

RESOLUTION NO. 2007-80

A RESOLUTION DESCRIBING A PROPOSAL FOR THE EXTENSION OF AN EXISTING 0.10% COUNTYWIDE SALES AND USE TAX; FOR THE ISSUANCE OF OPEN SPACE CAPITAL IMPROVEMENT TRUST FUND BONDS THROUGH A MULTIPLE-FISCAL YEAR COMMITMENT OF REVENUES FROM SUCH TAX, AND FROM OTHER OPEN SPACE SALES AND USE TAX REVENUES, GENERAL FUND MONEYS AND OTHER LEGALLY AVAILABLE FUNDS; AND A VOTER-APPROVED REVENUE CHANGE.

WHEREAS, Article 2, Title 29, Colorado Revised Statutes, (hereinafter the "Article") as amended, provides for the imposition of a county-wide sales and use tax upon approval of a majority of the registered electors of the County voting on such question; and

WHEREAS, on August 31, 1993, the Board of County Commissioners adopted Resolution 93-174, proposing and placing on the 1993 off-year (special) election ballot the approval of a 0.25% county-wide sales and use tax and issuance of open space sales and use tax revenue bonds, the proceeds of said tax and bonds to be spent in accordance with the terms of said Resolution to acquire, improve, manage and maintain open space lands and other open space property interests; and

WHEREAS, the voters of the County of Boulder approved the county-wide sales and use tax and bonds proposal described in said Resolution 93-174, and said county-wide sales and use tax and the revenue bonds issued in connection therewith have been collected and the revenues therefrom expended in accordance with the terms of said Resolution; and

WHEREAS, the voters of Boulder County approved a 0.10% county-wide sales and use tax on November 7, 2000, as proposed in Resolution No. 2000-113, the revenues from which were committed to expenditure for acquisition of and capital improvements to open space lands in Boulder County, which tax is due to expire on December 31, 2009; and

WHEREAS, the goals of the County open space program, as originally stated in Resolution 93-174, and as modified over time, have not as yet been fully realized, in that there are numerous lands and areas for which property interests should be acquired in order to create trails and open space buffers for communities, protect wildlife habitat and preserve important agricultural lands; and

WHEREAS, there remains a critical need for the preservation of open space lands in Boulder County, preserved open space being a fundamental shared value of the citizens of Boulder County, which open space lands can be used for purposes including but not limited to buffers to preserve community identity, natural areas, wildlife habitat

and wetlands, allow continuation of existing visual corridors and offer passive recreational use through the development of a recreational trail system, and therefore there is a critical need for county-wide sales and use taxes to finance the acquisition and limited improvement of said lands; and

WHEREAS, the current bond proceeds from the revenues approved by the voters in November, 2000, will soon be expended or committed, and without additional funding sources, no additional uncommitted acquisitions could take place for the future; and

WHEREAS, it is more cost-effective to purchase lands now rather than wait until additional revenues are realized from currently approved sources, since the price inflation of land costs is several times greater than the financing costs through tax-exempt bonds; and

WHEREAS, proposing to extend said 0.10% county-wide sales and use tax for twenty years, through December 31, 2029, with future revenues to be expended for open space acquisition and improvement, for repayment of capital improvement trust fund bonds, and for maintenance and management of open space lands, including but not limited to forest health management projects and wildlife habitat preservation projects, in accordance with the purposes set forth herein, is a cost-effective method of obtaining additional revenues without an increase in the total cumulative county-wide sales and use tax rate; and

WHEREAS, if such extension is approved, revenues collected from the imposition of said 0.10% county-wide sales and use tax up to and including December 31, 2009 would continue to be expended for the purposes and in accordance with the limitations of Resolution No. 2000-113, and Resolution No. 2000-113 would be superseded by this Resolution effective for revenues collected from the imposition of said 0.10% county-wide sales and use tax on and after January 1, 2010; and

WHEREAS, due to the immediacy of the need, open space capital improvement trust fund bonds as authorized by law in a maximum principal amount of \$40,000,000, net of any premium, should be issued in order to allow such acquisitions and improvements to take place as soon as possible, said revenue bonds to be repaid through a multiple-fiscal year commitment of revenues received from the extended 0.10% county-wide sales and use tax, and, to the extent moneys from such tax are not sufficient, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the County's general fund, and other legally available funds; and

