



October 21, 2022

Mr. Tyler Marr
Assistant City Manager
City of Fort Collins
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Comments to the City of Fort Collins Draft 1041 Regulations (Site Selection and Construction of Domestic Water and Sewage Treatment Systems)

Dear Mr. Marr:

Enclosed for your review are City of Greeley ("Greeley") comments to the revisions proposed by City of Fort Collins to its Land Use Code concerning Areas and Activities of State Interest ("1041 Regulations"), primarily to those concerning the Site Selection and Construction of Domestic Water and Sewage Treatment Systems.

A significant proportion of Greeley's water supply originates in the Cache la Poudre River and is treated at the Bellvue Water Treatment Plant northwest of Fort Collins before being conveyed to Greeley via three potable water transmission lines that travel through Fort Collins. Greeley has been conveying its potable water through Fort Collins since 1907. In addition to treating and delivering water to Greeley, Greeley provides treatment and transmission for portions of the Northern Colorado communities of Windsor and Evans. Portions of Greeley's transmission pipelines are nearly 100 years old and require regular maintenance, repair, and replacement. Overly burdensome regulation may require pipeline realignments would handicap Greeley's ability to make timely and necessary repairs and upgrades, placing our customers and regional partners at risk of service disruptions.

In addition to the proposed redlines enclosed with this letter, Greeley comments are as follows. Greeley reserves the right to make additional comments through the course of the stakeholder process.

- Several of the definitions included within Section 1-110, including those for *Major extension of an existing wastewater treatment system* and *Major extension of an existing domestic water treatment system* hinge on the interpretation of the defined term *Material change*, which is generally defined as a significant change to the nature or location of the development and its impacts. Accordingly, this definition further hinges on the interpretation of the separate defined term *Significant*, which is defined as "deserving to be considered important, notable, and not trifling." This is not a meaningful nor sufficiently clear substantive standard by which potentially regulated activities can be measured in the regulatory process and is arguably too vague to be enforceable.
- Several of the definitions included within Section 1-110, including those referenced above, contain the qualification that the system, extension, or upgrade meet the Land Use Code definition of the term *Development*. While that term does not include "work by the City or any public utility for the purpose of restoring or stabilizing the ecology of a site, or for the purpose of inspecting, repairing, renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like," the regulations should further exclude such work within existing easements by municipal water providers that do not clearly fall within the definition of a public utility, such as the City of Greeley and its Water Enterprise.

- The references to *service lines* and *distribution lines* throughout the definitions in Section 1-110 should include a threshold size or capacity of infrastructure that falls within each of the definitions, to more explicitly exclude projects of a smaller scale that will have no significant impacts.
- Section 2-303 should include more explicit criteria that the Director will consider when determining whether to make a finding that no significant impacts (“FONSI”) are likely to occur from the proposed development plan.
- Section 2-307 should include a requirement that the Director provide a reasonably detailed overview of those application elements found to be complete and those incomplete, to provides applicants an opportunity to focus on the areas where the application was deemed incomplete. Section 2-307 should also include a specific timeframe in which the Director will make a determination of completeness if no request for additional application materials has been made.
- There are several review standards throughout Section 2-401 that are already regulated in a comprehensive way by other agencies and arguably outside the scope of what Fort Collins may regulate from a land use perspective. For example, changes in the quality and quantity of fisheries and the changes in instream flows or reservoir levels are within the purview of agencies in the State Department of Natural Resources. Similarly, air quality, surface water quality, groundwater quality, wetlands and riparian areas, terrestrial and aquatic plant and animal life, and soil and geologic conditions are all regulated by various state and federal agencies. Furthermore, the standards or measurement of significant impact is not clearly defined and such ambiguity is problematic in the city’s evaluation of an application for its completeness.
- The provision in Section 3-201(L) requiring that jurisdictions receiving water diverted from within City of Fort Collins limits demonstrate sufficient water conservation policies, regulations, and programs is outside the scope of what Fort Collins may regulate from a land use perspective in other communities. It is not clear that the requirement, as applied to jurisdictions located some distance from the City of Fort Collins, bears a rational relationship to the health, safety, and welfare of the Fort Collins community.
- Beyond the scope issue in the previous comment, Section 3-201(L) is overly vague as to the extent of “policies, regulations, and programs” that would be considered sufficient for the review standard. At the very least, the provision should be more narrowly tailored to include a clear measurable standard, such as a current water conservation or efficiency plan as required by the State of Colorado.

The Cities of Greeley and Fort Collins have a century-long partnership on water matters in Northern Colorado. We value our strong alignment on many water issues, including watershed health, and while we understand the desire for greater local control of certain projects, we urge you to consider the negative regional impacts of the 1041 Regulations as currently proposed.

Sincerely,



Sean P. Chambers
Director of Water and Sewer

Cc: Mayor Jeni Arndt
Mayor John Gates
City Manager Raymond Lee
Deputy City Manager Don Tripp