

BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

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COMMENTS

RESOLUTION NO. 2010-93

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY DESCRIBING A PROPOSAL FOR THE IMPOSITION OF AN ADDITIONAL 0.15% COUNTY-WIDE 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; SETTING THE TITLE AND CONTENT OF THE BALLOT ISSUE FOR SUCH PROPOSAL; AND.. PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, Article 2, Title 29, Colorado Revised Statutes, as amended (hereinafter the "Article"), 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 (the "Board") of Boulder County, Colorado (the "County") 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 approved the County-wide sales and use tax and bonds proposal described in said Resolution 93-174; 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 the County, preserved open space being a fundamental shared value of the citizens of the 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, and lands to 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 approved by the voters of the County for open space purposes 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, the imposition of an additional County-wide sales and use tax effective January 1, 2011 to and including December 31, 2030, at the rate of 0.15%, with revenues to be expended for open space acquisition and improvement, management and maintenance and for repayment of capital improvement trust fund bonds for open space acquisition and improvement, in accordance with the purposes set forth in Resolution No. 93-174, is a cost-effective method of obtaining additional revenues which can be used for said purposes; 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 such additional 0.15% 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 conservation trust fund, and other legally available funds; and

WHEREAS, the Board finds that the imposition of an additional County-wide sales and use tax at the rate of 0.15% to be effective from January 1, 2011 to and including December 31, 2030, 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 such 0.15% 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 conservation trust 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 ("TABOR"), would permit additional revenues to be utilized now to further accomplish the 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, the 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 desires to refer to the registered electors of the County, 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, the Article provides for the submission of such a County-wide sales and use tax proposal and multiple fiscal year obligation authorization to the registered electors of the County at a general election scheduled within 120 days after adoption of such resolution; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO that there shall be referred to the registered electors of the County at the general election to be held on Tuesday, November 2, 2010, the following proposal:

1. (a) A County-wide fifteen one-hundredths of one percent (0.15%) sales tax in accordance with the provisions of the Article is imposed on the sale of tangible personal property at retail or the furnishing of services in the County as provided in paragraph (d) of subsection (1) of Section 29-2-105, Colorado Revised Statutes ("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 or to a common carrier for delivery to a destination outside the limits of the County. 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 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) Subject to the provisions of Section 39-26-127, C.R.S., as amended, 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: (i) 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; (ii) the exemption for purchases of machinery and machine tools specified in Section 39-26-709(1), C.R.S., as amended; (iii) the exemption of sales and purchases of those items in Section 39-26-715(1)(a)(II), C.R.S., as amended; (iv) the exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in Section 39-26-718(1)(c), C.R.S., as amended; (v) the exemption for

sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles specified in Section 39-26-723, C.R.S., as amended; (vi) the exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source, specified in Section 39-26-724, C.R.S., as amended; and (vii) the exemption for sales that benefit a Colorado school specified in Section 39-26-725, 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 when such sales meet both of the following conditions:

(i) the purchaser is a non-resident of or has his principal place of business outside of the County; and

(ii) such personal property is registered or required to be registered outside the limits of the County under the laws of the State of Colorado.

(f) The County-wide sales tax proposed hereby 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 County-wide sales tax proposed hereby 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. A credit shall be granted against the sales tax imposed by the County 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.

(h) The County-wide sales tax proposed hereby 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; provided that the County shall be authorized to enter into an intergovernmental agreement with said Executive Director pursuant to Section 39-26-122.5, C.R.S., as amended, to enhance systemic efficiencies in the collection of such taxes.

2. A County-wide fifteen one-hundredths of one percent (0.15%) use tax in accordance with the provisions of the Article is imposed for the privilege of using or consuming in the County any construction and building materials purchased at retail and for the privilege of storing, using, or consuming in the County any motor and other vehicles, purchased at retail on which registration is required. Subject to the provisions of Section 39-26-212, C.R.S., as amended, 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;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the County 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 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. A credit shall be granted against the use tax imposed by the County with respect to a person's storage, use, or consumption in the County 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 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 and purchased the vehicle outside of the County for use outside of the County 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;

(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 January 1, 2011;

(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 January 1, 2011.

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. 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 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 proposal, such additional 0.15% County-wide sales and use tax shall be effective on January 1, 2011 throughout the incorporated and unincorporated portions of the County up to and including December 31, 2030.

5. If the majority of the registered electors voting thereon vote for approval of this County-wide sales and use tax proposal, revenues collected from the imposition of said 0.15% County-wide sales and use tax up to and including December 31, 2030 shall be expended in accordance with this Resolution.

6. If the majority of the registered electors voting thereon vote for approval of this proposal, the Board 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-wide 0.15% 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 tax moneys, the County's 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 or resolutions to be adopted by the Board authorizing the bonds and setting the terms thereof, such bonds to be 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.

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 and each city and incorporated town within this County.

