

<b>Title:</b> Administrative Policy Open Space Priorities, Use of Funds and Transfers of Property	<b>Policy No.</b> Part 6, Management and Use of County Property Chapter 4, Open Space Section 2
	<b>Effective Date</b> November 14, 2023
<b>Policy Custodian</b> Open Space Division	<b>Adoption/Revision Date</b> November 7, 2023

**Adopting Resolution(s):** CC23- 320

**References (Statutes /Resos/Policies):** §32-1-103(10), §31-1-101(6); 1972 Resolution, CC80-711, CC81-227, CC86-269, CC86-764, CC86-969, CC87-882, CC87-942, CC88-354, CC90-100, CC90-139, CC90-140, CC90-472, CC92-726, CC93-375, CC93-630, CC93-752, CC94-14, CC95-238, CC98-665, CC06-138, CC07-159, CC12-175, CC14-046

**Purpose:** To (1) set forth the Open Space priorities, (2) detail the authorization and limitations for the use of Open Space Funds, (3) set forth the approval of acceptance of full or partial Real Estate Interest donations, and the criteria necessary for the signing of any federal, state or local donation acknowledgement form; and (4) set forth the criteria for the transfer of Open Space Real Property Interests.

**Policy:** Open Space Priorities, Use of Funds and Transfers of Property

- A. Board Discretion: Nothing contained in the Open Space Policies and Procedures shall limit the ultimate discretion and authority of the Board on any Open Space matter and the Board may, within its discretion, waive any Policy and Procedure.
- B. Policies and Procedures Definitions
  - 1. The term "Open Space" means the Open Space Division of the Jefferson County Parks and Conservation Department.
  - 2. The term "Enabling Resolution" means the Resolution adopted by the Board on September 26, 1972, and approved by the qualified voters of Jefferson County on November 7, 1972, as amended, and approved by the electors of the County at the election held on November 7, 1980, which collectively established Jefferson County Open Space.
  - 3. The term "Board" means the Jefferson County Board of County Commissioners.
  - 4. The term "Director" means the Director of the Open Space Division.
  - 5. The term "Real Property" includes without limitation those types of real property described in the Enabling Resolution, together with water and water rights.
  - 6. The term "Real Property Interest" means all interests in real property including without limitation:
    - a. Fee title

- b. Easements: trail, conservation, utility, etc.
  - c. Leasehold interests
  - d. Options
  - e. Rights of First Refusal
  - f. Life Estates
  - g. Future Interests
7. The term "Park and Recreation District" means a special district located wholly or partially within Jefferson County that provides park or recreational facilities or programs within its district boundaries, as defined in C.R.S. §32-1-103(14)(2021), as that term may be amended from time to time.
  8. The term "Metropolitan District" means a special district located wholly or partially within Jefferson County that provides parks and recreation within its district boundaries, as defined in C.R.S. §32-1-103(10)(c), (2021), as that term may be amended from time to time.
  9. The term "District" shall include a Park and Recreation District and/or a Metropolitan District, as applicable.
  10. The term "Municipality" means a city or town located wholly or partially within Jefferson County, as defined in C.R.S. §31-1-101(6)(2021), as that term may be amended from time to time.
  11. The term "Open Space Funds" means all proceeds from the one-half of one percent sales tax established by the Enabling Resolution, all bond proceeds that are to be repaid by the sales tax, Conservation Trust Funds allocated to Open Space, funds donated to Open Space, and in the event of a transfer by Open Space of an Open Space Real Property Interest, the roughly equivalent value of that Real Property Interest, and all other sources of revenue attributable to the Open Space Division.
  12. The term "Attributable Share" means that portion of Open Space Funds which consists of the net proceeds from the sales tax which is deemed attributable to Municipalities as described in the Enabling Resolution.
  13. The term "County Share" means all Open Space Funds which are not Attributable Share.
  14. The term "Committee" means the Jefferson County Open Space Advisory Committee.
  15. The term "Governmental Entity" means collectively, Municipalities, Districts, local, state, and federal public land organizations which are located, or operating, in Colorado, and Counties located adjacent to Jefferson County.

