrial Business Park International P.U.D., located in the West Half (W1/2) of Section 8, Township 7 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, according to the plat thereof recorded August 1, 2019 at reception number 20190043996 of the records of the Larimer County Clerk & Recorder.

And

Lots 3 – 4 of Plat of Industrial Business Park International P.U.D., located in Sections 7 and 8, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado, according to the plat thereof recorded August 12, 1981 at reception number 423677, Book 2128, Page 409, of the records of the Larimer County Clerk & Recorder.

IN WITNESS WHEREOF, I/we have executed this Petition for Annexation this 29 day of OCTOBER 2024.

Friends of Christian Education Foundation
a Colorado nonprofit corporation



By: Brent Holcombe
Title: President

2506 Zurich Dr.

Address

Fort Collins, Colorado 80524

City State Zip

ATTACHMENT "A"

LEGAL DESCRIPTION OF THE ANNEXATION

A tract of land situate in the County of Larimer, State of Colorado, to-wit:

A PARCEL OF LAND BEING A PORTION OF THE WEST 1/2 OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER 1/4 CORNER OF SAID SECTION 8 AND CONSIDERING THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 8 AS BEARING OF N 89°08'54" W AND HAVING ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE N 89°08'54" W A DISTANCE OF 636.52 FEET ALONG SAID SOUTH LINE;

THENCE N 00°51'06" E A DISTANCE OF 56.57 FEET TO THE SOUTHWEST CORNER OF LOT 3 OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 423677 (1981) OF THE LARIMER COUNTY RECORDS, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE S 89°41'35" E A DISTANCE OF 282.29 FEET ALONG THE SOUTH LINE SAID LOT 3 TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D.;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 7 COURSES:

1. N 00°24'08" E A DISTANCE OF 170.35 FEET;
2. N 41°35'52" W A DISTANCE OF 270.00 FEET;
3. N 65°35'35" W A DISTANCE OF 283.06 FEET;
4. N 80°23'05" W A DISTANCE OF 255.00 FEET;
5. N 65°09'53" W A DISTANCE OF 192.96 FEET;
6. N 08°05'13" E A DISTANCE OF 46.10 FEET;
7. N 89°36'46" W A DISTANCE OF 12.10 FEET TO A POINT ON THE BOUNDARY LINE OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT, RECORDED AT RECEPTION NO. 20190043996 OF THE LARIMER COUNTY RECORDS;

THENCE N 89°36'46" W A DISTANCE OF 791.94 FEET ALONG SAID BOUNDARY LINE;

THENCE N 89°36'46" W A DISTANCE OF 72.00 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE EAST LINE OF LOT 1A, LOT CONSOLIDATION OF LOTS 1 & 2, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;

THENCE S 00°49'21" W A DISTANCE OF 175.11 FEET ALONG SAID EAST LINE;

THENCE S 00°49'21" W A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST LINE OF LOT3, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;

THENCE S 00°49'01" W A DISTANCE OF 564.16 FEET ALONG SAID EAST LINE;

THENCE CONTINUING ALONG SAID EAST LINE 86.67 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 124°09'00" AND A CHORD THAT BEARS S 62°53'31" W A DISTANCE OF 70.68 FEET TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 3 COURSES:

1. S 55°01'59" E A DISTANCE OF 137.05 FEET;
2. S 89°10'59" E A DISTANCE OF 84.49 FEET;
3. S 89°10'59" E A DISTANCE OF 545.55 FEET;

THENCE S 89°10'59" E A DISTANCE OF 140.00 FEET TO THE BOUNDARY OF THE AMENDED PLAT OF LOTS 11 AND 12, AMENDED PLAT OF ENVELOPE "A" INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 19950040821 OF THE LARIMER COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE 62.83 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 90° AND A CHORD THAT BEARS N 44°10'56" W A DISTANCE OF 56.57 FEET;

THENCE N 00°49'04" E A DISTANCE OF 384.74 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE BOUNDARY LINE OF THE AMENDED PLAT OF ENVELOPE A INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECEPTION NO. 562057 (1984) OF THE LARIMER COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 5 COURSES:

1. N 00°49'04" E A DISTANCE OF 90.47 FEET;
 2. 35.63 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 241.54 FEET, A DELTA ANGLE OF 8°27'09" AND A CHORD THAT BEARS N 05°02'39" E A DISTANCE OF 35.60 FEET;
 3. 91.74 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, A DELTA ANGLE OF 105°07'55" AND A CHORD THAT BEARS N 61°50'10" E A DISTANCE OF 79.41 FEET;
 4. S 65°35'52" E A DISTANCE OF 523.36 FEET;
 5. 111.98 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 115.69 FEET, A DELTA ANGLE OF 55°27'28" AND A CHORD THAT BEARS S 37°52'08" E A DISTANCE OF 107.66 FEET;
- THENCE N 79°52'41" E A DISTANCE OF 60.00 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1,081,947 SQ.FT. (24.838 ACRES) MORE OR LESS.

ATTACHMENT "B"

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

Circulator's Signature

Brent Holcombe

Subscribed and sworn to before me this 29th day of October 2024, by
Brent Holcombe.

WITNESS my hand and official seal.



10/29/2026
Commission Expiration

Dawn L Cuckler
Notary Public

Statement of Principles and Policies

Heritage Annexation

July 11, 2024

Heritage Christian Academy is beginning its path towards becoming a full two-track school. As they grow to two tracks and double the size of our student body, Heritage Christian Academy must expand its facilities.

To support the growth of the school, HCA has purchased approximately 13.6 acres of property located adjacent to, and west of, the existing school site within the Industrial Business Park International PUD, currently located in unincorporated Larimer County.

On March 8, 2024, a Conceptual Review meeting was held with the City of Fort Collins and HCA was encouraged to begin with Annexation and Zoning of the property. City plans influencing the planned annexation include:

- City Plan (updated 2019)
- East Mulberry Plan (updated December 5, 2023)
- Land Use Code Phase 1 Update (effective May 17, 2024), and
- Potential Land Use Code Phase 2 Updates (in progress)

The property is within the East Mulberry Enclave, an area of unincorporated Larimer County completely surrounded by Fort Collins city limits. The East Mulberry Enclave is located within the Fort Collins Growth Management Area (GMA) which was established through an Intergovernmental Agreement (IGA) with Larimer County. In establishing the boundaries of the GMA, the IGA also sets forth a general goal to annex areas within the GMA that are eligible. The Heritage Annexation would be a voluntary petition to annex into the City of Fort Collins to support the expansion of Heritage Christian Academy, a pre-K through 12 school, and/or similar uses existing within the area.

Existing Land Uses within the property include:

Public (school) and
Vacant, undeveloped properties

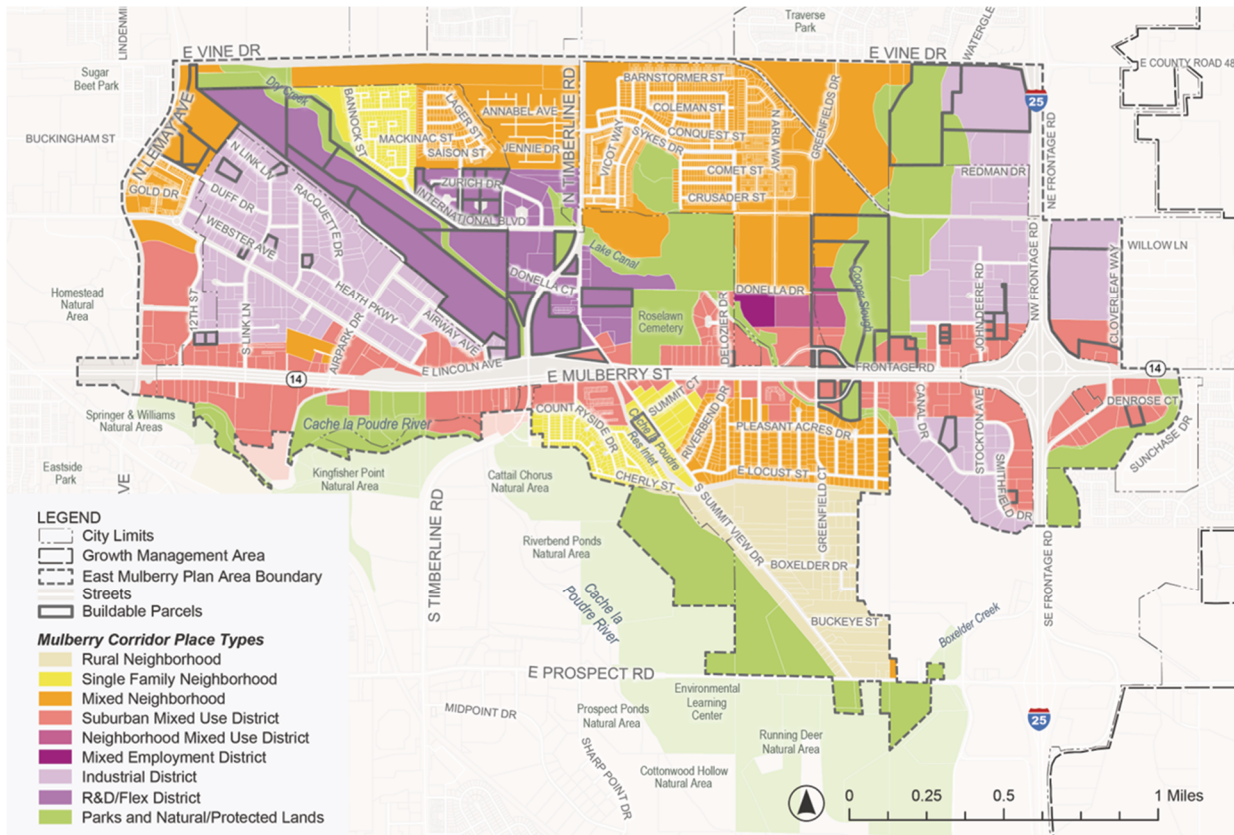
Existing adjacent land uses include:

Commercial uses – south
Residential uses – north
Industrial uses – east
Vacant, undeveloped properties - west

The City of Fort Collins **Structure Plan** (2019) identifies the annexation property as a ‘Mixed Neighborhood’ Place Type. Adjacent properties are designated as:

- ‘Mixed Neighborhood’ (north and west), and
- ‘Industrial’ (south and east)

However, the recently updated **East Mulberry Plan** identifies the annexation property and the adjacent properties to the east, west and south as part of the Transitional / Mixed-Use Character Area and as the ‘**Research and Development Flex District**’ Place Type. Based on our discussions with city staff, the city’s Structure Plan is anticipated to be updated to incorporate the designations within the East Mulberry Plan.



This map depicts place type designations from City Plan's Structure Plan map. The Structure Plan map illustrates how the community may grow and change over time, setting a basic framework for future land use decisions.

DEVELOPMENT & GROWTH MAP

As described in the plan, the R&D Flex District is one of the most flexible place type designations and supports a wide range of light industrial, employment, and commercial/retail land uses. Application of the R&D place type is supportive of Plan goals to remain a viable place for business and industry and promote additional neighborhood services and retail. This is particularly relevant for large portions of the Transitional / Mixed-Use Character Area which forms a bridge between established industrial development and new residential neighborhoods, which is applicable to the Heritage Annexation property. The flexibility and range of uses within this place type make it ideal to accommodate a variety of future functions and land uses serving the needs of industrial and residential users while applying more modern buffering and compatibility development standards.

The intent of this R&D Flex District Place Type and HCA's plans for the property are to allow for a mix of commercial and industrial businesses but adjacent to existing residential uses. Based on these plans and our discussions with city staff, we propose the **Employment (E) zone district** be designated for the property with the Heritage Annexation. The intent is to allow for the school and other uses within the property as are allowed within the Employment (E) zone district while considering the more industrial character of the existing neighborhood development including building character, larger building sizes, and needs for storage and equipment not always associated with traditional employment uses.

The above helps to support applicable goals of the East Mulberry Plan including:

Goal 1: COMMERCIAL & INDUSTRIAL HUB by fostering a healthy and prosperous commercial and industrial hub for the City, while remaining viable for small businesses and industry, and

1.T.1 by maintaining flexibility for future land uses that act as a buffer between industrial and residential areas, thereby supporting the continued viability of industrial and commercial areas.

Appropriate **City Plan Principles and Policies** achieved by the proposed plan:

Annexations can primarily impact Principle LIV 1: Maintain a compact pattern of growth that is well served by public facilities and encourages the efficient use of land. The Heritage Annexation aligns with and helps to achieve applicable policies in this category.

Policy LIV 1.1 – GROWTH MANAGEMENT AREA (GMA)

The proposed Heritage Annexation is located within the City's GMA and is part of the East Mulberry Enclave. The Intergovernmental Agreement (IGA) with Larimer County establishes the boundaries of the GMA and sets forth a general goal to annex areas within the GMA that are eligible.

POLICY LIV 1.2 - AMENDMENTS TO THE GROWTH MANAGEMENT AREA

The proposed Heritage Annexation maintains the GMA as currently configured.

POLICY LIV 1.5 - CAPITAL IMPROVEMENT POLICIES

The proposed Heritage Annexation allows for the use of standard City policies for public improvements to be implemented including developer participation in infrastructure upgrades.