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

10. All of the net proceeds from the additional 0.15% County-wide sales and use tax proposed hereby that are received by the County from collections during the period authorized hereby, as well as the net proceeds from the issuance of open space capital improvement trust fund bonds, shall be distributed to the County and expended by the County 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 for open space when determined by the Board, 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;
- (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 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 (e) above;
- (g) To improve all County open space property and trails in accordance with Parks and Open Space policies adopted by the Board; 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 manage, patrol and maintain all County open space property and trails in accordance with Parks and Open Space policies adopted by the Board;
- (i) To permit the use of these funds for the joint acquisition of open space property with municipalities located within the County in accordance with an intergovernmental agreement for open space or with other governmental entities or land trusts;
- (j) 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.

In connection with these purposes, these funds shall be used for:

- major remaining open lands, including an emphasis on areas surrounding or within existing mountain open space parks (Heil/Hall/Caribou ranches);
- highly visible buffer lands surrounding cities and towns outside their urban growth areas;

- wildlife habitat lands, especially winter elk range areas of North Foothills Highway, and remaining parcels along stream corridors, including St. Vrain River, Boulder Creek, Lefthand Creek and Coal Creek;
- lands that include trail corridors connecting communities to open space properties; and
- agricultural lands and improvements that enhance local food production;
- effective/efficient use of water resources for open space lands; and
- improvements to such lands

11. Open space land, for the purposes of this resolution, is generally described as: those lands in which it has been determined by the Board 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.

12. 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.

13. 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.

14. The Board will annually consult the City Councils and Town Boards of the municipalities within the 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.

15. 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. 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. Approval of the disposal may be given only by a majority vote of the members of the Board 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's 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.

16. 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.

17. The County will not use any of the revenues received from the 0.15% County-wide sales and use tax proposed hereby to acquire an interest, other than an option, in open space land within the community service or influence area of a municipality as designated and recognized by action of the Board 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:

18. Revenue generated from activities on open space lands may be used to acquire, manage, patrol, improve and maintain open space properties.

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

20. For purposes of TABOR, the receipt and expenditure of revenues of the 0.15% County-wide sales and use tax proposed hereby and of the proceeds of the revenue bonds proposed hereby and refunding bonds, if any, together with earnings on the investment of the proceeds of such tax and bonds, shall constitute a voter-approved revenue change.

21. The sales and use tax shall expire at 12:00 a.m. on January 1, 2031, and all monies remaining may continue to be expended for the purposes set forth herein until completely exhausted.

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

23. A notice of the approval of this County-wide sales and use tax 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 15, 2010.

24. The election shall be conducted on November 2, 2010 as a coordinated election in accordance with articles 1 to 13 of title 1, C.R.S. (the "Uniform Election Code").

25. The Board shall take further action by resolution to set a ballot title for the proposal described herein. For purposes of Section 1-11-203.5, C.R.S., as amended, such resolution shall serve to set the ballot title for such proposal and the text of such proposal shall be the text of this Resolution.

26. No later than September 3, 2010, the Designated Election Official shall certify the order of the ballot and ballot content to the Clerk and Recorder of the County (the "County Clerk"). The "Designated Election Official" shall be Michelle Krezek, Intergovernmental Relations Director and Administrative Deputy to the Board.

27. The order of the ballot shall be determined by the County Clerk as provided in Section 1-5-407(5), C.R.S., and the rules of the Secretary of State. In accordance therewith, if the County refers more than one ballot issue, the order of the ballot shall, in accordance therewith, be as follows: first, measures to increase taxes; second, measures to retain revenues in excess of its fiscal year spending limit; third, measures to increase debt; fourth, citizen petitions; and fifth, other referred measures. If the County refers more than one ballot issue within any such type of ballot issue, the order within such type of ballot issue shall, unless otherwise determined by the Board, be the same as the order of the ballot issues in the resolution of the Board that orders that such ballot issues be so referred (with questions set forth in separate resolutions listed in the order in which such resolutions were adopted).

28. The Designated Election Official is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and comply with the Uniform Election Code, TABOR and other applicable laws; provided that all acts required or permitted by the Uniform Election Code relevant to voting by early voters' ballots, absentee ballots and emergency absentee ballots which are to be performed by the designated election official shall be performed by the County Clerk. The election shall be conducted in accordance with the Uniform Election Code, TABOR and all other applicable laws.

29. No later than September 21, 2010, the Designated Election Official shall submit to the County Clerk, in the form, if any, specified by the County Clerk, the notice of election required by subsection (3)(b) of TABOR.

30. No later than October 13, 2010, the Designated Election Official shall ensure that, in accordance with Section 1-7-908, C.R.S., as amended, the posting of financial notice required thereby is made on the County's website.

31. The Designated Election Official, the County Clerk and other County officials and employees are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

32. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board and the officers and employees of the County and directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.

33. All prior acts, orders or resolutions, or parts thereof, by the County in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

34. 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.

IT IS HEREBY DECLARED by the Board of County Commissioners of the County of Boulder, 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.

This Resolution has been adopted this 27th day of July, 2010.

BOULDER COUNTY, COLORADO

(SEAL)



ATTEST:


Mike Ryder
Deputy Clerk to the Board


Cindy Domenico, Chair


Ben Pearlman, Vice-Chair

 (EXCUSED)
Will Toor, Commissioner