16. The term "Local Nonprofit" means a nonprofit corporation or other nonprofit entity that provides public park or recreation opportunities within Jefferson County.
17. The term "Open Space Reverter" means the County's reversionary interest that restricts the use of Real Property to public park and recreation purposes. The Open Space Reverter shall read that the Real Property Interest is deeded to the Governmental Entity "for so long as all of the Real Property remains within Jefferson County boundaries and is used by a public entity for public open space, park or recreational purposes."
18. The term "Land Acquisition Criteria" means those criteria that are referenced with the Open Space 2020-2025 Conservation Greenprint as that Plan may be amended from time to time.
19. The term "Open Space Grant or Partnerships Programs" means the County Share of Open Space Funds to be granted to Local, State or Federal Governments and/or Local Nonprofits under any grant program which may be established by Resolution of the Board.
20. The term "Current Value Analysis" means either an appraisal or a market value analysis performed by staff, both of which are created no more than two years prior to closing.

#### C. Open Space Priorities

1. Acquisition of Real Property Interests for public open space, park, or recreation purposes and/or preservation of interests in Open Space Real Property, trails, and improvements to Open Space Real Property;
2. Development of Open Space Real Property Interests, trails, and improvements;
3. Operation and maintenance of Open Space Real Property Interests and improvements, and;
4. All priorities include administration and planning.

#### D. Use of County Share of Open Space Funds

1. Acquisition of Open Space Real Property Interests.
  - a. Open Space staff is authorized to expend County Share of Open Space Funds for a title commitment, Current Value Analysis, survey, environmental site assessment, and any other necessary due diligence, and to enter into negotiations for the acquisition of any Real Property Interest, so long as such acquisition contains one or more Open Space Land Acquisition Criteria.
  - b. County Share of Open Space Funds shall be used to purchase any Real Property Interest only if the Real Property Interest will be used in ways that are compatible with the Enabling Resolution, and after obtaining:
    - (1) a current title commitment,

- (2) survey, where appropriate,
  - (3) environmental site assessment, where appropriate, and
  - (4) a Current Value Analysis.
- c. After Open Space staff has negotiated proposed final terms for an acquisition the Committee shall consider a Resolution recommending that the Board approve the acquisition subject to the final terms. The Committee's Recommendation and the Board's Resolution to acquire any Real Property Interest shall articulate the anticipated uses of such Real Property Interest.
  - d. A title policy shall be issued to the County on all Real Property Interests that have been funded wholly or partially with County Share of Open Space Funds.
  - e. A Real Property Interest shall be purchased only for a price that is less than or equal to its market value, as set forth in a Current Value Analysis.
  - f. Notwithstanding the requirement in Subsection D1e., a Real Property Interest may be acquired for more than its market value if it contains one or more significant or unique Land Acquisition Criteria, or a significant strategic or community value.
    - (1) A Committee Resolution recommending the purchase of a Real Property Interest for more than its market value requires an affirmative vote of not less than 8 Committee members.
    - (2) In addition, the Committee Resolution must contain one or more findings articulating the basis for purchasing the Real Property Interest for more than its market value.
  - g. When a Real Property Interest has been acquired with County Share of Open Space Funds and other County funds, that portion of the Real Property Interest acquired with County Share of Open Space Funds shall be used for those purposes set forth in the Enabling Resolution and shall be treated as follows:
    - (1) Such portion shall be separately identified in the Committee's Recommendation and the Board's Resolution to acquire the Open Space Funded Real Property Interest.
    - (2) At such time as such portion is acquired, it shall bear a legal description separate from all others, and it shall be held by virtue of a recorded conveyance document that conveys only the Open Space Funded Real Property Interest.

## 2. Administration

County Share of Open Space Funds may be expended for administering Open Space Real Property, including planning, developing, operating, managing,

maintaining, securing, and protecting Open Space Real Property Interests and improvements.