POLICY LIV 1.6 - ADEQUATE PUBLIC FACILITIES

The proposed Heritage Annexation includes developed properties and is similar to an infill site already served by critical facilities including utilities, roads.

HERITAGE ANNEXATION
SITUATE IN THE WEST 1/2 OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M.,
COUNTY OF LARIMER, STATE OF COLORADO

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF THE WEST 1/2 OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER 1/4 CORNER OF SAID SECTION 8 AND CONSIDERING THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 8 AS BEARING OF N 89°08'54" W AND HAVING ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO:

THENCE N 89°08'54" W A DISTANCE OF 636.52 FEET ALONG SAID SOUTH LINE;
THENCE N 00°51'06" E A DISTANCE OF 56.57 FEET TO THE SOUTHWEST CORNER OF LOT 3 OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 423677 (1981) OF THE LARIMER COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING;
THENCE S 89°41'35" E A DISTANCE OF 282.29 FEET ALONG THE SOUTH LINE SAID LOT 3 TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D.;
THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 7 COURSES:

1. N 00°24'08" E A DISTANCE OF 170.35 FEET;
2. N 41°35'52" W A DISTANCE OF 270.00 FEET;
3. N 65°35'35" W A DISTANCE OF 283.06 FEET;
4. N 80°23'05" W A DISTANCE OF 255.00 FEET;
5. N 65°09'53" W A DISTANCE OF 192.96 FEET;
6. N 08°05'13" E A DISTANCE OF 46.10 FEET;
7. N 89°36'46" W A DISTANCE OF 12.10 FEET TO A POINT ON THE BOUNDARY LINE OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT, RECORDED AT RECEPTION NO. 20190043996 OF THE LARIMER COUNTY RECORDS;

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THENCE N 89°36'46" W A DISTANCE OF 72.00 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE EAST LINE OF LOT 1A, LOT CONSOLIDATION OF LOTS 1 & 2, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;

THENCE S 00°49'21" W A DISTANCE OF 175.11 FEET ALONG SAID EAST LINE;
THENCE S 00°49'21" W A DISTANCE OF 100.00 FEET TO A POINT ON THE EAST LINE OF LOTS 3, BLOCK 1 OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;
THENCE S 00°49'01" W A DISTANCE OF 564.16 FEET ALONG SAID EAST LINE;
THENCE CONTINUING ALONG SAID EAST LINE 86.67 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 124°09'00" AND A CHORD THAT BEARS S 62°53'31" W A DISTANCE OF 70.68 FEET TO A POINT ON THE BOUNDARY LINE OF THE SAID INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 3 COURSES:

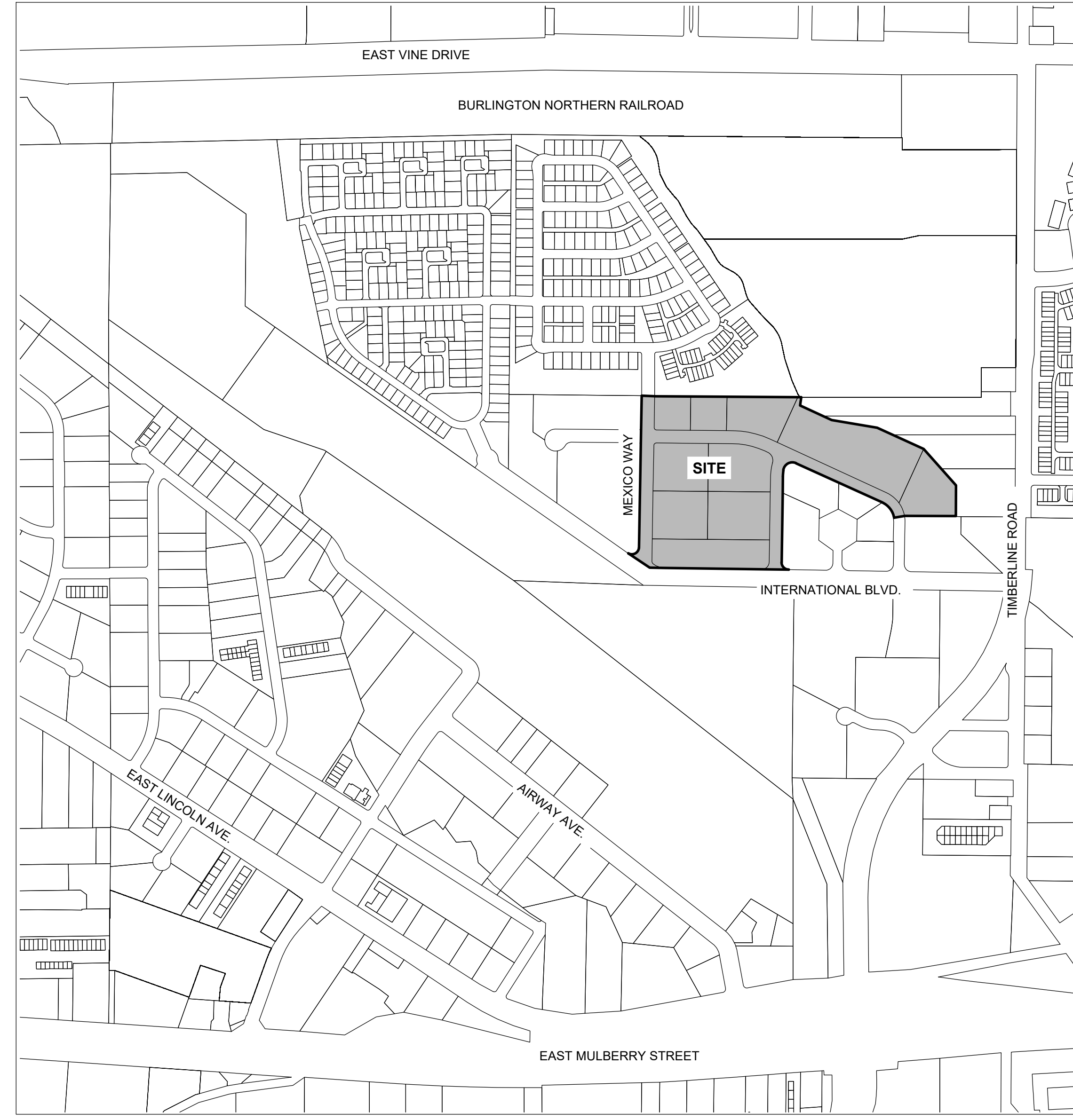
1. S 55°01'59" E A DISTANCE OF 137.05 FEET;
2. S 89°10'59" E A DISTANCE OF 84.49 FEET;
3. S 89°10'59" E A DISTANCE OF 545.55 FEET;

THENCE S 89°10'59" E A DISTANCE OF 140.00 FEET TO THE BOUNDARY OF THE AMENDED PLAT OF LOTS 11 AND 12, AMENDED PLAT OF ENVELOPE "A" INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 19950040821 OF THE LARIMER COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE 62.83 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, A DELTA ANGLE OF 90° AND A CHORD THAT BEARS N 44°10'56" W A DISTANCE OF 56.57 FEET;
THENCE N 00°49'04" E A DISTANCE OF 384.74 FEET CONTINUING ALONG SAID BOUNDARY LINE TO THE BOUNDARY LINE OF THE AMENDED PLAT OF ENVELOPE A INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECEPTION NO. 562057 (1984) OF THE LARIMER COUNTY RECORDS;
THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING 5 COURSES:

1. N 00°49'04" E A DISTANCE OF 80.47 FEET;
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 3. 91.74 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, A DELTA ANGLE OF 105°07'55" AND A CHORD THAT BEARS N 61°50'10" E A DISTANCE OF 79.41 FEET;
 4. S 65°35'52" E A DISTANCE OF 523.36 FEET;
 5. 111.98 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 115.69 FEET, A DELTA ANGLE OF 55°27'28" AND A CHORD THAT BEARS S 37°52'08" E A DISTANCE OF 107.66 FEET;
- THENCE N 79°52'41" E A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1,081,947 SQ.FT. (24.838 ACRES) MORE OR LESS.



VICINITY MAP
SCALE 1"=500'

APPROVED AS TO FORM:

CITY ENGINEER _____ DATE _____

APPROVED:

THIS ANNEXATION MAP TO BE KNOWN AS THE HERITAGE ANNEXATION TO THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO BY ORDINANCE NO. _____ PASSED AND ADOPTED ON FINAL READING AT A REGULAR MEETING THIS _____ DAY OF _____ A.D. _____

CITY CLERK _____ DATE _____

SURVEYORS STATEMENT:

I, CHRISTOPHER L. THEW, A COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS ANNEXATION PLAT WAS PREPARED BY ME OR UNDER MY PERSONAL SUPERVISION, THAT THE ANNEXATION DESCRIPTION AND BOUNDARY SHOWN HERE ON IS DERIVED FROM THE BEARINGS AND DISTANCES FROM THE PREVIOUSLY RECORDED PLATS; THAT AT LEAST (1/6) OF THE BOUNDARY OF THE DESCRIBED ANNEXATION IS CONTIGUOUS TO THE PRESENT BOUNDARY OF THE CITY OF FORT COLLINS; AND IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF.

PREPARED BY AND ON THE BEHALF OF:
TRI-PEAKS LAND SURVEYING, LLC
306 E. ELIZABETH STREET
FORT COLLINS, COLORADO 80524

CHRISTOPHER L. THEW P.E.-PLS
COLORADO PLS NO. 38692

DATE _____

NOTES

- OWNERSHIP OF UN-PLATTED PARCELS ARE SHOWN PER THE LARIMER COUNTY ASSESSOR.
- BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 8, T7N, R68W OF THE 6TH P.M. TO HAVE THE RECORD PLAT BEARING OF S89°36'46"E BETWEEN THE WEST 1/4 CORNER OF SAID SECTION 8, BEING A FOUND 2-1/2" ALUMINUM CAP ON 3/4" REBAR STAMPED "LS 17497 - 2001", AND THE CENTER 1/4 CORNER OF SAID SECTION 8 BEING A FOUND 2-1/2" ALUMINUM CAP IN A MONUMENT BOX STAMPED "LS 17497 - 1999".
- BEARINGS OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 423677 (1981), THE AMENDED PLAT OF ENVELOPE A INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECEPTION NO. 562057 (1984), AND THE AMENDED PLAT OF LOTS 11 AND 12, AMENDED PLAT OF ENVELOPE "A" INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. RECORDED AT RECEPTION NO. 19950040821 HAVE BEEN ROTATED 00°24'08" AS TO MATCH THE BEARINGS OF THE INDUSTRIAL BUSINESS PARK INTERNATIONAL P.U.D. AMENDED PLAT RECORDED AT RECEPTION NO. 20190043996.
- LINEAR UNITS ARE SHOWN IN U.S. SURVEY FOOT.

DRAFT FOR REVIEW ONLY

REVISION:	
REVISION:	
REVISION:	

PROJECT NO.:	W24-658
DRAWN BY:	CLT
DWG. DATE:	8-31-2024
FIELD DATE:	8-31-2024

CLIENT: HERITAGE CHRISTIAN ACADEMY

TRI-PEAKS, LLC
306 E. ELIZABETH STREET
FORT COLLINS, COLORADO
cthew@tri-peaks.com

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

File Attachments for Item:

6. Resolution 2025-003 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and Authorizing an Intergovernmental Agreement with Said District.

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude the property annexed into the City in 2024 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The property affected by this Resolution is the I-25 & Mulberry Annexation. Colorado Revised Statutes Section 32-1-502 requires an order of exclusion from the District Court to remove the annexed property from special district territories. The property has been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

January 7, 2025



AGENDA ITEM SUMMARY

City Council

STAFF

Kelly DiMartino, City Manager

SUBJECT

Resolution 2025-003 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and Authorizing an Intergovernmental Agreement with Said District.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude the property annexed into the City in 2024 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The property affected by this Resolution is the I-25 & Mulberry Annexation. Colorado Revised Statutes Section 32-1-502 requires an order of exclusion from the District Court to remove the annexed property from special district territories. The property has been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Property that is within a fire protection district continues to be subject to the District's property tax assessment even after annexation to the City until the property is officially excluded from the District. Exclusion must occur pursuant to state law (C.R.S. Section 32-1-502). The law allows the City to seek exclusion of annexed property from the District so that the property is not subject to property tax assessment by both the District and the City.

In 2024, the City annexed one area within the territory of the District, the legal description of which is set forth in Exhibit "A" to the proposed Resolution.

Consistent with the state law, this proposed Resolution authorizes:

1. The City Attorney to file a petition on behalf of the City to exclude the annexed property from the District; and
2. The City Manager to enter into an agreement with the District for the continuation of fire protection services within the annexed property.

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration
2. Exhibit A to Resolution
3. Exhibit B to Resolution

RESOLUTION 2025-003
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE INITIATION OF EXCLUSION
PROCEEDINGS OF ANNEXED PROPERTIES WITHIN THE
TERRITORY OF THE POUFRE VALLEY FIRE PROTECTION
DISTRICT AND AUTHORIZING AN INTERGOVERNMENTAL
AGREEMENT WITH SAID DISTRICT

A. In 2024, the City annexed one property within the territory of the Poudre Valley Fire Protection District (the “District”).

