



**Board of County Commissioners**

**Faye Griffin**

District No. 1

**J. Kevin McCasky**

District No. 2

**Donald Rosier**

District No. 3

February 15, 2011

The Honorable Ken Salazar  
Secretary of the Department of Interior  
U.S. Department of Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

**Re: Transfer of Transportation Right of Way at Rocky Flats Wildlife Refuge**

Dear Secretary Salazar:

You recently received a letter from the City of Boulder and Boulder County asking you not to agree to the request of the Jefferson Parkway Public Highway Authority (JPPHA) to purchase the transportation right of way denoted in Section 3174 of the Rocky Flats Wildlife Refuge Act of 2001 (the Act), until Jefferson County, the City of Boulder, and Boulder County reach agreement on the preservation of the Colorado State Land Board's property known as Rocky Flats Section 16 (Section 16). The City of Boulder and Boulder County also raise the issue of an additional environmental review for unspecified purposes prior to consummating the transfer of the transportation right of way. The attempt by the City of Boulder and Boulder County to thwart the transfer of the transportation right of way not only delays progress on the Jefferson Parkway, but also prevents completion of the agreement and acquisition of Section 16, the enhancement of the Refuge, and progress on your "Beyond the Fences" initiative.

None of the issues raised by the City of Boulder and Boulder County are relevant to the decision to transfer the right of way.

The Department of Interior, United States Fish and Wildlife Service's (USFWS) own Rocky Flats Comprehensive Conservation Plan addressed the environmental issue and determined that the transfer of the transportation right of way will not adversely impact or affect the Rocky Flats Wildlife Refuge (Refuge). Additionally, two years ago the JPPHA adopted Resolution 1-09 committing JPPHA to mitigate and resolve any environmental issues with USFWS related to the construction of the Jefferson Parkway.

The fact that an agreement has not yet been executed regarding Section 16 should not delay the transfer of the transportation right of way. Fundamentally, the Act does not require any governmental unit to acquire any property or to take any action as a condition for the sale of the transportation right of way; nor does the Act give any local government the authority to cause delay in such sale of the right of way.



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The Regional Realty Division Chief of the USFWS obtained an appraisal of the transportation right of way in the summer of 2010. That appraisal was conducted in accordance with the requirements established by the Department of Interior and applicable federal law and regulation, with the resulting appraisal report issued on December 1, 2010. The appraisal concluded that the value of the transportation right of way is \$2.8 million for the 100 acres, more or less, or a per acre value of \$28,000. On January 20, 2011, the JPPHA Board unanimously adopted Resolution 11-3, authorizing its staff to proceed with the purchase of the transportation right of way for the appraised value. Subsequently, the Realty Division initiated the process to complete the sale and comply with the Act.

As a local government partner and as a commitment to you and USFWS, the Jefferson County Board of Commissioners (BCC) passed Resolution CC10-448 committing \$5 million of funding to the acquisition of all or any portion of Section 16 that your staff feels would be an asset to the Refuge.

At our direction, Jefferson County staff has been working with the City of Boulder and Boulder County staff to draft an agreement that focuses on the acquisition of Section 16 and anticipates the transfer of the property to the USFWS for inclusion into the Refuge. Further, BCC Resolution CC10-448, attached, commits Jefferson County's contribution until January 1, 2016. At no time has the BCC directed staff not to move forward with the acquisition of Section 16. We were negotiating in good faith with the City of Boulder and Boulder County, and are dismayed that they have abandoned those efforts, walking away from the negotiation table to contact you directly. We have attached our latest iteration of an agreement for your review that shows the progress of those negotiations.

To reiterate, Section 3174 of the Act commits the United States of America to sell or lease the transportation right of way once a local government meets the conditions set forth in the Act. The JPPHA has met those conditions, formally requested the purchase of the right of way, and has agreed to pay the price for such property as determined by your staff. Once the right of way is transferred to JPPHA, Jefferson County will resume its efforts to acquire Section 16.

Mr. Secretary, Jefferson County lives up to its commitments and was willing to put \$5 million in an escrow account specifically to be used to acquire Section 16 and convey it to USFWS. We are disheartened that those who have made such public pronouncements of commitment to work in cooperation with us would jeopardize the imminent and fruitful conclusion of this impressive regional initiative that inures to the benefit of the Refuge and the citizens of the United States of America.

