

RESOLUTION NO. 99 - 111

A RESOLUTION DESCRIBING A PROPOSAL FOR THE EXTENSION OF THE EXISTING 0.25% COUNTY-WIDE SALES AND USE TAX; PROVIDING FOR THE DEPOSIT OF SUCH SALES AND USE TAX IN THE OPEN SPACE SALES AND USE TAX CAPITAL IMPROVEMENT FUND; CALLING A SPECIAL ELECTION FOR THE APPROVAL OF SUCH PROPOSAL, THE ISSUANCE OF REVENUE BONDS IN CONNECTION THEREWITH, 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, additional revenue bonds were authorized by the voters in 1997 and issued in 1998, utilizing the revenues from the 0.25% county-wide sales and use tax; and

WHEREAS, there is 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 county-wide trail system, and therefore there is a critical need for county-wide sales and use taxes to finance the acquisition and limited development of said lands; and

WHEREAS, due to the immediacy of the need, revenue bonds as authorized by said Article should be issued in order to allow such acquisitions and improvements to take place as soon as possible; and

WHEREAS, due to the revenue limitations contained in Colo. Const., Art. X, Section 20, even where the voters of the County have approved such a sales tax and use tax, and the issuance of revenue bonds, the uneven flow of revenues of such taxes and bonds and the earnings from such tax and bond revenues from year to year, could cause significant problems in the funding and provision of County programs and services in any future year; therefore, it is necessary to obtain a voter-approved revenue change; and

WHEREAS, the goals of the 1993 county-wide open space sales and use tax and bond proposal, as stated in Resolution 93-174, 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, this Board finds that the extension of the existing county-wide open space sales and use tax in the existing amount of 0.25% for an additional period of ten years from the current expiry date of December 31, 2009, to be effective to and including December 31, 2019, and the issuance of up to \$35,575,000 in open space revenue bonds, 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, said Article provides for the submission of such a sales tax and use tax and revenue bond proposal to the registered electors of the County at an election called by resolution of the Board of County Commissioners; and Section 104 (3) of said Article provides that if no general election is scheduled within 120 days after adoption of such resolution, the Board of County Commissioners shall submit the sales and use tax proposal to the registered electors at a special election called for the purpose to be held not less than 30 nor more than 90 days after the adoption of such resolution; 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, pursuant to said Article as affected by Colo. Const., Art. X, Section 20(3)(a), a special election shall be scheduled within no fewer than 30 days nor more than 90 days from the date of adoption of this resolution, for November 2, 1999; 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, the Board of County Commissioners of the County of Boulder intends that this proposal not change the purpose, intent, terms and conditions of the original proposal as stated in Resolution 93-174, except for purposes of the extension of the existing county-wide open space sales and use tax in the existing amount of 0.25% for an additional period of ten years from the current expiry date of December 31, 2009, to be effective up to and including December 31, 2019, and the issuance of up to \$35,575,000 in open space revenue bonds, and to obtain a voter-approved revenue change for the additional tax revenues, bond proceeds and the interest thereon for purposes of article X, section 20 of the Colorado Constitution, said proposal as described in Resolution No. 93-174 is amended by this Resolution, and its restatement as so amended is provided herein for the convenience of public reference; and

WHEREAS, it is the intent of the Board of County Commissioners that, should the proposal to extend the existing county-wide open space 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, outstanding bonds, 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 open space sales and use tax, revenue bond and revenue change proposal as stated in Resolution 93-174 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 a special election called for that purpose to be held on Tuesday, November 2, 1999, the following proposal:

1. THAT the county-wide one quarter of one percent (0.25%) sales tax in accordance with the provisions of Article 2, Title 29, Colorado Revised Statutes, 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, Colorado Revised Statutes, as amended, and as is more fully hereinafter set forth. 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, Colorado Revised Statutes, as amended, regardless of the place to which delivery is made. In the event 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, Colorado Revised Statutes, as amended, and by rules and regulations promulgated by the Department of Revenue. The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, Colorado Revised Statutes, 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, Colorado Revised Statutes, as amended, and subject to

the same exemptions as those specified in Section 39-26-114, Colorado Revised Statutes, as amended, and further subject to the exemption for sales of food specified in Section 39-26-114(1)(a)(XX), Colorado Revised Statutes, as amended, the exemption for purchases of machinery and machine tools specified in Section 39-26-114(11), Colorado Revised Statutes, as amended, and the exemption of sales and purchases of those items in Section 39-26-114(1)(a)(XXI), Colorado Revised Statutes, as amended. 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:

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

The county-wide sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, Colorado Revised Statutes, 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.

The county-wide sales tax will 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.

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, Colorado Revised Statutes, as amended.

2. THAT a County-wide one quarter of one percent (0.25%) use tax in accordance with the provisions of Article 2, Title 29 Colorado Revised Statutes, 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 non-resident acquiring residency;

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a non-resident of the County of Boulder and he 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 he 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 January 1, 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 2, 1999;

(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 prior to January 1, 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 2, 1999.