B. Colorado Revised Statutes (“C.R.S.”) Section 32-1-502 requires an order of exclusion from the district court to remove the annexed property from special district territories.

C. Under the provisions of C.R.S. Section 32-1-502(2)(a), an order excluding property from the boundaries of a special district requires the governing body of the annexing municipality to agree, by resolution, to provide the services previously provided by the special district to the area described in the petition for exclusion from and after the effective date of the exclusion order.

D From the date of such annexations, the City has provided municipal services to said property, including fire services.

E. The residents within the property described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Annexed Property”) have paid ad valorem property taxes to the District for fire protection services prior to exclusion, and subsequent to exclusion, will instead pay ad valorem property taxes to the City for City services, including fire protection.

F. It is the desire and intent of the City Council to reflect by this Resolution its willingness to provide fire protection services to the Annexed Property and to exclude the Annexed Property from the District.

G. The City Council wishes to properly exclude the Annexed Property from the District in accordance with law and to allow for the provision of fire protection services to such property by the Poudre Fire Authority, which is an independent entity providing fire protection services to both the District and the City pursuant to an intergovernmental agreement.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby agrees that the Annexed Property should be excluded from the District.

Section 2. The City Council hereby authorizes the City Attorney to file a petition in the Larimer County District Court pursuant to C.R.S. Section 32-1-502 for an order to exclude the Annexed Property, the boundaries of which are described on Exhibit "A".

Section 3. The City Council hereby agrees to provide fire protection service, through the Poudre Fire Authority, to the Annexed Property.

Section 4. The City Council hereby finds that a plan for the disposition of assets or continuation of service is unnecessary as the Poudre Fire Authority has in the past served, and continues to serve, both the District and the City.

Section 5. The City Manager is authorized to enter into an agreement with the District for the continuation of services for the Annexed Property, which agreement shall be substantially in the form of Exhibit "B" attached hereto, subject to such modifications as the City Manager may, in consultation with the City Attorney, deem necessary or appropriate to protect the interests of the City.

Passed and adopted on January 7, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 7, 2025
Approving Attorney: Dawn Downs

LEGAL DESCRIPTION OF I-25 & MULBERRY ANNEXATION AREA:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.

EXHIBIT B TO RESOLUTION 2025-003

**MEMORANDUM OF AGREEMENT FOR
CONTINUATION OF SERVICE
(POUDRE VALLEY FIRE PROTECTION DISTRICT/CITY OF FORT COLLINS)**

THIS AGREEMENT, is made and entered into on _____, by and between the CITY OF FORT COLLINS, COLORADO, a municipal home-rule corporation (the “City”), and the POUDRE VALLEY FIRE PROTECTION DISTRICT, a special statutory district within the State of Colorado (the “District”);

WHEREAS, the City has recently filed pursuant to Section 32-1-502(1)(a), C.R.S., a Petition with the District Court in and for Larimer County, Colorado for an Order excluding a certain property from the territory of the District, which property is shown on Exhibit “A” (the “Property”) hereto attached, the contents of which are incorporated by reference herein; and

WHEREAS, said Petition is premised upon the prior annexation and inclusion of the Property within the municipal boundaries of the City; and

WHEREAS, it is the mutual desire of the City and the District to set forth their understanding and agreement with regard to the continuation of fire protection services to the Property, as well as remaining properties within the boundaries of the District and Poudre Fire Authority, as defined below.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and obligations herein contained, the parties agree:

1. From and after the effective date of any Order of Exclusion issued by the District Court in response to the City’s Petition, filed pursuant to Section 32-1-502(1)(a), which effective date is anticipated to be January 1, 2026, the City will continue to assume full and complete responsibility for fire protection services to the Property. Such fire protection services shall be provided by Poudre Fire Authority (“PFA”) pursuant to that certain Second Amended and Restated Intergovernmental Agreement effective January 1, 2025, by and between the City and the District.

2. From and after the effective date of the Exclusion Order entered by the District Court in and for Larimer County, Colorado, the District shall have no further liability or responsibility with regard to the provision of fire protection services for the Property or any improvements thereon, other than the obligations existing under the aforementioned intergovernmental agreement creating PFA for the provision of regional fire services.

3. From and after the effective date of any Exclusion Order entered by the District Court in and for Larimer County, Colorado, the District agrees that the Property shall be free from taxation by the District, other than mill levies assessed for purposes of paying outstanding bonded indebtedness and interest thereon, owed by the District effective immediately prior to the effective date of such Exclusion Order. Exclusion of the Property from the District and entry of an

EXHIBIT B TO RESOLUTION 2025-003

Exclusion Order by the District Court shall not affect any claim the District may have or the District's ability to make such claim for taxes which were certified by the District prior to the effective date of the Exclusion Order.

4. The District will retain ownership of all equipment and facilities now owned by the District, including such facilities as may be located within the Property, if any.

5. The District will, through its agreement with PFA, continue to provide fire protection services to those properties located within the boundaries of the District, as modified by the exclusion of territory pursuant to the anticipated Exclusion Order requested from the District Court.

6. In the event that any bonded indebtedness exists as of the effective date of the anticipated Exclusion Order, the Board of Directors of the District shall continue to assess a proportional mill levy against the Property, together with other properties within the boundaries of the District, sufficient to repay the principal and accrued interest on any such bonded indebtedness in accordance with the terms and provisions of the instruments pursuant to which said obligations have been created and incurred.

7. Nothing within this Agreement shall modify or terminate any obligations of the City or the District with respect to existing obligations under the intergovernmental agreement forming the PFA, including any future amendments or modifications thereto as the parties may hereafter agree.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ATTEST:

CITY OF FORT COLLINS, COLORADO,
a municipal home-rule corporation

City Clerk

Kelly DiMartino, City Manager

Approved as to form:

Dawn Downs, Deputy City Attorney

EXHIBIT B TO RESOLUTION 2025-003

POUDRE VALLEY FIRE PROTECTION
DISTRICT,
a special statutory district within the State of
Colorado

By: _____
Chairman, Board of Directors

Approved as to form:

By: Allison C. Ulmer
Attorney for Poudre Valley Fire Protection
District

File Attachments for Item:

7. First Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

The purpose of this item is to incorporate process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

January 7, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Carrie Daggett, City Attorney
 Heather Jarvis, Assistant City Attorney
 Kim Meyer, Interim Community Development and Neighborhood Services, Director

SUBJECT

First Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

EXECUTIVE SUMMARY

The purpose of this item is to incorporate process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

During 2021 through 2024 staff and Council processed several appeals wherein Council sat as a quasi-judicial body to consider appeals of final decisions of boards, commissions, or other decision makers. Experiences and concerns from these many appeals has identified many possible improvements.

On November 14, 2023, Council held a work session to discuss the current state of the appeals process. The work session reviewed and discussed various elements of that process that might be updated to create a more fair, consistent, and simple appeals system. That November 2023 work session resulted in direction to staff to present a range of alternatives and possible solutions to Council to simplify and streamline the process, provide a better experience for all parties and community, and investigate some specific elements of the current process that might impact our current state.

On August 27, 2024, a second work session provided specific feedback on issues and elements of the current process, including who is the appropriate decision maker, who has standing to appeal, what are the allowable grounds for appeal, whether there should be multiple levels of appeals, what evidence and arguments are allowed, and some process improvements.

On December 10, 2024, at third work session on this topic, staff proposed updates and revisions to the overall process and decision makers at different levels to simplify the appeals process for the community, staff, and Council. Attached to this AIS is a version showing the proposed changes marked as highlights and strike-outs to the existing code. The alterations between the Code presented December 10, 2024 and the Code presented with this agenda item are identified in red.

The Ordinance shows a version of the code without the changes tracked, as the Ordinance repeals the existing Code in its entirety and replaces it with the revised Code. A summary of the Code changes that are proposed is as follows:

- **Standing to appeal / participation.** An appellant must have participated in the original hearing/decision by providing oral or written comments to the original decision maker. The proposed Code defines both an “eligible person” and an “appeal party,” distinguishing between the eligible person who participated in the original decision and the appeal party who is an eligible person who registers with the City Clerk their intention to participate in an appeal. These Code changes also remove receipt of an original hearing notice as a basis for eligibility and replace the term “party-in-interest” with the more specific term “eligible party.”
- **Two routes.** The proposed Code creates two routes for an eligible person to raise questions about a final decision.
 - **Council appeal.** One route for an eligible person to raise questions about a final decision is the Council appeal route wherein Council will examine questions of interpretation and application of City Code. The fee for an appeal is raised in the proposed Code from \$100 to \$250.
 - **Fair hearing review.** Another route for an eligible person to raise questions about a final decision is an administrative route wherein an appointee in the City Manager’s Office will examine alleged procedural defects, such as questions of whether the appellant was given a fair hearing as those grounds are described in the existing code. The fee for such an administrative review is \$100.
- **Permitted grounds for appeal: issues of interpretation and application of City Code.** The proposed Code allows appeal to Council only on issues raised with the original decision maker and that are questions of interpretation and application of City Code. The appeal must be based solely on the existing record, with no new evidence.
- **Process improvements.** Several process improvements the proposed Code introduces are a completeness review, screening review, materials submission requirements, a pre-hearing conference, and a shortened time frame in which to schedule an appeal hearing.
 - **Completeness review** is a review of a submitted notice of appeal for completeness—to ensure the person submitting the appeal qualifies as an eligible person, to confirm that the listed code provisions are relevant, and to determine that all the required notice of appeal information has been properly provided. An appeal party has the option to cure an incomplete application before it is dismissed as incomplete.
 - **Screening review** is a screening of the notice of appeal to ensure it raises questions narrow in focus that relate directly to the record of the decision being appealed. The screen will ensure the stated grounds were introduced at an original hearing/decision process and will determine that all persons joining the appeal qualify as eligible persons, that the appeal is legally sufficient and raises a valid interpretation or application of Code issue based on the record, and that no new evidence was submitted.
 - **Appeals pre-hearing conference** is a conference the City Clerk convenes not fewer than four days before an appeal hearing to respond to questions and concerns of all appeal parties together.

- **Materials submission requirements** clarify the specificity appeal parties must provide in the notice of appeal and opposing party response, and also clarify the deadline for submitting a presentation version of the appeal party's argument.
- **Appeal hearing scheduling** must be between fourteen and thirty-five days after the deadline for appeal party registration has elapsed.
- The proposed Code specifies the composition of the record on appeal, eliminates the organized site visit, clarifies time allotments for appeal parties during the appeal hearing, and provides times when the City Clerk will post submitted materials.

At the December 2024 work session, Council was interested when the appeal fee was last set. The date the existing appeal fee of \$100 was last set was 1990 (Ordinance No. 023, 1990). The fee in the proposed code is increased to \$250.

CITY FINANCIAL IMPACTS

There will be minimal costs to codify the changed Code, and when an appeal or fair hearing review is filed in the future, the administrative costs incurred that were previously unremunerated will be more adequately covered with the updated fees.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

Appeal parties and members of the community have provided feedback about the process.

ATTACHMENTS

1. Ordinance for Consideration
2. Proposed Appeals Code Revisions (redlined)
3. Flow Chart of Proposed Appeals Procedures
4. Process Duration Comparison Table
5. Presentation

ORDINANCE NO. 003, 2025
 OF THE COUNCIL OF THE CITY OF FORT COLLINS
 REPEALING AND REENACTING CHAPTER 2, ARTICLE II,
 DIVISION 3 OF THE CODE OF THE CITY OF FORT COLLINS
 PERTAINING TO APPEALS PROCEDURE

A. Chapter 2, Article II, Division 3 of the City Code establishes a process whereby parties directly affected by the quasi-judicial decisions of City boards and commissions and certain other City decision makers may be appealed to the City Council.

B. The City Council has periodically amended these provisions of the Code.

C. Several procedural issues have arisen during recent appeals that have prompted City staff and City Council to further review the appeal processes to identify additional amendments that will:

- Eliminate ambiguities in certain provisions;
- Clarify who is eligible to appeal and require registration of a party's intent to participate in an appeal;
- Require matters on appeal before Council to be questions of interpretation and application of Code about issues raised during the original decision;
- Create a completeness review and screening review to ensure a notice of appeal contains the required information and raises viable questions for the hearing before Council;
- Create an administrative review process for fair hearing issues;
- Update the appeal fee and insert a fee for the fair hearing administrative review process; and
- Make certain other procedural changes to enhance the fairness and efficiency of appeal hearings and fair hearing reviews.

D. The City Council believes that it is in the best interests of the City to repeal the existing Appeals Procedure at Chapter 2, Article II, Division 3 of the City Code and reenact Chapter 2, Article II, Division 3 of the City Code to adopt an Appeals Procedure that includes amendments, improvements, and updates to the processes and procedures for appeals and questions of procedural defects.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins is hereby repealed and reenacted as follows:

CHAPTER 2 - ADMINISTRATION

ARTICLE II – CITY COUNCIL

Division 3
Appeals Procedure

Sec. 2-45. Appeals generally.