WHEREAS, this Board finds that the extension of the existing county-wide sales and use tax in the existing amount of 0.10% from the current expiration date of December 31, 2009, through December 31, 2029, with proceeds of such extension to be utilized for open space purposes in accordance with the provisions of this Resolution, and the issuance of up to \$40,000,000 in open space capital improvement trust fund bonds repaid through a multiple-fiscal year commitment of revenues received from the extended

0.10% county-wide sales and use tax, and, to the extent moneys from such tax are not sufficient, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the County's general fund, and other legally available funds, and the exemption of such tax revenues, bond proceeds and the interest thereon from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution, would permit additional revenues to be utilized now to further accomplish Boulder County's open space goals while lands are still undeveloped and at lower cost to the public than if acquisition were postponed to future years; and

WHEREAS, Boulder County, with voter approval, is statutorily authorized to issue bonds to finance open space acquisitions and improvements, and to repay those bonds from any revenue source available to the County; and

WHEREAS, the Board of County Commissioners of the County of Boulder, State of Colorado, desires to refer to the registered electors of the County of Boulder, State of Colorado, to be determined by a majority voting thereon, the question of whether such taxes, bonds and voter-approved revenue change shall be approved or disapproved; and

WHEREAS, said Article provides for the submission of such a countywide sales and use tax proposal and multiple fiscal year commitment authorization to the registered electors of the County at a general election scheduled within 120 days after adoption of such resolution, but since no general election is scheduled within that time, this proposal shall be placed upon the November 6, 2007 coordinated election ballot as required by Colo. Const., Art. X, Section 20(3)(a); and

WHEREAS, the said Article provides that the County Clerk and Recorder shall publish the text of such tax proposal four separate times, a week apart, in the official newspaper of the County and of each city and incorporated town within the County; and

WHEREAS, Colo. Const., Art. X, Section 20(3)(b), requires certain election notices to be mailed to all registered voters of the County; and

WHEREAS, the said Article provides that the proposal shall contain certain provisions concerning the amount, levying and scope of said tax; and

WHEREAS, it is the intent of the Board of County Commissioners that, should the proposal to extend the existing county-wide 0.10% sales and use tax, issue new bonds, and obtain a voter-approved revenue change for such tax, bond and earnings proceeds, not be approved by the electorate in November, the existing tax, multiple fiscal year revenue commitment authorization, and existing voter-approved revenue change, shall not in any way be affected by such failed amendment and shall continue in full force and effect as if this Resolution had not been adopted.

NOW, THEREFORE, BE IT RESOLVED that the existing county-wide 0.10% sales and use tax, revenue bond, multiple fiscal year revenue commitment, and revenue

change proposal as originally stated in Resolution No. 2000-113 shall be amended as set forth below upon the approval of a majority of registered electors voting thereon.

BE IT FURTHER RESOLVED THAT there shall be referred to the registered electors of the County of Boulder at the coordinated election to be held on Tuesday, November 6, 2007, the following proposal:

1. (a) A countywide one tenth of one percent (0.10%) sales tax in accordance with the provisions of article 2, title 29, C.R.S., as amended, is imposed on the sale of tangible personal property at retail or the furnishing of services in the County of Boulder as provided in paragraph (d) of subsection (1) of section 29-2-105, C.R.S., as amended, and as is more fully hereinafter set forth.

(b) For the purposes of this sales tax proposal, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the County of Boulder or to a common carrier for delivery to a destination outside the limits of the County of Boulder. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26 of title 39, C.R.S., as amended, regardless of the place to which delivery is made. If a retailer has no permanent place of business in the County of Boulder or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of a sales tax imposed by this proposal shall be determined by the provisions of article 26 of title 39, C.R.S., as amended, and by rules and regulations promulgated by the Colorado Department of Revenue.

(c) The amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S., as amended.

(d) The tangible personal property and services taxable pursuant to this proposal shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., as amended, and subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S., as amended, and further subject to the exemption for sales of food (as defined in section 39-26-102(4.5), C.R.S., as amended) specified in section 39-26-707 (1) (e), C.R.S., as amended, the exemption for purchases of machinery and machine tools specified in section 39-26-709 (1), C.R.S., as amended, and the exemption of sales and purchases of those items in section 39-26-715(1)(a)(II), C.R.S., as amended.

