

CITY OF CHICO
Administrative Procedure and Policy Manual

Subject: LINDO CHANNEL ENCROACHMENTS - POLICIES AND PROCEDURES	Number: 10-37
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Introduction

History and Jurisdiction: In 1908, Annie E. K. Bidwell sold land known as Bidwell River Park to the State of California. The land included parcels along the Sacramento River and Lindo Channel from the point where the Channel intersects with the boundaries of Bidwell Park to what is now known as Big Chico Creek. Big Chico Creek and Lindo Channel carry run-off from a 70-square mile drainage above the City of Chico. The State of California transferred the property to Butte County in 1950. In 1965, flood control improvements were completed by the U.S. Corps of Engineers on Big Chico Creek, Mud Creek and Lindo Channel, and in November 1965 the Board of Supervisors formed County Service Area No. 24 for the purpose of operating and maintaining these improvements. In August 1994 the City of Chico obtained ownership from Butte County of that portion of Lindo Channel between Manzanita Avenue and Glenwood Avenue, annexing the portion of Lindo Channel east of Holly Avenue in July 1998.

The City acquired Lindo Channel from the County by grant deed with a “metes and bounds” description. With this type of description, the legal boundary of the property remains fixed while the flowing water is free to meander across the property boundary. If the deed descriptions in the chain of title had been written in an alternate manner, for instance, “100 feet north and south of channel centerline,” then the property lines would have moved when the channel moved, adding and subtracting land from the Lindo Channel property.

Various agencies have regulatory responsibilities in Lindo Channel. They include:

1. Department of Water Resources (DWR)-Reclamation Board is responsible for maintaining the flood-carrying capacity of the channel.
2. Butte County is responsible for maintaining the diversion structures and the riprap just below the structures.
3. Department of Fish and Game enforces laws pertaining to habitat and water quality, and regulates fisheries.
4. Regional Water Quality Control Board regulates water quality by giving certification to any work proposed in the Channel.
5. United States Fish and Wildlife Service reviews actions that require federal permits and makes recommendations for fish and wildlife species. If endangered species are involved, U.S. Fish and Wildlife Service gets directly involved through a formal consultation process. This agency also offers technical assistance for biological reports.
6. United States Army Corps of Engineers delegated the operations and maintenance of the Channel to DWR. If DWR requests, the Army Corps of Engineers will advise DWR on issues or concerns.
7. City of Chico owns Lindo Channel (Sandy Gulch).

Objective: The objective of this policy is the removal of all private encroachments within the City-owned portion of Lindo Channel. This policy was adopted by the Bidwell Park and Playground Commission, memorandum to the Chico City Council dated October 1, 1998, and presented to the Council at its meeting of October 13, 1998. The *Chico Municipal Code* (12.04.030) grants to the Bidwell Park and Playground Commission the authority to supervise, control and manage City parklands, including Lindo Channel (12.04.010).

Definitions: An encroachment is any unauthorized use of Lindo Channel parkland, where such use, either totally or partially, extends one foot or more into the parkland. The parkland shall be defined by the boundaries of the City-owned property, as identified by the *Lindo Channel Record of Survey* (dated October 1992, filed January 18, 1994 in Book 131 with the County of Butte). The City of Chico is the controlling agency for authorizing use of Lindo Channel parkland.

Identification: Identification and classification of encroachments shall be the responsibility of the Park Department. In situations where complications arise, the Park Director shall have the discretion of consulting the Bidwell Park and Playground Commission. In all cases, suspected encroachments shall be verified by field inspection. In situations where the survey corners of the City property are either lost or destroyed, the corners shall be reset and visibly marked.

Encroachment Classifications

Encroachments shall be categorized according to the following criteria.

Category Ia: Any encroachment which may potentially impede the flow of water.

Ib: Any encroachment which may potentially hinder public access to and travel within the parkland.

Category II: Spraying of pesticides (e.g., herbicides and insecticides) and deposition of any toxic or hazardous material, including fertilizers.

Category III: Permanent structures.

Definition: Permanent structures are those which utilize a durable and complete foundation.

Examples: Buildings, concrete swimming pools, concrete patios, paved parking areas, decks with concrete foundations, masonry walls, sheds and rip-rap.

Category IV: Non-permanent structures.

Definition: Non-permanent structures are those without a durable and complete foundation.