We encourage you to move forward with the transfer of the transportation right of way, to enable the acquisition of Section 16 and the implementation of your visionary "Beyond the Fences" initiative.

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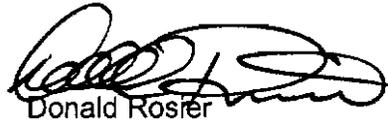
Thank you for your consideration and efforts on our behalf.

Sincerely,

BOARD OF COUNTY COMMISSIONERS



Faye Griffin  
Chairman



Donald Rosier



J. Kevin McCasky

BCC/ew/ll

Enclosures

c: Mark Udall, United States Senate  
Michael Bennet, United States Senate  
Ed Perlmutter, United States House of Representatives  
Jared Polis, United States House of Representatives  
Will Shafroth, Interim Assistant Secretary of Fish and Wildlife  
Steve Guertin, Regional Director, USFWS Mountain Prairie Region  
Boulder County Board of Commissioners  
Susan Osborne, Mayor, City of Boulder  
Boulder City Council  
Jefferson Parkway Public Highway Authority  
Ralph Schell, Jefferson County Administrator  
Ellen Wakeman, Jefferson County Attorney

Commissioner Griffin moved that the following Resolution be adopted:

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF JEFFERSON  
STATE OF COLORADO  
RESOLUTION NO. CC10-448**

**RE: BOARD OF COUNTY COMMISSIONERS – REGIONAL VISION OF  
THE NORTHWEST QUADRANT OF JEFFERSON COUNTY**

**WHEREAS**, interested parties desire to achieve an overall regional vision in the northwest quadrant of Jefferson County to balance the competing interests of construction of a major transportation corridor known as the Jefferson Parkway, preservation of regional open space and wildlife habitat, and creation of economic development opportunities, and

**WHEREAS**, the interested parties arrived at principles and an implementation strategy to implement this regional vision, and

**WHEREAS**, while the parties recognize there are numerous details related to property acquisition described herein, and as such the accompanying negotiations may take an extended period of time, the parties approve this plan of action in good faith, in the spirit of cooperation and a commitment to achieve the regional vision discussed above.

**NOW THEREFORE, BE IT RESOLVED**, that the Board of County Commissioners supports implementation of the regional vision as follows:

1. Jefferson County, the City of Boulder, and the County of Boulder agree that they will support the acquisition and transfer of land along the eastern edge of the Rocky Flats Wildlife Refuge, known as the transportation right-of-way denoted in Section 3174 of the Rocky Flats Wildlife Refuge Act of 2001, from the U.S. Fish & Wildlife Service (USF&WS) to the Jefferson Parkway Public Highway Authority (JPPHA) for the express use as a multi-model transportation corridor.
2. Jefferson County, the City of Boulder and the County of Boulder recognize and agree that the acquisition of the transportation right-of-way by the JPPHA shall be accomplished by a separate transaction and shall not be contingent upon, or delayed until, the conclusion of any property acquisition transaction related to any portion of Rocky Flats Section 16.

3. Jefferson County, the City of Boulder, and the County of Boulder agree that they support, and will work collaboratively with the Colorado State Board of Land Commissioners (State Land Board) to acquire property interests that achieve the permanent preservation of Rocky Flats Section 16 as publicly owned open space and/or wildlife refuge. Any other jurisdictions, agencies or entities may participate in the contribution of funding or resources necessary to acquire property interests in Rocky Flats Section 16 as long as any contribution of funding or resources has no condition counter to the principles outlined herein.

4. Jefferson County hereby commits \$5,000,000 to acquire property interests in Rocky Flats Section 16 from the State Land Board. This commitment by Jefferson County will expire by January 1, 2011 if the City of Boulder and the County of Boulder have not agreed to the principles outlined herein. Further, if the parties agree to the principles outlined herein by January 1, 2011, Jefferson County will maintain its \$5,000,000 commitment until January 1, 2016.

5. Jefferson County, the City of Boulder and the County of Boulder will also work to acquire the mineral leases on Rocky Flats Section 16, and will support efforts to transfer the underlying mineral rights from the State Land Board to the USF&WS.