(e) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax imposed by the County of Boulder when such sales meet both of the following conditions:

- (1) The purchaser is a non-resident of or has his principal place of business outside of the County of Boulder; and
- (2) Such personal property is registered or required to be registered outside the limits of the County of Boulder under the laws of the State of Colorado.

(f) The countywide sales tax shall not apply to the sale of construction and building materials, as the term is used in section 29-2-109, C.R.S., as amended, if such materials are picked up by the purchaser and if the purchaser of such materials

presents to the retailer a building permit or other documentation acceptable to the County evidencing that a local use tax has been paid or is required to be paid.

(g) The countywide sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the County of Boulder. A credit shall be granted against the sales tax imposed by the County of Boulder with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the County of Boulder.

(h) The sales tax imposed shall be collected, administered and enforced by the Executive Director of the Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado state sales tax, as provided by article 26 of title 39, C.R.S., as amended.

2. A countywide one tenth of one percent (0.10%) use tax in accordance with the provisions of article 2 of title 29, C.R.S., as amended is imposed for the privilege of using or consuming in the County of Boulder any construction and building materials purchased at retail and for the privilege of storing, using, or consuming in the County of Boulder any motor and other vehicles, purchased at retail on which registration is required. The use tax shall not apply:

(a) To the storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the County of Boulder;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the County of Boulder either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(c) To the storage, use, or consumption of tangible personal property brought into the County of Boulder by a non-resident thereof for his own storage, use, or consumption while temporarily within the County; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a non-resident to be used in the conduct of a business in this state;

(d) To the storage, use, or consumption of tangible personal property by the United States government, or the State of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof;

(f) To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by the County of Boulder. A credit shall be granted against the use tax imposed by the

County of Boulder with respect to a person's storage, use, or consumption in the County of Boulder of tangible personal property purchased in another statutory or home rule county. The amount of the credit shall be equal to the tax paid by the person by reason of the imposition of a sales or use tax of the other statutory or home rule county on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this resolution;

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the County of Boulder and brought into it by a nonresident acquiring residency;

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the County of Boulder and purchased the vehicle outside of the County of Boulder for use outside of the County of Boulder and actually so used it for a substantial and primary purpose for which it was acquired and registered, titled, and licensed said motor vehicle outside of the County of Boulder;

(i) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to November 8, 1994, or, where applicable to such storage, use or consumption after December 31, 2009, pursuant to a written contract for the purchase thereof entered into prior to November 6, 2007;

(j) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into any time prior to November 8, 1994, or, where applicable to such storage, use or consumption after December 31, 2009, pursuant to a construction contract bid, let, or entered into prior to November 6, 2007.

3. Except as provided by section 39-26-208, C.R.S., as amended, any use tax imposed shall be collected, enforced and administered by the County of Boulder. The use tax on construction and building materials will be collected by the County building inspector or as may be otherwise provided by intergovernmental agreement, based upon an accurate estimate of building and construction materials costs submitted by the owner or contractor at the time a building permit application is made.

4. If the majority of the registered electors voting thereon vote for approval of this County-wide sales and use tax extension proposal, such existing 0.10% County-wide sales and use tax shall continue to be effective throughout the incorporated and unincorporated portions of the County of Boulder up to and including December 31, 2029.

5. If the majority of the registered electors voting thereon vote for approval of this County-wide sales and use tax extension proposal, revenues collected from the imposition of said 0.10% county-wide sales and use tax up to and including December 31, 2009 would be expended in accordance with Resolution No. 2000-113, and Resolution No. 2000-113 would be superseded by this Resolution effective for revenues collected from the imposition of said 0.10% county-wide sales and use tax beginning January 1, 2010.

6. If the majority of the registered electors voting thereon vote for approval of this proposal, the Board of County Commissioners may issue up to \$40,000,000 maximum principal amount, net of any premium, of open space capital improvement trust fund bonds payable from moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from moneys from the County's extended 0.10% sales and use tax authorized herein, and to the extent moneys from such tax are not sufficient for the repayment of such bonds, from the County's other open space sales and use taxes, the conservation trust fund, the county's general fund and other legally available funds, in such amount as is necessary to pay the debt service on the bonds and to otherwise comply with the covenants of the resolution to be adopted by the Board of County Commissioners authorizing the bonds and setting the terms thereof, such bonds being issued in accordance with part 5 of article 26 of title 30, C.R.S., as amended.; and

7. The cost of the election shall be paid from the general fund of the County of Boulder.

8. The County Clerk and Recorder shall publish the text of this sales and use tax proposal four separate times, a week apart, in the official newspaper of the County of Boulder and each city and incorporated town within this County.