### 3. Open Space Grants and Partnership Programs

- a. Only Local, State and Federal Governments and Local Nonprofits that provide public park and recreation services to County residents, or that provide services on properties located wholly or partially within or adjacent to Jefferson County are eligible to apply for Open Space Grants.
- b. The Committee may recommend use of the Open Space Grants or Partnership Program funding for the purchase of a Real Property Interest on behalf of a Governmental Entity or Local Nonprofit, only upon a resolution of the governing body of the appropriate Governmental Entity or Local Nonprofit authorizing the use of Open Space Grant funds for the purchase.
- c. Grant or Partnership Funds are only available for the purposes outlined in the guidelines of the applicable Open Space Grant or Partnership.
- d. The Director is authorized to establish guidelines for the distribution of Open Space Grants or Partnership Programs.
- e. Recipients of Open Space Grant or Partnership Funds may make requests for a change of use by submitting the request to the Director, and the Director shall have approved such requests prior to initiation of the changed work. Initiation of the changed work prior to Director's approval may result in ineligibility for future Grant Funds.
- f. If Open Space Grant or Partnership Funds are not completely expended within two (2) years from the date of distribution, the recipient shall advise the Director as to why the Grant Funds have not been spent, and the Director may require the relinquishment of some or all the unspent Funds.
- g. Unless otherwise approved by the Director, all Open Space Grant or Partnership Funds are nontransferable, cannot be applied by the recipient to another project, and unexpended Funds must be returned to Open Space immediately upon completion of the project for which the Open Space Grant or Partnership Funds were awarded.

### 4. Other Uses of the County Share of Open Space Funds

- a. In addition to the distribution of the County Share of Open Space Funds through a Grant or Partnership Program as set forth in Subsection D.3. above, the County Share of Open Space Funds may be distributed to a Governmental Entity on an ad hoc basis for the acquisition of a Real Property Interest or improvements, or for the development of facilities or programs, for public open space, park, or recreation purposes.
- b. If any of the County Share of Open Space Funds has been used to acquire a Real Property Interest on behalf of a Governmental Entity, such Real Property Interest shall be deeded first to the County and thereafter deeded by the County to the Governmental Entity with the Open Space Reverter.

- c. In those cases in which a Governmental Entity acquires a Real Property Interest by virtue of a County deed with the Open Space Reverter, such Governmental Entity shall simultaneously execute and deliver to the County an indemnification and hold harmless of the County with respect to any loss the County may incur as a result of the environmental condition of the Real Property.
- d. All title policies for Real Property Interests of a Governmental Entity subject to the Open Space Reverter shall issue in the name of the Governmental Entity and the County, as their interests may appear. Or, at the County's option, the County may receive a title policy for its fee interest held before the Real Property Interest has been deeded to the Governmental Entity.
- e. In order to maximize the use of public funds and facilities through cooperative efforts between the County and private persons and entities, academic entities, and other governmental organizations, the County may enter into written agreements with such persons or entities for the use of a Real Property Interest or facility for public open space, park or recreation purposes or for the development of facilities for public open space, park or recreation purposes, and expend County Share of Open Space Funds for those stated purposes.

#### 5. Leasing of Open Space Property

If the County leases a Real Property Interest to a Governmental Entity, the lease shall, at a minimum, provide that:

- a. The lease shall terminate if the Real Property Interest is not used by that Governmental Entity for public open space, park, or recreational purposes.
- b. All operation and maintenance for the leased Real Property Interest shall be at the expense of the Governmental Entity.
- c. All improvements shall be erected, operated, and maintained at the expense of the Governmental Entity.
- d. The Governmental Entity shall obtain the County's approval prior to constructing improvements on the leased Real Property Interest.
- e. The Governmental Entity shall procure and maintain insurance as required by the County.
- f. All improvements, whether existing or later installed, shall be owned by the County.

#### E. Use of Attributable Share Funds

- 1. Municipalities shall expend Attributable Share Funds solely for open space purposes, as set forth in the Enabling Resolution, and in a manner consistent

with this Policy, the Enabling Resolution, and any intergovernmental agreement between the County and a Municipality.

2. Within one hundred eighty days (180) following the end of each calendar year, the Municipality will provide the County with (i) a copy of a portion of its audited financial statement for the prior calendar year, which portion is limited solely to detailing the Municipality's use of the Attributable Share Funds, which is to consist of a description of the expenditure of each portion of the Attributable Share Funds including a narrative of use, location, and amounts expended, and (ii) a sworn statement signed by the Mayor or City/Town Manager certifying that the Municipality expended all Attributable Share Funds during the preceding year as detailed in its audited financial statement, and in accordance with the requirements of the Enabling Resolution, this Policy, and any applicable intergovernmental agreement between the County and the Municipality, and (iii) a general description of the Municipality's proposed expenditures for the next two calendar years, with a view to establishing priorities for expenditures over the next two years.
3. If the County determines that the Attributable Share Funds were not used by a Municipality in accordance with the provisions and guidelines set forth in the Enabling Resolution and/or are used in violation of the terms and conditions of the intergovernmental agreement, then that Municipality will be ineligible for future Attributable Share Funds and any Open Space Grant or Partnership funding, unless and until the Municipality refunds the misused Funds to the County or a compliance plan, which has been approved by the Open Space Director, has been fulfilled by the Municipality. Any refund of misused Funds shall be applied by the County to the Municipality's Attributable Share Fund.