An appeal of any final decision expressly appealable to City Council under other provisions of this Code, including the Land Use Code, shall be initiated by an eligible party and decided in the manner set forth in this Division. Any action taken in reliance upon any decision of an original decision maker that is subject to review or appeal under this Division shall be solely at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action.

Sec. 2-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Appeal party means an eligible person who has taken steps necessary under Section 2-52(a) and been verified under Section 2-52(b) to participate in an appeal.

Appellant means one or more eligible persons appealing a decision from an original decision maker to the City Council by the filing of a notice of appeal.

Appellant representative means the individual designated in a notice of appeal as the contact person for all matters related to that appeal.

Applicant means the person who or organization that submitted the application to the original decision maker whose decision has been appealed.

Decision maker, administrative means the designee of the City Manager who performs fair hearing reviews under Section 2-48 and notice of appeal screening under Section 2-51.

Decision maker, original means the board, commission or other decision maker the final decision of which is the subject of an appeal or a request for administrative review.

Eligible person means a person who or organization that has standing to appeal the final decision of an original decision maker. Such standing to appeal shall be limited to the following:

- (1) The applicant;
- (2) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the decision of the original decision maker whose action is to be appealed;

- (3) Any person who or organization that provided written comments to the appropriate City staff for delivery to the original decision maker before or at the hearing on the matter that is to be appealed;
- (4) Any person who or organization that appeared before and provided comments to the original decision maker at the hearing on the action that is to be appealed;
- (5) The City Council as represented by the request of a single member of the City Council.

Evidence means any information, whether in verbal, audio, written, graphic, or other form, presented at the appeal hearing to support or refute a particular proposition or conclusion. *Evidence* does not include argument as to how information offered as evidence should be viewed by the City Council.

Final decision means the action of an original decision maker when no further rehearing is available before that original decision maker; provided, however, that a recommendation to the City Council from a board, commission or other decision maker shall not be considered as a final decision of that board, commission or other decision maker.

New evidence means any evidence, relating to the proposal or application that was the subject of final decision by an original decision maker, that was not provided or presented at the hearing or as part of the record before that original decision maker. *New evidence* does not include evidence in the record that has been modified, highlighted, underlined, italicized or otherwise marked to emphasize certain portions of writings or graphics presented to the original decision maker as long as any modified graphic presented to the City Council at the appeal hearing is accompanied by a reference to the location of the original material in the record of the decision being appealed.

Sec. 2-47. Appeal of final decision permitted; effect of appeal; grounds for appeal; limit on subject matter of appeal.

- (a) Initiating an appeal. Any eligible person may appeal to the City Council the final decision of any original decision maker to which this appeal procedure applies in the manner provided in this Division by the filing a notice of appeal with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the appeal. A separate process for seeking administrative review of fair hearing issues is provided in Section 2-48. Fair hearing review is separate from and may be in addition to an appeal.
- (b) Grounds for appeal. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the original decision maker failed to properly interpret and apply relevant provisions of the Code and Charter in deciding particular aspects of the decision raised by an eligible person for consideration by the original decision maker.
- (c) Limit on subject matter of appeal. Allegations of appeal must follow from issues raised before the original decision maker. Issues not raised in connection with the original decision are deemed waived and are not subject to appeal.

(d) Councilmember appeals. Appeals filed by members of the City Council must include a statement of each specific question to be considered on appeal rather than allegations of error.

(1) Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the specific questions raised by the appeal and shall provide the information to the City Clerk before the date that the notice of hearing on the appeal is to be mailed under Section 2-52 of this Division.

(2) The City Clerk will include said information with the notice of hearing.

(3) Councilmembers who file an appeal may participate in hearing an appeal in the same manner as they participate in hearing appeals filed by other eligible persons.

Sec. 2-48. Administrative fair hearing review of final decision permitted; effect of fair hearing determination.

(a) Fair hearing review. Any eligible person may seek administrative review of procedural defects in connection with the final decision of an original decision maker to which this Division applies by filing a request for fair hearing review with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the requested review.

(b) Fair hearing issues. Procedural defects subject to review include those matters constituting an alleged failure to conduct a fair hearing in that:

(1) The original decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;

(2) The original decision maker substantially ignored its previously established rules of procedure;

(3) The original decision maker considered evidence relevant to its findings that was substantially false or grossly misleading;

(4) The original decision maker improperly failed to receive all relevant evidence offered by the appellant; or

(5) The original decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the original decision maker's independence of judgment.

(c) Review process.

- (1) The request for fair hearing review shall be on a form provided by the City Clerk, shall be signed by all persons joining the request for review, and must include documentation to substantiate the grounds for the review sought, such as evidence in the record, new evidence relevant to the issues under review, and written arguments explaining the allegations.
 - (2) If the eligible person seeking the fair hearing review is not the applicant, the City Clerk will notify and provide a copy of the request for review to the applicant within two (2) working days of receiving the request for review.
 - (3) The applicant may file a written summary of facts and arguments and any documentation to oppose the allegations no later than five (5) working days after the City Clerk's notice of the request.
 - (4) The administrative decision maker may review any information received from the requesting party, applicant, City staff, or other source that the administrative decision maker considers relevant to evaluate the allegations of procedural defects, including the original decision and supporting documents internally, potentially requesting additional information or clarification.
- (d) Fair hearing/procedural defect determination.
- (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the issues raised no later than five (5) working days after receipt of the request, unless the request was made by the a party other than the applicant, in which event the administrative decision maker will issue a decision no later than five (5) working days after receipt of the applicant's response.
 - (2) If the administrative decision maker determines that no procedural defect raised a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will provide written notice of that determination to the requesting party and to the applicant.
 - (3) If the administrative decision maker determines that a procedural defect occurred that raises a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will remand the matter for rehearing.
 - (4) If the administrative decision maker determines that on remand the original decision maker will be unable to provide a fair rehearing or will be unable to provide a fair rehearing because a quorum will not be available, the administrative decision maker must remand the matter for rehearing to a qualified, alternative decision

maker. Additionally, the administrative decision maker may remand the matter for rehearing to a qualified, alternative decision maker if the public confidence in the decision on remand would be better served than remand to the original decision maker.

(e) Effect of fair hearing determination. If the administrative decision maker remands the matter for rehearing, any notice of appeal that was filed on the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

(f) Fair hearing review fee. In all fair hearing reviews, the person requesting review must remit to the City Clerk with the request a fee of one hundred dollars (\$100). No fair hearing review will begin until the fee has been received by the City Clerk. Any fair hearing review for which the fair hearing review fee has not been paid before the deadline for the filing of the fair hearing review will be rejected as untimely.

(g) Final decision. Any fair hearing review decision under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-49. Notice of appeal; no new evidence.

(a) Form of appeal notice. The notice of appeal must be on a form provided by the City Clerk, must be signed by all persons joining the appeal and must include the following:

(1) The action of the original decision maker that is the subject of the appeal;

(2) The date of the action;

(3) The name, address, telephone number and the basis for the person's qualification to appeal as an eligible person;

(4) In all appeals except those filed by members of City Council, the grounds for the appeal, including specific allegations of error of interpretation or application of relevant and specific provisions of Code or the Charter;

(5) A summary of the facts contained in the record on appeal (no new evidence) that support the appeal allegations, separated into support for each separate allegation, including where in the record (such as the minute number in a recording, or page and line number in a document) the appellant raised the issue(s) before the original decision maker;

(6) A written summary of the appellant's argument accompanied by specific references to applicable material in the record (no new evidence), separated into argument for each separate allegation;

(7) The name, address, email address, and phone number of the appellant representative who is authorized to receive notice required to be mailed by the City to the appellant and an indication of the appellant representative's preferred means of contact. In the case of an appeal filed by more than one (1) person, the name, address, email address, and telephone number of one (1) appellant representative

who is authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant under this Division and an indication of the appellant representative's preferred means of contact; and

(8) Any other information required by the City Clerk.

(b) Limit on submittal. No materials other than that specified in Subsection (a) of this Section are allowed to be included in or attached to the notice of appeal or submitted by the appellant at any time, except for presentation materials as allowed in Section 2-54(d).

(c) Appeal fee. In all appeals, except those filed by members of the City Council, the appellant must remit to the City Clerk with the notice of appeal a fee of two hundred fifty dollars (\$250). No appeal will be reviewed for completeness or sufficiency until the appeal fee has been received by the City Clerk. Any appeal for which the appeal fee has not been paid before the deadline for the filing of the appeal will be rejected as untimely. If a fair hearing review was filed on the same matter and the administrative decision maker remands the matter for rehearing, the appeal for the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

Sec. 2-50: Completeness review.

(a) Review by Clerk. Within three (3) working days of receiving the notice of appeal and appeal fee, the City Clerk will review the notice of appeal in consultation with the City Attorney for completeness and sufficiency.

(b) Scope of completeness review. Completeness includes any obvious defects in form or substance, confirmation that the person(s) submitting the appeal qualifies as an eligible person (the person has standing to raise the appeal), confirmation that the listed code provisions are relevant, and determination that all items in Section 2-49 have been properly provided.

(c) City Clerk action on incomplete appeal.

(1) If a notice of appeal is incomplete, the City Clerk will promptly notify the person authorized to receive notice that the notice of appeal is incomplete and will specify the incomplete items.

(2) Within three (3) working days of being notified the notice of appeal is incomplete, the notice of appeal may be resubmitted with the incomplete items cured.

(3) If the notice of appeal is not resubmitted, or if the resubmitted notice of appeal is determined, after additional review, to be incomplete, the appeal shall be terminated, the City Clerk will provide notice to the appellant representative, no further action will be taken on the notice of appeal, and the City Clerk will return to the applicant the appeal fee, less a ten percent (10%) administrative fee.

(d) Complete appeal forwarded for screening. When an appeal has been determined to be complete and the appeal fee has been paid, the City Clerk will promptly forward the appeal to the administrative decision maker for screening. When an appeal has been determined to be complete, the City Clerk will also order assembly of the relevant record and thereafter will make it available to the appeal parties.

Sec. 2-51: Screening review.

(a) Scope of screening. If a notice of appeal is determined to be complete, whether initially or after resubmittal, the administrative decision maker will review the subject matter of the appeal to determine whether:

- (1) all persons joining in the appeal are eligible persons;
- (2) each ground for appeal was raised before the original decision maker;
- (3) each ground for appeal is legally sufficient and raises a valid interpretation or application issue;
- (4) each ground for appeal has merit based on clearly established evidence in the record of the original decision; and
- (5) no new evidence was submitted.

(b) Screening review process. The administrative decision maker may review any information received as part of the notice of appeal, or in the record of the original decision, that the administrative decision maker deems relevant to evaluate the appeal allegations.

(c) Screening determination.

(1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the sufficiency of the appeal and each allegation on appeal no later than ten (10) working days after receipt of the notice of appeal, except if a simultaneous fair hearing review was filed under Section 2-48, the ten (10) working days' time for completing the screening review does not begin until after the fair hearing review is determined.

(2) If the administrative decision maker determines that the appeal or any allegation asserted in the appeal is not proper, does not raise legally cognizable issues for review, or has no merit based on clearly established evidence in the record of the original decision, the appeal or those allegations will not be presented to the City Council for review and will be dismissed.

(d) Notification of decision. Upon completion of the screening determination, the administrative decision maker will notify the appellant and the applicant of the determination and those appeal allegations that remain active will be set for hearing and appeal party registration will proceed as described in Section 2-52.

(e) Posting of appeal materials. The City Clerk will promptly post on the appeal page of the City's website the notice of appeal and screening determination of the administrative decision maker, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.

(f) Final decision. The screening determination under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-52. Appeal party registration/scheduling of the hearing/pre-hearing conference/ consolidation of appeals/no *ex parte* contacts.

(a) Appeal party registration. Within fourteen (14) calendar days after the complete and screened notice of appeal is posted on the City's website, any eligible person who intends to be an appeal party must register with the City Clerk using a form provided by the City Clerk as follows:

(1) The eligible person(s) who signed the notice of appeal is deemed an appeal party by virtue of filing a complete notice of appeal.

(2) An eligible person who is not the appellant but wishes to be an appeal party in support of the appeal must do so through the appellant and as part of the appellant's presentation and argument on the appeal.

(3) An eligible person who wishes to be an appeal party opposed to the appeal must submit:

- i. a statement of how the person qualifies as an eligible person;
- ii. a summary of the facts contained in the record on appeal (no new evidence) that oppose the appellant's appeal allegations, separated into support for each separate allegation;
- iii. a summary of the appeal party's argument accompanied by references to applicable material in the record, separated into argument for each separate allegation; and
- iv. the name, address, email address, and phone number of the person and an indication of the person's preferred means of contact.

(b) Verification. Within two (2) working days of receiving the registration submittal the City Clerk will review the submittal and confirm the registrant is an eligible person before the person is deemed an appeal party.

(c) Posting of appeal materials. Upon verification of any appeal party opposed to the appeal under Subsection (b) of this Section, the City Clerk will promptly post the summary of facts filed by the verified appeal party and any attached information on the City's website, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.