Examples: Fences, walkways, pavers, earthen berms, earth fill, unpaved parking areas.

Category Va: Gardens and other intentional plantings.

Vb: Unintentional plantings, escaping from private property through propagation by root, tube, vine or other non wind-borne means.

Example: Ivy covering a fence must be maintained by the property owner in such a manner that it does not spread onto City parkland.

Category VI: Dumping of any non-toxic and non-hazardous material, including green waste and storm water runoff.

Category VII: Clearing and modification of City parkland, including trimming, pruning and grading, and removing of vegetation, soil, rock, and other natural materials.

Policies for Removal of Encroachments

Encroachments shall be removed by category according to the following time lines, subject to the applicable appeal process as defined below.

Categories I-II: Shall be removed immediately following notification.

Category III: Shall be removed or have an approved plan for removal within 180 days of the date of notification or the City shall arrange for removal and restoration and bill the responsible party.

Categories IV-VII: Shall be removed and/or restored within 60 days of the date of notification.

If upon receipt of notification of an encroachment the notified party believes extenuating circumstances exist, he/she may communicate directly to the Park Director evidence disputing the encroachment. Possible compelling or extenuating circumstances include but are not limited to:

c prior permission to encroach;

- C adverse possession which predates the Bidwell deed;
- C errors in the controlling record of survey;
- C conflicts between an adjoining property deed and the controlling record of survey; and
- C financial hardship or other undue hardship

The Park Director shall verify the accuracy of the dispute and may make justifiable modifications to the classification of the encroachment and/or the removal and restoration plan for this individual case.

In situations where restoration is required, the party responsible for the encroachment shall submit a Restoration Plan, to be approved by the Park Director prior to any restoration being conducted. The Restoration Plan shall specify the character and scope of the required restoration, a deadline for completion of the work, and a time period for monitoring of any plantings required.

Encroachments shall be removed and the parkland restored at the expense of the responsible party. In situations where the encroachment is not removed within the stated time line, the City shall arrange removal and restoration and shall bill the responsible party for the cost.

Exception for Category Va

Encroachments of Category Va (gardens) shall be allowed by permit, at the discretion of the Bidwell Park and Playground Commission. The City assumes no liability in granting such a permit, all such liability resting with the permittee. The permit shall specify the maximum size of the impacted area, the types of plantings allowed, and the duration of the allowed encroachment. Under no circumstances shall such use include alteration or obstruction of the parkland profile (e.g., fences, improved walkways, borders, irrigation systems), planting of invasive species, or destruction of native vegetation, other than the incidental removal of grasses or other annuals in the immediate vicinity of spot plantings. Under no circumstances shall such authorized use imply private ownership or restricted use and access of a portion of the parkland. All cultivation shall be accomplished using hand tools. No pesticide, herbicide or fertilizer use shall be allowed. Upon expiration of the permit, the permittee shall restore the parkland to a natural condition.

This exception is an interim policy only for *existing* encroachments of Category Va. Upon eventual approval of comprehensive management policies in the *Lindo Channel Riparian Restoration Master Plan*, this policy exception will be reviewed and may be modified by the Bidwell Park and Playground Commission. If the policy is modified, previously permitted gardens shall be required to conform to the new policy.

Appeals

Following determination and notification of an encroachment by the Park Director, any member of the public, including the party responsible for the encroachment, may appeal through the normal process (*Chico Municipal Code 2.40 and 2.80*). An appeal shall first be made to the Bidwell Park and Playground Commission, which will rule on the merits of the appeal and determine necessary actions. If dissatisfied with the Commission's decision, the appellant(s) may appeal to the City Council. When an appeal is filed, the deadline for removal of the encroachment will be automatically extended. If the appeal is denied, the normal time line for removal and restoration will begin immediately upon denial of the appeal.

Exemptions for Fire Protection and Flood Control

Certain and specific exemptions to these policies may be allowed at the discretion of the City and other responsible public agencies for the purposes of fire protection and flood control. Such exemptions shall require explicit and documented approval by the controlling authority or agency. All such exemptions shall be reviewed by the Bidwell Park and Playground Commission prior to implementation of the exemption.

Exemptions for Community Service

No part of this policy shall prevent individuals or groups from performing community service activities in the Lindo Channel parkland, including removal of invasive plants (such as star thistle) and construction of trails. However, such activities shall require prior approval of the Park Director.