9. The County Clerk and Recorder, as election officer, shall undertake all measures necessary to comply with the election provisions set forth in Colo. Const., Art. X, Section 20(3), including but not limited to the mailing of required election notices and ballot issue summaries.

10. The conduct of the election shall conform so far as is practicable to the general election laws of the State of Colorado.

11. The net proceeds from the sales and use tax received by the County of Boulder during the extended period authorized hereby, as well as the net proceeds from the issuance of open space capital improvement trust fund bonds, shall be expended by the County of Boulder for the following purposes:

- (a) To acquire fee title interest in real property through all means available and by various types of instruments and transactions, in the County of Boulder for open space when determined by the Board of County of Commissioners, acting pursuant to authority as set forth in title 30, C.R.S., and in article 7 of title 29, C.R.S., to be necessary to preserve such areas;
- (b) To acquire an interest in real property by other devices, including but not limited to, lease, development rights, mineral and other subsurface rights, and conservation easements, in order to effect the preservation of open space lands, as hereinafter defined, in the County of Boulder;
- (c) To acquire water rights and water storage rights for use in connection with real property acquired for open space;
- (d) To acquire rights-of-way and easements for access to open space lands and for trails in the County of Boulder and to build and improve such access ways and trails;

- (e) To acquire options related to these acquisitions;
- (f) To pay for all related costs of acquisition and construction as set forth in subparagraphs (a) through (c) above;
- (g) To improve all County of Boulder open space property and trails in accordance with Parks and Open Space policies adopted by the Board of County Commissioners; improvements shall be related to resource management, including but not limited to water improvements (irrigation, domestic use and recreational uses), preservation enhancements (fences, wetlands and wildlife habitat improvements), and passive recreational uses, such as trails, trailhead parking and other access improvements, picnic facilities and restrooms;
- (h) To permit the use of these funds for the joint acquisition of open space property with municipalities located within the County of Boulder in accordance with an intergovernmental agreement for open space or with other governmental entities or land trusts;
- (i) To pay the costs of issuance and debt service of capital improvement trust fund revenue bonds, including principal and interest thereon, as authorized by this resolution.
- (j) To pay for the management and maintenance of open space lands and trails, including but not limited to forest health management projects and wildlife habitat preservation projects.

12. Open space land, for the purposes of this resolution, is generally described as: those lands in which it has been determined by the Board of County Commissioners that it is, or may in the future be, within the public interest to acquire an interest in order to assure their protection and to fulfill one or more of the functions described below. Interests acquired may include fee simple, lease, easements, development rights, and conservation easements.

13. Open space shall serve one or more of the following functions:
- (a) urban shaping between or around municipalities or community service areas and buffer zones between residential and non-residential development;
 - (b) preservation of critical ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitat, natural resources and landmarks, and cultural, historical and archeological areas,;
 - (c) linkages and trails, access to public lakes, streams and other usable open space lands, stream corridors and scenic corridors along existing highways;
 - (d) areas of environmental preservation, designated as areas of concern, generally in multiple ownership, where several different preservation methods (including other governmental bodies' participation or private ownership) may need to be utilized;
 - (e) conservation of natural resources, including but not limited to forest lands, range lands, agricultural land, aquifer recharge areas, and surface water;

- (f) preservation of land for outdoor recreation areas limited to passive recreational use, including but not limited to hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing.

14. Once acquired, open space may be used only for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes, all as set forth above.

15. The Board of County Commissioners will annually consult the City Councils and Town Boards of the municipalities within Boulder County to assure that open space preservation and trail projects identified by municipalities are considered in setting county open space acquisition and trail development priorities for the following calendar year.

16. No open space land acquired through the revenues provided by this sales and use tax may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the Board of County Commissioners. Prior to such disposal, the Parks and Open Space Advisory Committee shall review the proposed disposition, and a recommendation shall be forwarded to the Board of County Commissioners. Approval of the disposal may be given only by a majority vote of the members of the Board of County Commissioners after a public hearing held with notice published at least ten (10) days in advance in the official newspaper of the County and of each city and incorporated town within the County, giving the location of the land in question and the intended disposal thereof. No such open space land shall be disposed of until sixty (60) days following the date of Board of County Commissioners' approval of such disposal. If, within such sixty (60) day period, a petition meeting the requirements of §29-2-104, C.R.S., as amended, or its successor statute, is filed with the County Clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until a referendum held in accordance with said statute has been held. The provisions of this paragraph shall not apply to agricultural leases for crop or grazing purposes for a term of ten (10) years or less.