6. The City of Boulder and the County of Boulder agree that they will adopt a neutral position on construction of the Jefferson Parkway and will not oppose the transfer of right of way from the USF&WS, or seek to overturn the existing approval by the Denver Regional Council of Governments (DRCOG), or support any legal actions attempting to block the construction of the Jefferson Parkway.

Commissioner McCasky seconded the adoption of the foregoing Resolution. The roll having been called, the vote was as follows:

Commissioner Faye Griffin	Aye
Commissioner J. Kevin McCasky	Aye
Commissioner Kathy Hartman, Chairman	Aye

The Resolution was adopted by unanimous vote of the Board of County Commissioners of the County of Jefferson, State of Colorado.

Dated: November 23, 2010

I, Teri Schmaedecke, Deputy Clerk to the Board of County Commissioners do hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Board of County Commissioners at a regular hearing held in Jefferson County, Colorado on November 23, 2010.

 , Deputy Clerk to the Board



**INTERGOVERNMENTAL AGREEMENT BETWEEN JEFFERSON COUNTY,  
BOULDER COUNTY, AND THE CITY OF BOULDER REGARDING THE  
JEFFERSON PARKWAY AND ACQUISITION OF SECTION 16**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the **City of Boulder**, a Colorado home rule city ("City"), the **County of Jefferson**, a body corporate and politic of the State of Colorado ("Jefferson County"), and the **County of Boulder**, a body corporate and politic of the State of Colorado ("Boulder County"). The City, Jefferson County and Boulder County are collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate with each other regarding purposes of planning and development and provide for the joint exercise of functions and services to which each is individually authorized; and

WHEREAS, Jefferson County has sought approval for the authorization and construction of the Jefferson Parkway, a transportation corridor connecting Broomfield and Jefferson Counties ("Parkway"); and

WHEREAS, the City and Boulder County have opposed the construction of the Parkway because of plans to place part of the alignment within the Rocky Flats National Wildlife Refuge and upon connectivity between important wildlife areas in the vicinity; and

WHEREAS, the Parties desire to commit themselves to working cooperatively with each other to balance competing interests related to the future development of the Highway 93 corridor in northern Jefferson County; and

WHEREAS, the parcel that is approximately 640 acres located in Section 16, Township 2 South, Range 70 West of the 6<sup>th</sup> Principal Meridian ("Section 16"), has previously been identified to have Jefferson County Open Space Master Plan values; and

WHEREAS, the City and Boulder County agree to withdraw their opposition to the authorization and construction of the Parkway in exchange for financial assistance and support from Jefferson County for plans to acquire real property interests to create a permanent wildlife conservation area in Section 16 that will mitigate the impacts of the Parkway, as set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the recitals, promises, covenants, and undertakings hereinafter set forth, the Parties agree as follows:

1. Jefferson County will contribute \$5,000,000 ("Jefferson County's Contribution") towards the acquisition of Section 16 with priority given to the acquisition of surface interests and real property interests to be dedicated to publicly-owned open space and/or wildlife conservation. The goal of the Parties is to acquire all property interests in Section 16 and/or otherwise facilitate the transfer of those property interests to United States Fish and Wildlife Service ("USFWS") for inclusion in the Rocky Flats National Wildlife Refuge. Within 90 days after execution of this Agreement, Jefferson County's Contribution shall be placed in an interest-bearing escrow account (the "Escrow") to be held by an escrow agent mutually acceptable to all Parties and pursuant to escrow instructions consistent with the terms of this Agreement.

2. Within 30 days following the deposit of Jefferson County's Contribution in escrow, both the City and Boulder County will contact the USFWS, the Colorado Department of Transportation and the Denver Regional Council of Governments ("DRCOG") to inform these entities that they withdraw their opposition and will take a neutral position on the conveyance of right-of-way from USFWS to the Jefferson Parkway Public Highway Authority ("Authority") along the eastern edge of the Rocky Flats National Wildlife Refuge and that they will not oppose construction of the Parkway as proposed in the Authority's application for inclusion of the Parkway in the Denver Regional Council of Governments Fiscally Constrained Regional Transportation Plan ("Parkway Plan"). Jefferson County's Contribution is contingent upon the condition precedent of the acquisition of the right-of-way by the Authority. In the event the right-of-way is not acquired by January 1, 2014, Jefferson County's Contribution shall be paid to Jefferson County for use by Jefferson County for any appropriate Open Space purposes and all other contributions will be returned to the entities that contributed them, all in proportion to the amount of their contributions.