(d) Scheduling of the hearing. After screening of an appeal is complete and the deadline for appeal party registration has elapsed, the City Clerk will identify a possible date for the hearing on the appeal as early as reasonably practicable but no fewer than fourteen (14) and no more than thirty-five (35) calendar days after-the-deadline for appeal party registration has elapsed and their appeal materials are posted on the City's website under Subsection (c) of this Section. The City Clerk will also identify a possible date for the pre-hearing conference under Subsection (f) of this Section.

- (1) Before scheduling the hearing, the Clerk will notify the appeal parties of the possible hearing date or dates and the possible pre-hearing conference date or dates.
- (2) The appeal parties must respond within two (2) working days to inform the City Clerk if they believe they have an unavoidable conflicts that makes attendance impossible at such date, or dates.
- (3) The City Clerk will set the hearing date at a time that takes into account the unavoidable conflicts identified to the extent reasonably practicable.
- (e) Posting of hearing notice. The City Clerk will post on the appeals page of the City's website and will mail to the appeal parties written notice of the date, time and place of the hearing and the pre-hearing conference no more than five (5) working days after setting the date of the hearing. Said notice shall also include a copy of the notice of appeal (excluding attachments, which shall be available as provided in Section 2-51(e)).
- (f) Pre-hearing conference. Not fewer than four (4) working days before the scheduled appeal hearing, the City Clerk will convene a meeting with the appeal parties to provide information and respond to questions about the appeal hearing process. Any questions the City Clerk receives outside of the pre-hearing conference will be addressed at the pre-hearing conference so that all appeal parties may receive the same information.
- (g) Consolidation of appeals. All appeals regarding the same decision will be consolidated and scheduled together to be heard in a single hearing. Council may in its discretion by majority vote at the time of the scheduled hearing separate the hearing process for individual appeals as provided under Section 2-53(e).
- (h) Extension. At any time before the expiration of the time for Council to hear an appeal under Subsection (d), the City Manager may in the event of scheduling difficulties or notice defects request that Council approve by motion or resolution the extension of the time for hearing an appeal for a specified period.
- (i) No *ex parte* contact. To afford all eligible persons a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with appeal parties and members of the general public regarding the merits of the appeal before the hearing on the appeal, and all appeal parties and the general public must avoid communications with Councilmembers regarding the merits of the appeal.

Sec. 2-53. Procedure at the hearing.

- (a) Hearing order. At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order and for the times set forth below, subject to modification of time and scope allowed as may be established at the discretion of the Mayor or a majority vote of the Council:
- (1) Presentation by City staff explaining the appeal hearing process, the nature of the appeal or appeals, and the decision being appealed;

- (2) Comments by Councilmembers who have inspected the site of their own accord regarding the date of the inspection and any observations of the site they believe may be relevant to the Council's determination of the appeal;
 - (3) Consideration of any procedural issues identified under Subsection (c) below;
 - (4) Presentation of argument by the appellant for up to twenty (20) minutes or such other time as City Council allots;
 - (5) Presentation of argument by any appeal party opposed to the appeal for a total of up to twenty (20) minutes or such other time as City Council allots;
 - (6) If one or more appeal parties has argued to oppose the appeal, rebuttal presentation by the appellant for up to ten (10) minutes or such other time as City Council allots;
 - (7) Rebuttal presentation by any appeal party opposed to the appeal for a total of up to ten (10) minutes or such other time as City Council allots;
 - (8) Councilmember questions of City staff and appeal parties; and
 - (9) Motion, discussion and vote by the City Council.
- (b) Allocation of time. Factors to be considered in determining whether to modify the period of time for the presentation of argument on the merits of an appeal shall include, but not be limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of appeal parties who wish to address the Council with regard to the merits of the appeal.
- (c) Procedural matters. Before hearing the presentation of argument on the merits of the appeal, the Mayor may, in the Mayor's discretion, establish a separate period of time during which the Council may first consider and the Mayor may determine, subject to override by the Council by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, objections regarding the possible introduction or exclusion of certain evidence, whether to separate any consolidated appeals of the same decision by different appellants, the period of time to be allowed for presentation of argument and rebuttal on the merits of the appeal and any concerns or objections related to the record on appeal.
- (d) No cross-examination. No person making a presentation to the City Council shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
- (e) Consolidation of hearings. In the event of multiple appeals involving the same decision of an original decision maker that have been consolidated in accordance with Section 2-52(g), the Mayor, in the Mayor's discretion, may modify the procedure contained in Subsection (a) of this Section to expedite the hearing of such appeals, while still ensuring that each appellant can make that appellant's own case and that appeal parties for and against each appeal will have equal time.

Sec. 2-54. Record on appeal; written materials; evidence.

(a) Basis for decision. The City Council shall consider an appeal based upon the record on appeal, the relevant provisions of the Code and Charter and any other applicable legal authorities, the grounds for appeal cited in the notice of appeal, the arguments made by appeal parties at the hearing on the appeal, and the City staff report and presentation prepared for the appeal; provided, however, that issues raised during the presentation of argument but not within the allowable scope of the appeal shall not be considered by the City Council in deciding the appeal.

(b) Record provided. The record provided to the City Council shall include the following:

(1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the original decision maker at the proceedings;

(2) A verbatim transcript of the proceedings before the original decision maker unless the decision was not made a hearing (such as a decision by a department director). The cost of the transcript shall be borne by the City.

(3) If available, a video recording of the proceedings before the original decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to appeal party requesting the same within a reasonable period of time before the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.

(4) A copy of the notice of appeal and screening determination.

(5) A copy of all appeal party submittals admitted under Section 2-52(c).

(6) A copy of notice of the appeal hearing.

(7) City staff presentation required under Subsection (d) of this Section and appeal parties' presentations.

(c) Restriction on new evidence. No new evidence shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal, except:

(1) When offered by City staff or parties-in-interest in response to questions presented by Councilmembers at the hearing on the appeal; or

(2) When offered by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal.

(d) Staff summary and materials. City staff shall prepare for Council consideration the record as described in Subsections (a) and (b) of this Section, together with a staff agenda item summary and presentation materials, which shall become part of the record of the appeal hearing. Staff shall also provide to the Council the notice of appeal and all attachments to it.

(e) Submittal of party presentations required. Any appeal party wishing to submit a presentation of their previously submitted written facts and argument must submit the presentation to the City Clerk in digital form and in hard copy no later than noon on the working day before the day of the appeal hearing. By the end of the working day before the day of the hearing, the City Clerk will post any presentation materials received in accordance with this Subsection. Any appeal party may provide a true and accurate hard copy of any such presentation to be provided to the Council at the hearing, and to City staff and the other appeal parties, so long as no fewer than twenty (20) such copies are brought to the hearing for distribution.

(f) Objections as to evidence. Any appeal party who believes that evidence has been improperly offered or introduced into the appeal hearing may, at any time during the hearing, interrupt the proceedings and object to the Council's consideration of such evidence. If such an objection is made, the Mayor shall rule on the objection, after consultation with the City Attorney if necessary, and the evidence shall either be received and considered by the Council or disregarded by the Council in accordance with the ruling of the Mayor.

(g) Procedural rulings. The Mayor's ruling on any other procedural issue raised during the course of the hearing may be overridden by a majority of the Council.

(h) Objections waived if not raised at hearing. The failure of an appeal party to make an objection at the hearing as to a procedural matter shall constitute a waiver of the same by that appeal party for the purpose of any judicial review of the Council's decision.

Sec. 2-55. City Council decision on appeal.

(a) Council determination. In considering an allegation that a board, commission or other decision maker failed to properly interpret and apply the relevant provisions of the Code or Charter asserted under Subsection 2-49(b) of this Article, the City Council shall determine how such provisions should, in the City Council's judgment, be applied to the evidence contained in the record of the appeal hearing.

(b) Appeal outcome. At the conclusion of such hearing, the City Council shall uphold, overturn or modify the decision of the original decision maker, and may impose such conditions as the Council determines appropriate to further the purposes of or compliance with the standards governing the decision; provided, however, that the City Council may also remand the matter for rehearing for the original decision maker to receive and consider additional information with regard to any issue raised on appeal. Any such remand shall include direction from the City Council to the original decision maker as to the issues to be considered at the rehearing.

(c) Final action by resolution. No later than the date of its next regular meeting, the City Council shall adopt, by resolution, findings of fact in support of its decision. The date of passage of such resolution shall be the date of final action of the City Council for the purpose of any subsequent judicial review of the decision of the City Council.

(d) Amendment of resolution. After adoption of the resolution required under Subsection (c) of this Section, the Council may amend the resolution at any time to clarify or correct it, or to modify the decision to resolve a related legal dispute or to bring the

decision into compliance with federal, state or local law, including the Charter and Code of the City of Fort Collins, provided:

- (1) At least fourteen (14) days before consideration of any such amendments, written notice that the Council will consider such amendments must be mailed to the last known address of the appeal parties who appeared at the related appeal hearing.
- (2) Persons entitled to notice of the consideration of amendments shall have an opportunity to comment at the time of such consideration.

Secs. 2-56—2-70. Reserved.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: January 31, 2025
Approving Attorney: Heather N. Jarvis

Division 3 Appeals Procedure

Sec. 2-45. Appeals generally.

An appeal of any final decision expressly appealable to City Council under other provisions of this Code, including the Land Use Code, shall be initiated by an eligible party and decided by the City Council in the manner set forth in this Division. (moved from 2-47) Any action taken in reliance upon any decision of a board, commission or other original decision maker that is subject to review or appeal under the provisions of this Division shall be totally solely at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action. (moved from 2-47(b))

Sec. 2-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Appeal party means an eligible person who has taken steps necessary under Section 2-52(a) and been verified under Section 2-52(b) to participate in an appeal.

Appellant shall mean one or more parties in interest eligible persons appealing a decision from a board, commission or other original decision maker to the City Council by the filing of a notice of appeal.

Appellant representative means the individual designated in a notice of appeal as the contact person for all matters related to that appeal.

Applicant shall mean the person who or organization that submitted the application to the board, commission or other original decision maker whose decision has been appealed.

Decision maker, administrative means the designee of the City Manager who performs fair hearing reviews under Section 2-48 and notice of appeal screening under Section 2-51.

Decision maker, original means the board, commission or other decision maker the final decision of which is the subject of an appeal or a request for administrative review.

Evidence shall mean any information, whether in verbal, audio, written, graphic, or other form, presented at the appeal hearing to support or refute a particular proposition or conclusion. *Evidence* shall does not include argument as to how information offered as evidence should be viewed by the City Council.

Final decision shall mean the action of a board, commission or other an original decision maker by a vote of a majority of its members when no further rehearing is available before such board, commission or other that original decision maker; provided, however, that a recommendation to the City Council from a board, commission or other decision maker shall not be considered as a final decision of that board, commission or other decision maker.

New evidence shall mean any evidence, relating to the proposal or application that was the subject of final decision by a board, commission or other an original decision maker, that was not provided or presented at the hearing or as part of the record before such board, commission or other that original decision maker. *New evidence* does not include evidence in the record that has been modified by highlighting, underlining, italicizing or otherwise marked to emphasize certain portions of writings or graphics presented to the original decision maker as long as any modified graphic presented to the City Council at the appeal hearing is accompanied by a reference to the location of the original material in the record of the decision being appealed.

~~[MOVE TO ALPHA ORDER] Party in interest~~ **Eligible person** shall mean a person who or organization that has standing to appeal the final decision of a ~~board, commission or other~~ **an original** decision maker. Such standing to appeal shall be limited to the following:

- (1) The applicant;
- (2) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the decision of the ~~board, commission or other~~ **original** decision maker whose action is to be appealed;
- (3) ~~Any person to whom or organization to which the City mailed notice of the hearing of the board, commission or other decision maker;~~
- (4) Any person who or organization that provided written comments to the appropriate City staff for delivery to the ~~board, commission or other~~ **original** decision maker ~~prior to~~ **before** or at the hearing on the matter ~~which that~~ is to be appealed;
- (5) Any person who or organization that appeared before ~~and provided comments to~~ the ~~board, commission or other~~ **original** decision maker at the hearing on the action ~~which that~~ is to be appealed;
- (6) The City Council as represented by the request of a single member of the City Council.

~~Sec. 2-47. Certain appeals to be taken to city council.~~

~~An appeal of any final decision expressly appealable to City Council under other provisions of this Code, including the Land Use Code, shall be decided by the City Council in the manner set forth in this Division.~~

~~(Ord. No. 020, 2020, § 2, 2-4-20)~~

~~Sec. 2-48.~~ **Sec. 2-47. Appeal of final decision permitted; effect of appeal; grounds for appeal; limit on subject matter of appeal.**

- (a) **Initiating an appeal.** ~~A party in interest~~ **Any eligible person** may appeal to the City Council the final decision of any ~~board, commission or other~~ **original** decision maker to which this appeal procedure applies in the manner provided in this Division **by the filing a notice of appeal with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the appeal. A separate process for seeking administrative review of fair hearing issues is provided in Section 2-48. Fair hearing review is separate from and may be in addition to an appeal.**
- ~~(b) Risk during pending appeal.~~ **Risk during pending appeal.** Any action taken in reliance upon any decision of a ~~board, commission or other~~ **an original** decision maker that is subject to ~~review or~~ appeal under the provisions of this Division shall be ~~totally~~ **solely** at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action.
- (b) **Grounds for appeal.** Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the **original decision maker** ~~board, commission or other~~ decision maker committed one (1) or more of the following errors:
 - (1) ~~Failure~~ **failed** to properly interpret and apply relevant provisions of the Code and Charter **in deciding particular aspects of the decision raised by an eligible person for consideration by the original decision maker.**
 - (2) ~~Failure to conduct a fair hearing in that:~~
 - a. ~~The board, commission or other decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;~~

- b. ~~The board, commission or other decision maker substantially ignored its previously established rules of procedure;~~
- c. ~~The board, commission or other decision maker considered evidence relevant to its findings which was substantially false or grossly misleading;~~
- d. ~~The board, commission or other decision maker improperly failed to receive all relevant evidence offered by the appellant; or~~
- e. ~~The board, commission or other decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker's independence of judgment.~~

(c) Limit on subject matter of appeal. Allegations of appeal must follow from issues raised before the original decision maker. Issues not raised in connection with the original decision are deemed waived and are not subject to appeal.