17. If the real property or any interest therein acquired by use of proceeds of said sales and use tax pursuant to paragraph 13 of this resolution be ever sold, exchanged, transferred or otherwise disposed of, the consideration for such sale, exchange, transfer or disposition shall be subject to the same expenditure and use restrictions as those set forth herein for the original proceeds of said sales and use tax, including restrictions set forth in this paragraph; and if such consideration is by its nature incapable of being subject to the restrictions set forth herein, then the proposed sale, exchange, transfer or disposition shall be unlawful and shall not be made.

18. The County of Boulder will not use any of the revenues received from the sales and use tax to acquire an interest, other than an option, in open space land within the community service area of a municipality as designated and recognized by action of

the Board of County Commissioners in accordance with the Boulder County Comprehensive Plan or as provided in an intergovernmental agreement with such municipality, without the concurrence of the municipality involved.

19. Revenue generated from activities on open space lands may be used to acquire, and improve open space properties.

20. Interest generated from the revenues of the sales and use tax shall be used for the purposes set forth in this resolution.

21. For purposes of Colo. Const., Art. X, Section 20, the receipt and expenditure of revenues of the sales and use tax and of the revenue bonds and refunding bonds, if any, together with earnings on the investment of the proceeds of the tax and bonds, shall constitute a voter-approved revenue change.

22. The existing county-wide total sales and use tax rate of 0.65%, a portion of which would be extended under this proposal, when added to existing state and municipal sales and use tax rates which are non-exempt under the provisions of section 29-2-108, C.R.S., as amended, and cumulated with the extended 0.10% countywide transportation sales and use tax proposed contemporaneous herewith, results in a total sales and use tax rate in excess of the 6.9 percent limit stated in said statute as follows: Boulder: 7.11%; Boulder (retail food service): 7.26%; Erie: 7.05%; Lafayette: 7.05%; Louisville: 6.925%; Nederland: 7.30%; Superior: 7.01%.

23. The sales and use tax shall expire at 12:00 a.m. on January 1, 2030, and all monies remaining may continue to be expended for the purposes set forth herein until completely exhausted.

24. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this resolution which can be given effect without the invalid provision or applications and to this end, the provisions of this resolution are declared to be severable.

25. The proposal as described in this Resolution shall take effect immediately upon the approval of the electorate.

26. A notice of the adoption of this county-wide sales and use tax extension proposal by a majority of the registered electors voting thereon shall forthwith be submitted by the County Clerk and Recorder to the Executive Director of the Department of Revenue, together with a certified copy of this Resolution, prior to November 16, 2007.

27. Should this proposal to extend the existing county-wide 0.10% sales and use tax, issue new bonds, approve the multiple fiscal year commitment of revenues for the payment thereof, and obtain a voter-approved revenue change, not be approved by the electorate in November, the existing tax, multiple fiscal year revenue commitment

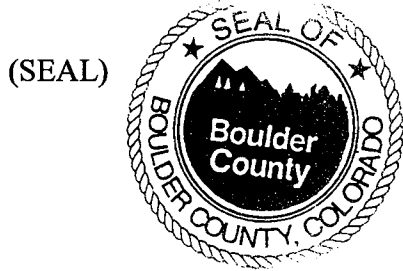
authorization, and existing voter-approved revenue change, shall not in any way be affected by such failed amendment and shall continue in full force and effect as if this Resolution had not been adopted.

28. The Board of County Commissioners of Boulder County shall take action to set a ballot title for this issue.

IT IS HEREBY DECLARED by the Board of County Commissioners of the County of Boulder and State of Colorado that this resolution is necessary for the immediate preservation of the public health, safety and welfare, and that it shall become effective immediately upon its adoption.

ADOPTED this 14th day of August, 2007 by the Board of County Commissioners of the County of Boulder, State of Colorado.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY, COLORADO



Ben Pearlman, Chair

Will Toor, Vice-chair

ATTEST:

Jana Petersen, Administrative Deputy
Cindy Domenico, Commissioner