3. THAT except as provided by Section 39-26-208 and Section 39-26-304, Colorado Revised Statutes, 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 estimate of building and construction materials costs submitted by

the owner or contractor at the time a building permit application is made.

4. THAT if the majority of the registered electors voting thereon vote for approval of this County-wide sales and use tax extension proposal, such existing 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, 2019.

5. THAT the cost of the election shall be paid from the general fund of the County of Boulder.

6. THAT 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.

7. THAT 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.

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

9. THAT the net proceeds from the sales and use tax received by the County of Boulder shall be continue to 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, such as, 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 accessways 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 manage, patrol, and maintain all County of Boulder open space property and trails in accordance with Parks and Open Space policies adopted by the Board of County Commissioners;
- (i) 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;
- (j) To pay the costs of issuance and debt service of the revenue bonds, including principal and interest thereon, as authorized by this resolution.

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.

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.

Open space acquisitions shall be as exemplified by, or similar in character to, those identified on Exhibit A, attached hereto and incorporated herein by this reference.

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.

10. THAT 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.

11. THAT 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 proposed shall be reviewed by the Parks and Open Space Advisory Committee, 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.

12. If the real property or any interest therein acquired by use of proceeds of said sales and use tax pursuant to paragraph 9 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, then the proposed sale, exchange, transfer or disposition shall be unlawful and shall not be made.

13. THAT 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.

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

15. THAT a special fund, known as the "Boulder County Open Space Sales and Use Tax Capital Improvement Fund" (the "Fund") currently exists and that at least ninety percent (90%) and up to one-hundred percent (100%) of total revenues may be pledged for capital improvement bonds and be deposited into the Fund, and that additional sales and use tax revenue bonds may be issued in the aggregate principal amount of \$35,575,000, the proceeds of which

shall be used for the purposes and in accordance with the limitations of this resolution, for the repayment of which the monies deposited in the Fund shall be pledged, and that, if this ballot measure is approved by a majority of the voters voting thereon, the Board of County Commissioners shall adopt a resolution authorizing the bonds and setting the terms thereof, including the maximum net effective interest rate, in accordance with the provisions of said Article, such bonds being issued under the authority of Section 29-2-112, C.R.S.

16. THAT a maximum of ten percent (10%) of total revenues may be deposited into a special fund, to be known as the "Boulder County Open Space Sales and Use Tax Operations and Maintenance Fund", and the monies deposited therein may be used to pay for operations and maintenance activities for any interest in open space lands owned by the County of Boulder.

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

18. THAT, 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.

19. THAT the existing county-wide total sales and use tax rate of 0.40%, when added to existing state and municipal sales and use tax rates which are non-exempt under the provisions of §29-2-108, C.R.S., as amended, results in a total sales and use tax rate in excess of the seven percent limit stated in said statute as follows: Broomfield, 7.15%; Nederland: 7.15%.

20. THAT 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 affect without the invalid provision or applications and to this end, the provisions of this resolution are declared to be severable.

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

22. THAT the sales and use tax shall expire at 12:00 a.m. on

January 1, 2020, and all monies remaining in any of the Funds created hereunder may continue to be expended for the purposes set forth herein until completely exhausted.

23. THAT 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.

24. That, should this proposal to extend the existing county-wide open space sales and use tax, issue new bonds, and obtain a voter-approved revenue change, not be approved by the electorate in November, the existing tax, outstanding bonds, 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.

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 11th day of August, 1999.



(SEAL)

Attest:

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER

Ronald K. Stewart
Ronald K. Stewart, Chair

Jana L. Mendez
Jana L. Mendez, Vice-Chair

Susan M. Ashcraft
Clerk to the Board

Paul D. Danish
Paul D. Danish, Commissioner

EXHIBIT A

Corridors -- Included in the open space corridor category are greenways, riparian areas, adjacent lakes and ponds where they exist near streams, and the foothills scenic area; some corridors may include trails, while others might have no trails in order to protect critical habitat areas. The corridors would provide linkages between communities and, in some instances, access to other open space lands. Examples of corridors considered desirable for preservation include

St. Vrain River, from Lyons to E. County Line
Lefthand Creek, N. Foothills to Longmont
Boulder Creek, from Boulder holdings to E. County Line
Coal Creek, Superior to E. County Line
Rock Creek, S. County Line to Coal Creek
N. Foothills Hwy scenic corridor
Linkages with existing open space or other public lands

Community Buffers -- Areas preserved as open space to separate communities and maintain community identity, such as

Longmont/Hygiene Buffer
Longmont/Niwot Buffer
Lafayette/Louisville/Broomfield Buffer(s)
Additions to existing open space

Mountain/Wildlife Areas -- These are areas which would expand mountain park land and/or preserve wildlife movement corridors or critical habitat areas in the mountains or on the plains, such as

Heil Ranch
Rabbit Mountain
Wetland areas/willow carrs
Wildlife corridors from the Peak to Peak Hwy to the Foothills

The various interests to be acquired in the types of open space described above include fee title, leases, development rights, mineral and other subsurface rights, conservation easements, water rights and water storage rights, rights-of-way, easements, and options.