(d) ~~(e) Councilmember appeals.~~ Appeals filed by members of the City Council need not include specific grounds for appeal, but shall ~~must~~ include a statement of each specific question to be considered on appeal rather than allegations of error.

- (1) Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the specific questions raised by ~~such the~~ appeal and shall provide ~~such the~~ information to the City Clerk ~~prior to~~ before the date that the notice of hearing on the appeal is to be mailed ~~by the City Clerk to parties in interest under Section 2-52 of this Division.~~
- (2) ~~The City Clerk will include s~~ Said information shall then be mailed to the parties in interest ~~together with the notice of hearing.~~
- (3) Councilmembers who file an appeal may participate in hearing ~~such the~~ an appeal in the same manner as they participate in hearing appeals filed by other ~~eligible persons~~ parties in interest.

Sec. 2-48. Administrative fair hearing review of final decision permitted; effect of fair hearing determination.

- (a) Fair hearing review. Any eligible person may seek administrative review of procedural defects in connection with the final decision of an original decision maker to which this Division applies by filing a request for fair hearing review with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the requested review.
- (b) Fair hearing issues. Procedural defects subject to review include those matters constituting an alleged failure to conduct a fair hearing in that:
 - (1) The original decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;
 - (2) The original decision maker substantially ignored its previously established rules of procedure;
 - (3) The original decision maker considered evidence relevant to its findings that was substantially false or grossly misleading;
 - (4) The original decision maker improperly failed to receive all relevant evidence offered by the appellant; or
 - (5) The original decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the original decision maker's independence of judgment.

(c) Review process.

- (1) The request for fair hearing review shall be on a form provided by the City Clerk, shall be signed by all persons joining the request for review, and must include documentation to substantiate the grounds for the review sought, such as evidence in the record, new evidence relevant to the issues under review, and written arguments explaining the allegations.
- (2) If the eligible person seeking the fair hearing review is not the applicant, the City Clerk will notify and provide a copy of the request for review to the applicant within two (2) working days of receiving the request for review.
- (3) The applicant may file a written summary of facts and arguments and any documentation to oppose the allegations no later than five (5) working days after the City Clerk's notice of the request.
- (4) The administrative decision maker may review any information received from the requesting party, applicant, City staff, or other source, that the administrative decision maker considers relevant to evaluate the allegations of procedural defects, including the original decision and supporting documents internally, potentially requesting additional information or clarification.

(d) Fair hearing/procedural defect determination.

- (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the issues raised no later than five (5) working days after receipt of the request, unless the request was made by the a party other than the applicant, in which event the administrative decision maker will issue a decision no later than five (5) working days after receipt of the applicant's response.
- (2) If the administrative decision maker determines that no procedural defect raised a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will provide written notice of that determination to the requesting party and to the applicant.
- (3) If the administrative decision maker determines that a procedural defect occurred that raises a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will remand the matter for rehearing.
- (4) If the administrative decision maker determines that on remand the original decision maker will be unable to provide a fair rehearing or will be unable to provide a fair rehearing because a quorum will not be available, the administrative decision maker must remand the matter for rehearing to a qualified, alternative decision maker. Additionally, the administrative decision maker may remand the matter for rehearing to a qualified, alternative decision maker if the public confidence in the decision on remand would be better served than remand to the original decision maker. (modified from Sec. 2-56.)

(e) Effect of fair hearing determination. If the administrative decision maker remands the matter for rehearing, any notice of appeal that was filed on the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

- (f) Fair hearing review fee. In all fair hearing reviews, the person requesting review must remit to the City Clerk with the request a fee of one hundred dollars (\$100). No fair hearing review will begin until the fee has been received by the City Clerk. Any fair hearing review for which the fair hearing review fee has not been paid before the deadline for the filing of the fair hearing review will be rejected as untimely.
- (g) Final decision. Any fair hearing review decision under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-49. Filing of a Notice of appeal; no new evidence.

- (a) ~~An appeal shall be commenced by filing a notice of appeal of the final decision of a board, commission or other decision maker to which this Division applies with the City Clerk within fourteen (14) calendar days after the action that is the subject of the appeal.~~
- (b)(a) Form of appeal notice. ~~Such~~ The notice of appeal must shall be on a form provided by the City Clerk, must shall be signed by all persons joining the appeal and must shall include the following:
- (1) The action of the ~~board, commission or other~~ original decision maker that is the subject of the appeal;
 - (2) The date of ~~such~~ the action;
 - (3) The name, address, telephone number and ~~the basis for the person's qualification to appeal as an eligible person~~ relationship of each appellant to the subject of the action of the ~~board, commission or other decision maker~~;
 - (4) In all appeals except those filed by members of City Council, the grounds for the appeal, including specific allegations of error of interpretation or application of relevant and specific provisions of Code or the Charter; and
 - (5) A summary of the facts contained in the record on appeal (no new evidence) ~~which~~ that support these appeal allegations, separated into support for each separate allegation, including where in the record (such as the minute number in a recording, or page and line number in a document) the appellant raised the issue(s) before the original decision maker;
 - (6) A written summary of the appellant's argument accompanied by specific references to applicable material in the record (no new evidence), separated into argument for each separate allegation;
 - (5) In the case of an appeal alleging a fair hearing issue under § 2-48(b)(2)c, d or e, above all new evidence related to such allegations that the appellant wishes for Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) days calendar days after the deadline for filing a notice of appeal and must be clearly marked as new evidence;
 - (6) The name, address, email address, and phone number of the appellant representative who is authorized to receive notice required to be mailed by the City to the appellant and an indication of the appellant representative's preferred means of contact. In the case of an appeal filed by more than one (1) person, the name, address, email address, and telephone number of one (1) ~~such person~~ appellant representative who shall be is authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant under ~~the provisions of § 2-52 of this Division~~ and an indication of the appellant representative's preferred means of contact; and
 - (7)(8) Any other information required by the City Clerk.
- (c)(b) Limit on submittal. No materials other than that specified in Subsection (b) above shall (a) of this Section are allowed to be included in or attached to the notice of appeal or submitted by the appellant at any time, except for presentation materials as allowed in Section 2-54(d).
- (cd) Appeal fee. In all appeals, except those filed by members of the City Council, the appellant must remit to the City Clerk with the notice of appeal a fee of two hundred fifty dollars (\$250). No appeal will be reviewed for

completeness or sufficiency until the appeal fee has been received by the City Clerk. Any appeal for which the appeal fee has not been paid before the deadline for the filing of the appeal will be rejected as untimely. If a fair hearing review was filed on the same matter and the administrative decision maker remands the matter for rehearing, the appeal for the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

- (e) The City Clerk will promptly post the notice of appeal and any attached information, and any new evidence subsequently received pursuant to Subsections (b)(5) above or 2-55(b)(2), on the City's website, and such information shall be available for public inspection in the Office of the City Clerk. [moved to after screening review]

Sec. 2-50: Completeness review.

- (a) Review by Clerk. Within three (3) working days of receiving the notice of appeal and appeal fee, the City Clerk will review the notice of appeal in consultation with the City Attorney for completeness and sufficiency.
- (b) Scope of completeness review. Completeness includes any obvious defects in form or substance, confirmation that the person(s) submitting the appeal qualifies as an eligible person (the person has standing to raise the appeal), confirmation that the listed code provisions are relevant, and determination that all items in Section 2-49 have been properly provided.
- (c) City Clerk action on incomplete appeal.
- (1) If a notice of appeal is incomplete, the City Clerk will promptly notify the person authorized to receive notice that the notice of appeal is incomplete and will specify the incomplete items.
 - (2) Within three (3) working days of being notified the notice of appeal is incomplete, the notice of appeal may be resubmitted with the incomplete items cured.
 - (3) If the notice of appeal is not resubmitted, or if the resubmitted notice of appeal is determined, after additional review, to be incomplete, the appeal shall be terminated, the City Clerk will provide notice to the appellant representative, and no further action will be taken on the notice of appeal, and the City Clerk will return to the applicant the appeal fee, less a ten percent (10%) administrative fee.
- (e) (d) Complete appeal forwarded for screening. When an appeal has been determined to be complete and the appeal fee has been paid, the City Clerk will promptly forward the appeal to the administrative decision maker for screening, post the notice of appeal and any attached information, and any new evidence subsequently received pursuant to Subsections (b)(5) above or 2-55(b)(2), on the City's website, and such the information shall be available for public inspection in the Office of the City Clerk. When an appeal has been determined to be complete, the City Clerk will also order assembly of the relevant record and thereafter will make it available to the appeal parties.

Sec. 2-51: Screening review.

- (a) Scope of screening. If a notice of appeal is determined to be complete, whether initially or after resubmittal, the administrative decision maker will review the subject matter of the appeal to determine whether:
- (1) all persons joining in the appeal are eligible persons;
 - (2) each ground for appeal was raised before the original decision maker;
 - (3) each ground for appeal is legally sufficient and raises a valid interpretation or application issue
 - (4) each ground for appeal has merit based on clearly established evidence in the record of the original decision; and
 - (5) no new evidence was submitted.
- (b) Screening review process. The administrative decision maker may review any information received as

part of the notice of appeal, or in the record of the original decision, that the administrative decision maker deems relevant to evaluate the appeal allegations.

(c) Screening determination.

(1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the sufficiency of the appeal and each allegation on appeal no later than ten (10) working days after receipt of the notice of appeal, except if a simultaneous fair hearing review was filed under Section 2-48, the ten (10) working days time for completing the screening review does not begin until after the fair hearing review is determined.

(2) If the administrative decision maker determines that the appeal or any allegation asserted in the appeal is not proper, does not raise legally cognizable issues for review, or has no merit based on clearly established evidence in the record of the original decision, the appeal or those allegations will not be presented to the City Council for review and will be dismissed.

(d) Notification of decision. Upon completion of the screening determination, the administrative decision maker will notify the appellant and the applicant of the determination and those appeal allegations that remain active will be set for hearing and appeal party registration will proceed as described in Section 2-52.

(e) Posting of appeal materials. The City Clerk will promptly post on the appeal page of the City's website the notice of appeal and screening determination of the administrative decision maker, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.

(f) Final decision. The screening determination under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-50. Fee for filing of appeal.

In all appeals, except those filed by members of the City Council, the appellant must remit to the City Clerk with the notice of appeal shall be charged a fee of [FILL IN FEE AMOUNT HERE] one hundred dollars (\$100.), to be paid to the City Clerk at the time of the filing of the notice of appeal. [Add escalation clause based on inflation or some other index?] Any appeal for which the appeal fee has not been paid before the deadline for the filing of the appeal will be rejected as untimely.

Sec. 2-51. Record on appeal. [moved to Section 2-54, below]

Any appeal to the City Council shall be an appeal on the record of the hearing before the board, commission or other decision maker together with such additional evidence as may be admitted by the Council for consideration as provided in this Article. The record provided to the City Council shall include the following:

- (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the board, commission or other decision maker at the proceedings;
- (2) A verbatim transcript of such proceedings before the board, commission or other decision maker. The cost of the transcript shall be borne by the City. If a verbatim transcript of the proceedings does not exist and cannot be produced, whether due to an equipment malfunction or clerical error, or for any other reason, the decision that is the subject of the appeal will be re-heard before the decision maker

after notice as required by the relevant provisions of this Code or the Land Use Code, whichever is applicable, and the appeal shall be terminated.

- (3) If available, a video recording of such proceedings before the board, commission or other decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to any party in interest requesting the same within a reasonable period of time prior to the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.
- (4) A copy of notice of the hearing on the decision appealed, along with a list of those to whom such notice was mailed.

Sec. 2-52. Appeal party registration/Scheduling of the hearing/pre-hearing conference/consolidation of hearings/appeals/no ex parte contacts.