#### F. Real Property Interests Gifted to Open Space

1. The County may, but need not, accept gifts or donations, in whole or in part, of any Real Property Interest to be used for Open Space purposes so long as such acquisition contains one or more Open Space Land Acquisition Criteria. Such gifts may be accepted only after a title commitment has been obtained, along with an environmental site assessment where appropriate, and any additional due diligence materials deemed necessary by staff.
2. An IRS Form 8283, or any such similar donation acknowledgement Form shall be signed on behalf of the County only by the Board and only according to the following process:
  - a. The Acquisition Proposal Application will contain the request by the Landowner that at the closing, the County sign the Form.
  - b. A Committee Resolution will contain a finding of a full or partial donation of the Real Property Interest, based on a Current Value Analysis and a recommendation that the Board sign the Form.

#### G. Real Property Interests subject to Planning & Zoning Application or Legal Proceeding

No Real Property Interest shall be considered for acquisition if such Real Property is the subject of an active County Planning & Zoning application or in a legal proceeding in which the County is a named party. This policy shall not apply to Real Property that is in the County Rural Cluster Process.

#### H. Transfer of Open Space Real Property Interests

1. For purposes of this Subsection H., a Real Property Interest is “transferred” when it is sold, exchanged, conveyed, or otherwise transferred, or when it is no longer to be managed or used for the purposes set forth in the Enabling Resolution. Except as provided herein, this Subsection H. shall not apply to the transfer of a Real Property Interest to a Governmental Entity pursuant to Subsection D.4.b. above.
2. An Open Space Real Property Interest may be transferred only after obtaining a Current Value Analysis for the Real Property Interest.
3. The compensation Open Space receives for the transfer of a Real Property Interest shall equal or exceed its value as determined by a Current Value Analysis.
4. Open Space staff is authorized to expend County Share of Open Space Funds for any necessary due diligence required for the transfer of a Real Property Interest.
5. After Open Space staff has negotiated proposed final terms for a transfer, the Committee shall consider a Resolution recommending that the Board approve the transfer subject to the final terms.
6. All consideration received for the transfer of a Real Property Interest shall be returned to the Open Space Account unless a Governmental Entity contributed monies towards the purchase of the Real Property Interest, in which case the consideration from the transfer shall be credited between Open Space and the Governmental Entity in the same proportion as their contribution for the purchase of the Real Property Interest.
7. Transfer of Five or More Acres of Open Space Real Property Interests
  - a. This Subsection 7. shall apply to the following Real Property Interests that were acquired with Open Space Funds or by donation: fee, trail easements, conservation easements, and the Open Space Reverter. It does not apply to transfers of an easement interest for utility, water, electrical, or other similar purposes.
  - b. A Committee Resolution recommending the transfer of 5 acres or more of a Real Property Interest subject to this Subsection 7 requires an affirmative vote of not less than 8 members of the Committee.
  - c. In addition, the Committee Resolution must contain at least one of the following findings:



- (1) The Real Property Interest no longer meets the Open Space purposes for which it was acquired.
- (2) Transfer of the Real Property Interest would provide a significant community, ecologic, recreation, or heritage benefit consistent with the Enabling Resolution.
- (3) The Real Property Interest was not originally intended to be used permanently for Open Space purposes and this intention was noted in the Committee's and the Board's Resolution to acquire the Real Property Interest.
- (4) Transfer of the Real Property Interest would improve management by Open Space and/or the Governmental Entity of lands used for public open space, park, or recreation purposes, by consolidating or adjusting the boundaries of such lands.

I. Director Referrals

Any proposals and modifications deemed appropriate by the Director may be referred by the Director to the Committee for consideration and/or recommendation to the Board.