Title: Administrative Policy Open Space Program Terms, Priorities, Use of Funds and Transfers of Property	**Policy No.** Part 6, Management and Use of County Property Chapter 4, Open Space Section 2
	Effective Date May 1, 2012
Policy Custodian Open Space Division	**Adoption/Revision Date** May 1, 2012

Adopting Resolution(s): CC12-175

References (Statutes /Resos/Policies): §32-1-103(10), §31-1-101(6); 1972 Resolution, CC80-711, CC81-227, CC86-110, 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

Purpose: To (1) set forth the priorities of the Program, (2) detail the authorization and limitations for the use of Open Space Funds, and (3) set forth the procedure for the transfer of real property from the Open Space Program.

Policy: Open Space Program Terms, 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 of County Commissioners on any Open Space matter and the Board of County Commissioners may, within its discretion, waive any Policy and Procedure.

B. Open Space Policies and Procedures Terms

1. The term "Enabling Resolutions" shall mean those Resolutions adopted by the Board of County Commissioners 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 establish the Jefferson County Open Space Program.

2. The term "real property" shall include without limitation those types of real property described in the Enabling Resolutions, together with water and water rights.

3. The term "interest" in real property shall mean any real property interest and shall include, but not be limited to the following types of interests in real property:

    a. Fee title

    b. Easements: trail, conservation, etc.

    c. Leasehold interests

    d. Options

    e. Rights of First Refusal

    f. Life Estates

    g. Future Interests

4. The term "Park and Recreation District" shall mean a "Park and recreation district" as that term is defined in C.R.S. §32-1-103(14), (2005), as that term may be amended from time to time.

5. The term "Metropolitan District" shall mean a "Metropolitan District" as that term is defined in C.R.S. §32-1-103(10), (2005), as that term may be amended from time to time.

6. The term "District" shall include a Park and Recreation District and/or a Metropolitan District, as may be applicable.

7. The term "City" shall mean a "Municipality" as that term is defined in C.R.S. §31-1-101(6), (2005), as that term may be amended from time to time.

8. The term "Open Space Funds" shall mean all proceeds from the one half (1/2) per cent sales tax established by the Enabling Resolutions, and all bond proceeds that are to be repaid by the sales tax, together with all sources of revenue attributable to the Open Space Division.

9. The term "Committee" shall mean the Jefferson County Open Space Advisory Committee.

10. The term “Local Government” shall mean, collectively, Cities and Districts.

C. Open Space Program Priorities

1. Acquisition of interests in real property for public open space, park or recreational purposes and/or preservation of interests in Open Space real property, trails, and improvements to Open Space real property;

2. Operation and maintenance of Open Space real property, trails, and improvements;

3. Development of Open Space real property, trails, and improvements; and

4. All priorities include administration and planning.

D. Use of Open Space Funds and Open Space Gifts

1. Open Space Funds May Be Expended for the Acquisition of an Interest in Real Property.

   a. Upon passage by the Committee of a Resolution to go forward, Open Space staff is authorized to order a title commitment, appraisal, survey, environmental hazard assessment and any other necessary due diligence, and to expend funds for same, and to enter into negotiations for the acquisition of any interest in real property, so long as such acquisition is consistent with the County’s then current Open Space Master Plan.

   b. Open Space Funds (or in the case of a real property trade, the equivalent of such funds) shall be used to purchase any interest in real property only after:

      (1) a current title commitment,

      (2) survey, where appropriate,

      (3) environmental hazard assessment at least to a Phase I, and

      (4) either an appraisal or a current market value analysis performed by staff, have been obtained. A "current" appraisal or market value analysis is defined as one

that has been performed no longer than two years prior to closing. A title policy shall be issued to the County on all real property interests that have been funded wholly or partially by Open Space Funds (or in the case of a real property trade, the equivalent of such funds).

c. Interests in real property shall be purchased only for a price that is less than or equal to the value for the real property interest being considered, as set forth in a current appraisal or a current market value analysis of the real property.

d. If the County's share of Open Space Funds has been used to acquire any interest in real property, such real property interest shall be acquired in the name of the County.