- (a) Appeal party registration. Within fourteen (14) calendar days after the complete and screened notice of appeal is posted on the City's website, any eligible person who intends to be an appeal party must register with the City Clerk using a form provided by the City Clerk as follows:
- (1) The eligible person(s) who signed the notice of appeal is deemed an appeal party by virtue of filing a complete notice of appeal.
 - (2) An eligible person who is not the appellant but wishes to be an appeal party in support of the appeal must do so through the appellant and as part of the appellant's presentation and argument on the appeal.
 - (3) An eligible person who wishes to be an appeal party opposed to the appeal must submit:
 - i. a statement of how the person qualifies as an eligible person;
 - ii. a summary of the facts contained in the record on appeal (no new evidence) that oppose the appellant's appeal allegations, separated into support for each separate allegation;
 - iii. a summary of the appeal party's argument accompanied by references to applicable material in the record, separated into argument for each separate allegation; and
 - iv. the name, address, email address, and phone number of the person and an indication of the person's preferred means of contact.
- (b) Verification. Within two (2) working days of receiving the registration submittal the City Clerk will review the submittal and confirm the registrant is an eligible person before the person is deemed an appeal party.
- (c) Posting of appeal materials. Upon verification of any appeal party opposed to the appeal under Subsection (b) of this Section, the City Clerk will promptly post the summary of facts filed by the verified appeal party and any attached information on the City's website, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.
- (d) Scheduling of the hearing. In the event of After screening of an appeal is complete and the deadline for appeal party registration has elapsed, the City Clerk will identify a possible date for shall schedule the hearing on the appeal for a date as early as reasonably practicable but no fewer than ~~twenty-eight (28)~~ **fourteen (14)** days and no more than ~~seventy-seven (77)~~ **sixty-three (63)**/~~thirty-five (35)~~ calendar days after the deadline for filing of the notice of appeal for appeal party registration has elapsed and their appeal materials are posted on the City's website under Subsection (c) of this Section. The City Clerk will also identify a possible date for the pre-hearing conference under Subsection (f) of this Section.
- a. ~~Prior to~~ **Before** scheduling the hearing, the Clerk ~~shall provide~~ **will notify** the appellant and applicant appeal parties with a of the possible hearing date, or dates and the possible pre-hearing conference date or dates.

- b. The appeal parties must respond within two (2) working days to inform the City Clerk determine if they believe they have an unavoidable conflicts that makes attendance impossible at such date, or dates, exist.
- c. The City Clerk will set the hearing date at a time that takes into account the unavoidable conflicts identified to the extent reasonably practicable.
- (e) Posting of hearing notice. The City Clerk will post on the appeals page of the City's website and will shall mail to the appeal parties written notice of the date, time and place of the hearing and the pre-hearing conference to the appellant and all other parties in interest no less more than twenty-one (21) calendar five (5) working days after prior to setting the date of said the hearing. Said notice shall also include a copy of the notice of appeal (excluding attachments, which shall be available as provided in §2-49(c) Section 2-51(e)).
- (f) Pre-hearing conference. Not fewer than four (4) working days before the scheduled appeal hearing, the City Clerk will convene a meeting with the appeal parties to provide information and respond to questions about the appeal hearing process. Any questions the City Clerk receives outside of the pre-hearing conference will be addressed at the pre-hearing conference so that all appeal parties may receive the same information.
- (b)(g) Consolidation of hearings/appeals. All appeals regarding the same decision may will be consolidated and scheduled together to be heard in a single hearing. Council may in its discretion by majority vote at the time of the scheduled hearing separate the hearing process for individual appeals as provided under Section 2-53(e).
- (c)(h) Extension. At any time prior to before the expiration of the time for Council to hear an appeal under Subsection (ad), the City Manager may in the event of scheduling difficulties or notice defects request that Council approve by motion or resolution the extension of the time for hearing an appeal for a specified period.
- (d)(i) No ex parte contact. In order to afford all parties in interest eligible persons a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and in order to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with parties in interest appeal parties and members of the general public regarding the merits of the appeal prior to before the hearing on the appeal, and all appeal parties and the general public must avoid communications with Councilmembers regarding the merits of the appeal.

Sec. 2-53. Site inspection.

- (a) Councilmembers may inspect the site of an overall development plan, project development plan or other proposal that is the subject of an appeal, either alone or with City staff present, for the purpose of gaining a better understanding of the physical characteristics of the site and the surrounding area.
- (1) If a Councilmember wishes to schedule a site inspection with City staff present, he or she shall, no later than fourteen (14) days after the filing of the notice of appeal, request that the City Manager schedule such inspection.
- (2) Upon receipt of such a request, the City Manager shall forthwith schedule the inspection for a date and time when he or she believes that a majority of the Councilmembers wishing to inspect the site will be able to attend.
- (3) The City Clerk shall, no less than seven (7) days prior to the date of the site inspection, mail notice of such inspection to the appellant and to all parties in interest to whom notice of the appeal hearing was sent by the City Clerk under § 2-52 above.
- (4) The appellant and all other parties in interest shall be entitled to attend such scheduled inspection, along with any members of City staff whose presence is requested by the City Manager. Failure to mail notice to any party in interest shall not affect the scheduling or validity of any proceeding held or determination made under this Division. Upon receipt of any notice returned by the U.S. Postal Service marked as undeliverable for any reason, the City Clerk may exclude the party in interest to which such

notice had been mailed from any future mailings related to the appeal that was the subject of the returned notice.

- (b) ~~Any Councilmembers conducting a site inspection under the provisions of Subsection (a) above, either alone or with City staff present, shall, at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.~~
- (c) ~~Nothing in this Section shall be construed to authorize any Councilmember or other officer or employee of the City to enter upon any parcel of real property that is not open to the public without the permission of the owner of such property or the permission of such other person or entity as may be lawfully in possession of the property.~~

Sec. 2-5453. Procedure at the hearing.

- (a) **Hearing order.** At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order **and for the times set forth below**, subject to **modification of such limitations in time and scope allowed** as may be ~~imposed~~ **established** at the discretion of the **Mayor or a majority vote of the Council**:
- (1) Presentation by City staff explaining **the appeal hearing process**, the nature of the appeal or appeals, and the decision being appealed;
 - (2) Comments by Councilmembers who have inspected the site ~~pursuant to Subsection 2-53(a) above~~ **of their own accord regarding the date of the inspection and any observations of the site they believe may be relevant to the Council's determination of the appeal**;
 - (3) Consideration of any procedural issues identified under Subsection (c) below;
 - (4) Presentation of argument by the appellant **for up to twenty (20) minutes or such other time as City Council allots** ~~and any party in interest in support of the appeal~~;
 - (5) Presentation of argument by any ~~party in interest who is an opponent of~~ **appeal party opposed to** the appeal **for a total of up to twenty (20) minutes or such other time as City Council allots**;
 - (6) **If one or more appeal parties has argued to oppose the appeal, rebuttal presentation by the appellant for up to ten (10) minutes or such other time as City Council allots** ~~and any party in interest in support of the appeal~~;
 - (7) Rebuttal presentation by any ~~party in interest who is an opponent of~~ **appeal party opposed to** the appeal **for a total of up to ten (10) minutes or such other time as City Council allots**;
 - (8) Councilmember questions of City staff and ~~parties in interest~~ **appeal parties**; and
 - (9) Motion, discussion and vote by the City Council.
- (b) **Allocation of time.** Factors to be considered in determining **whether to modify** the period of time for the presentation of argument on the merits of an appeal shall include, but not be limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of ~~parties in interest~~ **appeal parties** who wish to address the Council with regard to the merits of the appeal.
- (c) **Procedural matters.** ~~Prior to~~ **Before** hearing the presentation of argument on the merits of the appeal, the Mayor may, in ~~their~~ **Mayor's** ~~his or her~~ discretion, establish a separate period of time during which the Council may first consider and the Mayor may determine, subject to override by the Council by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, **objections regarding** the possible introduction or exclusion of certain evidence, whether to separate any consolidated appeals of the same decision by different appellants, the period of time to be allowed for presentation of

argument and rebuttal on the merits of the appeal and any concerns or objections related to the record on appeal.

- (d) **No cross examination.** No person making a presentation to the City Council shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
- (e) **Consolidation of hearings.** In the event of multiple appeals involving the same decision of a board, commission or other an original decision maker that have been consolidated in accordance with §2-52(b) Section 2-52(gf), the Mayor, in his or her the Mayor's discretion, may modify the procedure contained in Subsection (a) above so as of this Section to expedite the hearing of such appeals, while still ensuring that each appellant can make that appellant's own case and that appeal parties for and against each appeal will have equal time.

Sec. 2-51. Record on appeal.

Any appeal to the City Council shall be an appeal on the record of the hearing before the board, commission or other decision maker together with such additional evidence as may be admitted by the Council for consideration as provided in this Article. [moved to 2-54(b)] The record provided to the City Council shall include the following, together with such additional materials as are provided in Sec. ??:

- (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the board, commission or other decision maker at the proceedings;
- (2) A verbatim transcript of such proceedings before the board, commission or other decision maker. The cost of the transcript shall be borne by the City. If a verbatim transcript of the proceedings does not exist and cannot be produced, whether due to an equipment malfunction or clerical error, or for any other reason, the decision that is the subject of the appeal will be re-heard before the decision maker after notice as required by the relevant provisions of this Code or the Land Use Code, whichever is applicable, and the appeal shall be terminated.
- (3) If available, a video recording of such proceedings before the board, commission or other decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to any party in interest requesting the same within a reasonable period of time prior to the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.
- (4) A copy of notice of the hearing on the decision appealed, along with a list of those to whom such notice was mailed.

Sec. 2-554. Record on appeal; Wwritten materials; new evidence.

- (a) **Basis for decision.** The City Council shall consider an appeal based upon the record on appeal, including any new evidence admitted for or at the appeal hearing, the relevant provisions of the Code and Charter and any other applicable legal authorities, the grounds for appeal cited in the notice of appeal, the arguments made by parties in interest appeal parties at the hearing on the appeal, and the City staff report and presentation prepared for the appeal; provided, however, that issues raised during the presentation of argument but not raised in the notice of within the allowable scope of the appeal shall not be considered by the City Council in deciding the appeal.
- (b) **Record provided.** The record provided to the City Council shall include the following: [moved from Section 2-51 and modified]
 - (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the original decision maker at the proceedings;

- (2) A verbatim transcript of the proceedings before the original decision maker unless the decision was not made a hearing (such as a decision by a department director). The cost of the transcript shall be borne by the City.
- (3) If available, a video recording of the proceedings before the original decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to appeal party requesting the same within a reasonable period of time before the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.
- (4) A copy of the notice of appeal and screening determination.
- (5) A copy of all appeal party submittals admitted under Section 2-52(c).
- (6) A copy of notice of the appeal hearing.
- (7) City staff presentation required under Subsection (d) of this Section and appeal parties' presentations.
- (b)(c) Restriction on new evidence. No new evidence shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal, except as follows:
- (1) When offered by an appellant and submitted pursuant to § 2-49(b)(5);
 - (2) When offered by a party in interest opposed to the appeal in response to and regarding appeal allegations under § 2-48(b)(2)c, d, or e, provided that any such new evidence must be submitted to the City Clerk within twenty-one (21) calendar days after the deadline for filing the related notice of appeal and the City Clerk shall not provide any new evidence to Council submitted by any person after the time for submittal has expired;
 - (3) When offered by City staff or parties-in-interest in response to questions presented by Councilmembers at the hearing on the appeal under Subsection 2-54(a) or (d) above; or
 - (4) When offered by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal pursuant to the provisions of § 2-53 of this Article.
- (c)(d) Staff summary and materials. City staff shall prepare for Council consideration the record as described in § 2-51 Subsections (a) and (b) of this Section, together with a staff agenda item summary and presentation materials, which shall become part of the record of the appeal hearing. Staff shall also provide to the Council the notice of appeal and all attachments to it, and new evidence provided to the City Clerk in accordance with subsection (b)(2), above. The Council will determine whether to admit for consideration each item of new evidence offered by any party, and those materials admitted for consideration shall become part of the record of the appeal hearing.
- (d)(e) Submittal of party presentations required. Any party in interest appeal party wishing to submit a presentation of their previously submitted written facts and argument shall must submit the presentation to the City Clerk a copy of all materials, including digital presentations, to be presented to the Council at the appeal hearing in digital form and in hard copy no later than noon on the working day before the day of the appeal hearing, or 4:00 p.m. the business day prior to the appeal hearing if the Council meeting at which the hearing will be conducted is scheduled to begin earlier than 6:00 p.m., and such materials shall thereafter be made reasonably available by By the end of the working day before the day of the hearing, the City Clerk will post any presentation materials received in accordance with this Subsection. by the end of the working day before the day of the hearing to any persons upon on request. In light of the limitations on admission prohibition on submission of new evidence, admission of any such materials for consideration shall be subject to Council determination at the appeal hearing. Any party in interest appeal party may provide a true and accurate hard copy of any such argument or presentation to be provided to the for Council at the hearing, and to City staff and the other appeal parties reference, so long as no fewer than twenty (20) such copies are provided to the City Clerk along with the digital presentation brought to the hearing for distribution.