3. By agreeing not to oppose the conveyance of right-of-way to the Authority and not to oppose construction of the Parkway as provided above, neither the City nor Boulder County are giving up their right to advocate for maintenance or enhancement of Highway 93 or to object to future changes in the Parkway Plan that would affect Highway 93 and that would require a new approval from DRCOG. In the event either the City or County of Boulder does not withdraw its opposition as specified in this paragraph, or opposes the Parkway under any circumstances not permitted in this paragraph, the Jefferson County Contribution will be paid to Jefferson County to be used for any appropriate Open Space purposes and all other contributions will be returned to the entities that contributed them, all in proportion to the amount of their contributions.

4. After the acquisition of the right of way by the Authority, the money in the Escrow will become available for use by the Parties. The Parties will work in good faith to

leverage Jefferson County's Contribution to enable the acquisition of both the surface and mineral interests in Section 16 at or below fair market value. At the time this Agreement is signed, Section 16 is owned by the State of Colorado, Board of Land Commissioners ("State Land Board") and is encumbered by various property rights, leases and permits held by private parties. The Parties and/or their agents will work with the State Land Board and the private parties in an attempt to acquire a fee simple interest in all of Section 16, but the parties recognize that certain easements and encumbrances may remain or be granted as appropriate or as required by sellers. The goal of the Parties is to acquire the property interests in Section 16 and/or otherwise transfer those property interests to USFWS for inclusion in the Rocky Flats National Wildlife Refuge. The Parties will not employ any agent unless such agent will first agree to a set fee and scope of work acceptable to the Parties. The Parties will make efforts to raise additional funds to acquire property rights in Section 16.5. Because Section 16 is owned and encumbered by entities other than the Parties and because the Parties do not have assurances as to the conditions upon which USFWS will take title to Section 16, it is uncertain as to whether the Parties' goal that Section 16 be acquired and included in the Rocky Flats National Wildlife Refuge, or otherwise protected as wildlife habitat, can be realized. If the Parties, after good faith efforts, are unsuccessful in their attempts to acquire and protect all of Section 16 as wildlife habitat, Jefferson County's Contribution may be used to purchase as Open Space the Woman Creek parcel and the Tall Grass Prairie, as described in the Exhibit attached hereto, together with related wildlife and trail improvements. If neither Woman Creek nor the Tall Grass Prairie can be purchased, the Parties will meet to consider uses for all of the moneys that remain in escrow for other ways to enhance open space, trails, and wildlife habitat that are agreeable to all of the Parties. Any moneys remaining in the escrow unexpended by January 1, 2016, shall be returned to Jefferson County to be used for any appropriate Open Space purposes and all other contributions will be returned to the entities that contributed them, all in proportion to the amount of their contributions.

5. Jefferson County pledges to consult with the Cities of Superior, Golden and other communities regarding their concerns relative to construction of the Parkway.

6. The City and Boulder County agree to each contribute \$ \_\_\_\_\_ to the acquisition of Section 16 and will encourage other local governments also to make contributions. Funds contributed by the City and Boulder County shall be placed in the Escrow on or before December 31, 2011.

7. This Agreement is intended as the complete integration of all understanding among the Parties. No prior resolutions, and no prior or contemporaneous addition, deletion, or other amendment to this Agreement shall have any force or effect, unless embodied herein in writing. No subsequent amendment shall have any force or effect unless contained in a written Agreement executed by the Parties.

8. The enforcement of this Agreement and all rights of action relating to such enforcement, are reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person, nor shall anything contained in this

Agreement be construed as a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. seq., as amended. The Parties intend that any person or entity other than the Parties be deemed an incidental beneficiary only.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY OF BOULDER**, a Colorado home rule city

By: \_\_\_\_\_  
Jane S. Brautigam, City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**COUNTY OF BOULDER**, a body corporate and politic

By: \_\_\_\_\_  
Ben Pearlman, Chair

By: \_\_\_\_\_  
Cindy Domenico, Vice-Chair

By: \_\_\_\_\_  
Will Toor, Commissioner

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Attorney

**COUNTY OF JEFFERSON**, a body corporate and  
politic

By: \_\_\_\_\_  
Faye Griffin, Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Attorney