e. The Committee's Recommendation and the Board of County Commissioner's Resolution to acquire any real property interest shall articulate the anticipated uses of such real property interest.

f. The County may, but need not, accept gifts of any interest in real property to be used for Open Space purposes. Such gifts may be accepted only after an environmental hazard assessment and title commitment have been obtained for the real property interest. The County shall not be responsible for establishing a value, for tax purposes, of real property gifts.

g. When an interest in real property has been acquired through the use of Open Space Funds in conjunction with funds from any other source, that portion of the real property interest that is intended to be used for those purposes set forth in the Enabling Resolutions shall be treated as follows:

(1) Such portion of the property shall be separately identified and a description of the portion shall be attached to the Committee's Recommendation and the Board of County Commissioner's Resolution to acquire the real property interest.

(2) At such time as the interest in such portion of the property is acquired, it shall bear a legal description separate from all others, and it shall be held by virtue of a conveyance document which conveys only the interest in that portion of the property which is intended to be used for those purposes set forth in the Enabling Resolutions, and which conveyance document shall be recorded with the Clerk and Recorder of the county in which the property is located.

h. No real property interest shall be considered for acquisition if such real property is in the platting or zoning process 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.

2. Open Space Funds may be expended for administering County Open Space real property, including planning, developing, operating, managing, maintaining, securing, and protecting County Open Space real property.

3. Use of Open Space Funds through Joint Venture/Grant/Acquisition Program

a. Only Local Governments that are wholly or partially located in Jefferson County are eligible to apply for Joint Venture Grants. The applicants must prioritize the projects they have submitted.

b. Up to 100%, of the County's Attributable Share of Open Space Funds may be distributed to Local Governments.

c. When Open Space Funds have been used for any interest in real property or improvements, all park/trail signage located on such real property that acknowledges a Local Government's ownership or management shall recognize the Jefferson County Open Space Program, in a form acceptable to the Director.

d. Applicants shall have a time limit of two (2) years for the completion of a project. If the project is not completed within the two (2) calendar years from the date of distribution of Open Space Funds to the applicant, the applicant shall advise the Director why the project has not been completed, and the Director may require the relinquishment of the unspent funds.

e. All funds and grants not expended pursuant to the approved proposal, plus reasonable interest, are nontransferable, cannot be applied by the recipient to another project, and must be returned to Jefferson County Open Space immediately upon completion of the project.

f. Requests for change of use of Joint Venture/Grant/Acquisition funds shall be submitted to the Director prior to the changed work being initiated by the recipient. Failure to do so may result in loss of future Joint Venture/Grant/Acquisition funds.

g. No funds will be granted for operation and maintenance purposes.

4. Use of Open Space Funds through Cooperative Efforts

a. So long as the County and the applicable private individual or entity, Local Government or academic entity have entered into a written agreement, County Open Space Funds may be used to:

(1) acquire an interest in real property for public open space, park or recreational purposes, or

(2) develop facilities for public open space, park or recreational purposes.

b. It is the intent of this policy to maximize the use of public funds and facilities through cooperative efforts between the County and private individuals and entities, Local Governments, and academic entities, while maintaining the intent and purposes of the Open Space Program.

5. Use of Open Space Funds where Fees are Charged for Public Use

a. If any of the County's share of Open Space Funds have been used to acquire an interest in any real property or improvements, there shall be no differential in any fee which may be charged to any Jefferson County resident for the use of such real property interest or improvements.

b. A County-wide User Fee policy shall not be established for patrons of Jefferson County Open Space facilities. Where Open Space Funds have been expended, user fees, where appropriate, shall be established on a case by case basis. This policy shall not allow any user fees differential for Jefferson County residents.