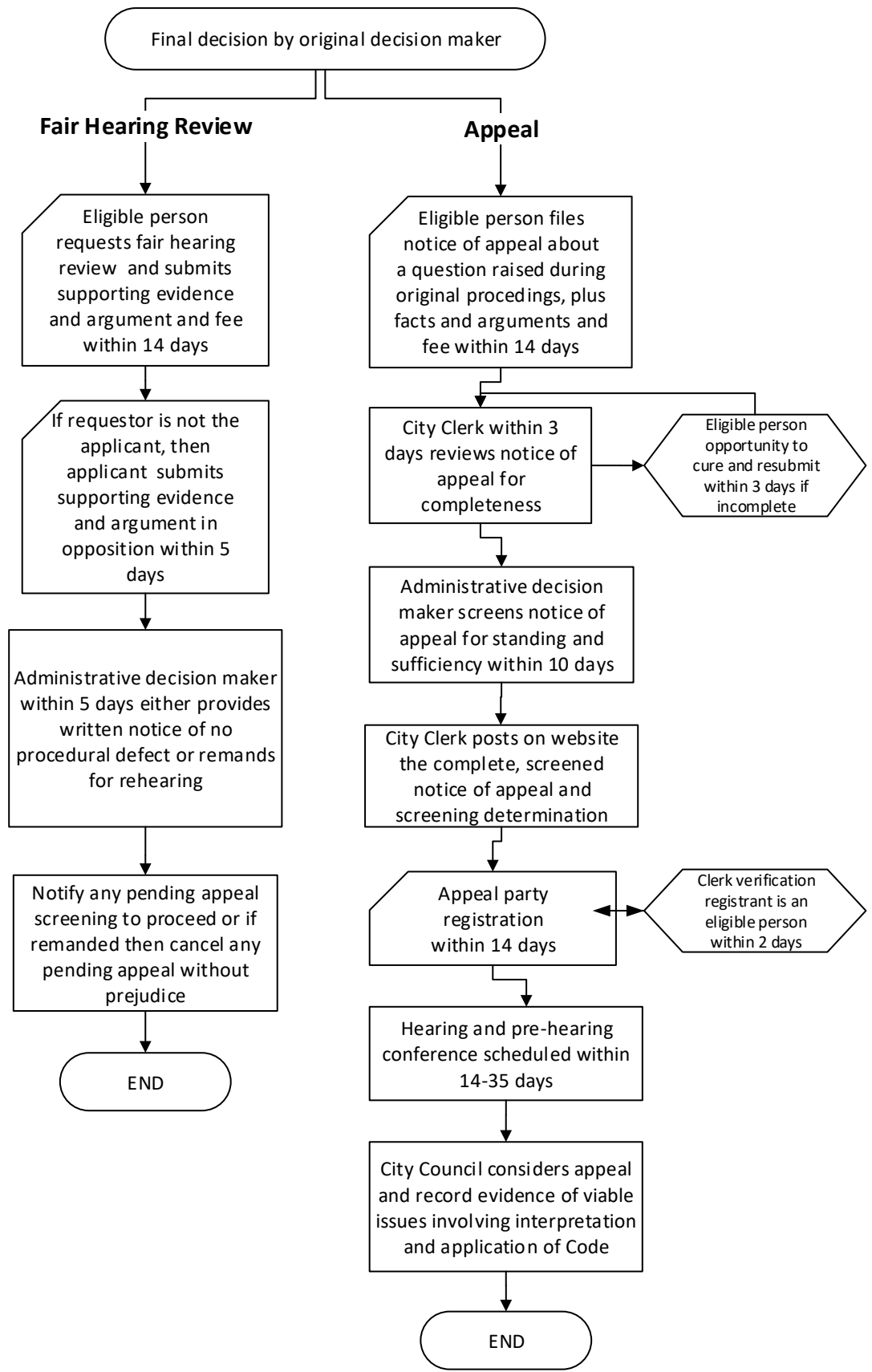
- (e)(f) **Objections as to evidence.** Any party in interest ~~appeal party~~ who believes that new evidence has been improperly offered or introduced into the appeal hearing may, at any time during the hearing, interrupt the proceedings and object to the Council's consideration of such evidence. If such an objection is made, the Mayor shall rule on the objection, after consultation with the City Attorney if necessary, and the evidence shall either be received and considered by the Council or disregarded by the Council in accordance with the ruling of the Mayor; ~~provided, however, that:~~
- (g) **Procedural rulings.** The Mayor's ruling on this or any other procedural issue raised during the course of the hearing may be overridden by a majority of the Council.
- (h) **Objections waived if not raised at hearing.** The failure of a party in interest ~~an appeal party~~ to make such an objection **at the hearing as to a procedural matter** shall constitute a waiver of the same by that party in interest ~~appeal party~~ for the purpose of any court appeal **judicial review** of the Council's decision.

Sec. 2-5655. **City Council decision on appeal.**

- (a) **Council determination.** In considering an allegation that a board, commission or other decision maker failed to properly interpret and apply the relevant provisions of the Code or Charter asserted under ~~Paragraph 2-48(b)(1)~~ **Subsection 2-49(b)** of this Article, the City Council shall determine how such provisions should, in the City Council's judgment, be applied to the evidence contained in the record of the appeal hearing.
- (b) **Appeal outcome.** At the conclusion of such hearing, the City Council shall uphold, overturn or modify the decision of the ~~board, commission or other~~ **original** decision maker, and may impose such conditions as the Council determines appropriate to further the purposes of or compliance with the standards governing the decision; provided, however, that:
- (1) ~~The City Council shall instead remand the matter for rehearing if it finds that the appellant was denied a fair hearing before the board, commission or other decision maker for any of the reasons stated in Paragraph 2-48(b)(2) of this Article. Notwithstanding any language to the contrary in City Code, if City Council determines that on remand the board, commission, or decision maker will be unable to provide a fair rehearing or will be unable to provide a rehearing because a quorum will not be available, City Council shall remand the matter for rehearing to a qualified, alternative decision maker determined by City Council. Additionally, City Council may remand the matter for rehearing to a qualified, alternative decision maker if the public confidence in the decision on remand would be better served than remand to the original board, commission, decision maker.~~
- (2) ~~The City Council may also remand the matter for rehearing in order for the board, commission or other~~ **original** decision maker to receive and consider additional information with regard to any issue raised on appeal. Any such remand shall include direction from the City Council to the ~~board, commission or other~~ **original** decision maker as to the issues to be considered at the rehearing.
- (c) **Final action by resolution.** No later than the date of its next regular meeting, the City Council shall adopt, by resolution, findings of fact in support of its decision. The date of passage of such resolution shall be the date of final action of the City Council for the purpose of any subsequent judicial review of the decision of the City Council.
- (d) **Amendment of resolution.** ~~Subsequent to the~~ **After** adoption of the resolution required under Subsection (c); ~~above of this Section,~~ the Council may amend ~~said~~ **the** resolution at any time in order to clarify or correct it, or to modify the decision in order to resolve a related legal dispute or to bring the decision into compliance with federal, state or local law, including the Charter and Code of the City of Fort Collins, **provided:**
- (1) At least fourteen (14) days ~~prior to~~ **before** consideration of any such amendments, written notice that the Council will consider such amendments must be mailed to the last known address of the ~~appellant, the applicant, and any other party in interest~~ **appeal parties** who appeared at the related appeal hearing.

- (2) Persons entitled to notice of the consideration of amendments shall have an opportunity to comment at the time of such consideration.

Secs. 2-5756—2-70. Reserved.



Process Duration Comparison Table

Jan. 7, 2025

Item 7.

Day Count	Fair Hearing Review	Appeal: New Procedures	Appeal: Current Procedure
Decision Day			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14	FH review request 14 cd	Notice of appeal 14 cd	Notice of appeal 14 cd
15			
16	Notify applicant (if requestor is not applicant) 2 wd		
17		Completeness review finished 3 wd	
18			
19	FH determination if request is from applicant 5 wd		
20		Cure deadline if incomplete 3 wd	
21	Applicant submit response (if requestor is not applicant) 5 wd		
22			
23			
24			
25			
26	FH determination if requestor is not applicant 5 wd		
27			
28			
29			
30		Screening complete (1) if no FH review or if FH request from applicant 10wd	
31			
32			
33			
34			
35			
36		Screening complete (2) if FH request where requestor not applicant 10 wd	
37			
38			
39			
40			
41			
42			Earliest hearing date 28 cd after notice of appeal
43			
44		Appeal party registration (1) 14 cd	
45			
46		Appeal party verification (1) 2 wd	
47			
48			
49			
50		Appeal party registration (2)	
51			
52		Appeal party verification (2) 2 wd	
53			
54			
55			
56		Pre-hearing conference (1) 4 wd before hearing	
57			
58			
59			
60		Earliest hearing date 14 cd after appeal party verification (1)	

Process Duration Comparison Table

Jan. 7, 2025

Item 7.

Day Count		Appeal:-New Procedures	Appeal: Current Procedure
61			
62		Pre-hearing conference (2) 4 wd before hearing	
63			
64			
65			
66		Earliest hearing date 14 cd after appeal party verification (2)	
67			
68			
69			
70			
71			
72			
73			
74			
75			
76			
77		Pre-hearing conference (1) 4 wd before hearing	
78			
79			
80			
81		Last hearing date 35 cd after appeal party verification (1)	
82			
83		Pre-hearing conference (2) 4 wd before hearing	
84			
85			
86			
87		Last hearing date 35 cd after appeal party verification (2)	
88			
89			
90			
91			
92			
93			
94			
95			
96			
97			
98			
99			
100			
101			
102			
103			
104			
105			
106			
107			
108			
109			
110			
111			Last hearing date 77 cd after notice of appeal
112			

Code Amendment to Improve Appeals Procedures

Kim Meyer

Principal Planner

Heather N. Jarvis

Assistant City Attorney



- Appeals can be complex and confusing.
- Certain elements of appeal hearings can be unpredictable.
- Appeals can create an unrealistic expectation of different outcomes.
- Grounds for appeal are frequently found to lack merit at hearing.
- Processing and preparing for appeals is burdensome on Council and other City resources – as well as the Appellant and Respondent.

- Clarify Standing to Appeal
 - Require Participation in Original Decision Process
- Separate Processes and Decision Makers:
 - Fair Hearing Questions – Administrative Review
 - Failure to Apply/Interpret Code – Council Appeal
- Require That Issue on Appeal Was Raised at Time of Original Decision
- Completeness and Screening Reviews
- Appeal Party Registration and Prehearing Conference
- Update Fees
- Clarify timeframes, submittals, communication and “the record”
- Eliminate the organized site visit

Current State:

Broad standing, including anyone who received a mailed notice, and Council

Future State:

Allow appeals by:

- a. Project Applicant;
- b. Subject Property Owner; and
- c. An “Eligible Party” who participated in the original hearing / decision-making process by providing written or oral comments

Current State:

City Council is final decision maker on all process, fair hearing, and failure-to-interpret/apply issues.

Any issue may be raised to Council, regardless of whether

- The original decision maker considered the issue
- The record on appeal contains information on the issue

Future State:

Fair Hearing Issues – Subject to Administrative Review and Remand

Failure to Interpret/Apply Code Issues – Subject to an appeals hearing before Council

- Limited to issues raised at original hearing
- Existing record / NO new evidence

- **Completeness Review:**
 - All required materials
 - Appellant is Eligible Party
- **Screening Review:**
 - Verify issues with the Record
 - Grounds for appeal are legally sufficient and raise valid interpretation or application issue(s)
- **Registration for Opposing parties**
 - Confirm registered parties are Eligible Parties
- **Pre-hearing Conference**
- **Material Submittal requirements**
 - Timing for submittals
 - Level of specificity - appeal and response
- **Removed organized Council site visit**
- **Composition of “the Record”**
- **Scheduling and hearing procedures**
- **Updated fees to \$100 and \$250**



Process Comparison to other Municipalities

	QJ Land Use Appeals to Council	Appeal Only on Record, No New Evidence	Council Can Initiate	Notable Features
FORT COLLINS	Yes	No, may consider new evidence + record	Yes	
Arvada	Yes	Yes	No	No appeals to Council of items appealed to Planning Commission
Boulder	Yes	No, may consider new evidence + record	Yes	
Centennial	Yes	Yes	No	Basis for appeal must be specific; Council must affirm unless decision was abuse of discretion or unsupported by record
Colorado Springs	Yes	No, may consider new evidence + record	No	Council may preliminarily determine appeal meets application requirements and dismiss, if not; Council may hear appeal de novo or limit to issues raised on appeal
Denver	No	n/a	No	Appeals principally heard by Board of Adjustment
Golden	Yes	Yes	No	Council appeal decisions subject to appeal to municipal court
Greeley	Yes	Yes	No	Council gives deference to decision on appeal; appeals may be filed by any department director or referral agency that provided comments.
Longmont	Yes	No, may consider new evidence + record	No	Major development applications: residents, Planning Director, & City Manager have standing; for minor and administrative application: City Manager has standing.
Loveland	Yes	Yes	No	Staff may dismiss appeal if lacks standing or sufficient detail; no appeals to Council of items appealed to Planning Commission.
Thornton	Yes	No, de novo hearings	Yes	
Westminster	Yes	No, de novo hearings	Yes	Four Councilmembers must appeal matter, City Manager may also appeal

- Administrative Hearing Officer
- Planning and Zoning Commission
- Land Use Review Commission
- Building Review Commission
- Historic Preservation Commission
- Water Commission
- City Manager
- City Engineer
- Utilities Executive Director
- Community Development & Neighborhood Services Director