6. Use of Open Space Funds on Behalf of a Local Government

a. The Committee may recommend use of the County's share of Open Space Funds with respect to the acquisition of an interest in real property, or reimbursement therefor, on behalf of a Local Government, only upon an authorizing resolution by the appropriate City council or District board.

b. If any of the County's share of Open Space Funds has been used to acquire an interest in real property on behalf of a Local Government, or to reimburse a Local Government for an interest in real property that has already been purchased, at the discretion of the County, such real property interest may be deeded to the County, and if so, shall thereafter be deeded by the County to the Local Government with a future interest clause (Open Space Reverter). The Open Space Reverter shall read that the real property interest is deeded to the Local Government "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."

c. In those cases in which a Local Government acquires a real property interest by virtue of a County deed with the Open Space Reverter, such Local Government 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 such real property.

d. All title policies for real property interests of a Local Government subject to the Open Space Reverter shall issue in the name of the Local Government and the County, as their interests may appear.

e. Upon written request of a District Board, the County may consider deeding to the District an interest in real property it had acquired on behalf of the District. The decision to deed any such real property interest shall be made on a case-by-case basis in the discretion of the County and in accordance with Section D.6. of these Policies.

f. If the County leases an interest in real property to a Local Government, the lease shall provide that:

(1) The lease shall terminate if the real property is not used for public open space, park or recreational purposes.

(2) All operation and maintenance for the real property shall be at the expense of the Local Government.

(3) All improvements shall be erected, operated and maintained at the expense of the Local Government.

(4) The Local Government shall obtain the County’s approval prior to constructing improvements on the real property.

(5) The Local Government shall hold harmless and indemnify the County and keep the County free from any liability for injury or damage occasioned by the use of the real property by the Local Government or from any claim for injury or damage occasioned by any person or persons making use of the real property.

(6) The Local Government shall procure and maintain insurance as required by the County.

(7) The Local Government shall hold harmless and indemnify the County with respect to any loss the County may incur as a result of the environmental condition of the property.

E. Transfer of Property from the County

1. For purposes of this Transfer of Property from the County Section, a real property interest is being "disposed of" when it is to be sold, exchanged, transferred or otherwise disposed of, or when a parcel of real property in which the County owns an interest is no longer to be managed or used for those purposes set forth in the Enabling Resolutions. Except as provided herein, this Transfer of Property from the County Section shall not apply to a real property interest conveyed to a Local Government pursuant to Section D.6. of these Policies.

2. An interest in Open Space real property, regardless of the size of the property, may be disposed of only after obtaining a current appraisal for the real property interest, or after a current market analysis has been performed by staff, and such interest shall be disposed of for a consideration equal to or in excess of the value of the real property interest set forth in such appraisal or such market analysis.

3. All monies received from the disposal of an interest in Open Space real property shall be returned to the Open Space Account unless a Local Government contributed monies towards the purchase of the real property interest, in which case the monies received from the disposal shall be credited between Open Space and the Local Government in the same proportion as was disbursed for the purchase of the real property interest.

4. Transfer of Specific Open Space Property:

   a. This Transfer of Specific Open Space Property Section shall apply only to certain interests in real property which meet all of the following criteria:

      (1) This Section shall apply only to the following interests in real property: fee, easements (trail, conservation, etc.) and the Open Space Reverter;

      (2) This Section shall apply only to an interest in real property owned by the County; and

      (3) This Section shall apply only to an interest that was acquired through the use of any Open Space Funds, or which was donated to the County for inclusion into the County's Open Space Program.

   b. This Transfer of Specific Open Space Property Section shall not apply to any transfers of an easement interest for utility, water, electrical, or other similar purposes.

   c. An interest in a parcel of real property that consists of 5 acres or more may be disposed of only after the following have occurred:

      (1) A Recommendation by the Committee has been issued, that contains an affirmative vote of not less than 8 members of the Committee, and;

      (2) Such Recommendation by the Committee contains a statement together with a justification for that statement that: The interest in real property being considered is no longer meeting the Open Space purpose for which it was acquired, or The transaction involving the contemplated disposal would provide to the public a significant ecological, recreational or cultural benefit in those Open Space real property interests which include but are not limited to those property interests listed in the Enabling Resolutions. This statement shall not be required in the Recommendation by the Committee if either of the following is true:

(a) The property interest was originally intended not to be used permanently for Open Space purposes and this intention was noted in both the Committee's Recommendation and the Board of County Commissioners' Resolution to acquire the real property interest, or

(b) The transaction involving the contemplated disposal would improve management by the County and/or Local Government of any lands used for public open space, park or recreation purposes, by consolidating or adjusting the boundaries of such lands.

F. 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 of County Commissioners.