



Board Summary Report

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Agenda Date: 6/10/2024

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To: Board of County Commissioners

Through: Gini Pingnot, Director, Open Spaces

Prepared By:

Michele Frishman, Grants & Acquisitions Manager, Open Spaces

Presenter: Gini Pingnot, Director, Open Spaces, and Michele Frishman, Grants & Acquisitions Manager, Open Spaces

Subject:

1:00 PM *Final Update on High Line Canal Acquisition

Purpose and Request:

For purposes of the County's pending acquisition of portions of the High Line Canal, staff will present a final update to the Board of County Commissioners (BOCC) on the latest negotiations and items completed for closing.

Background and Discussion: Arapahoe County is working with Denver Water and the High Line Canal Conservancy (Conservancy) to take ownership of 45 miles of the 71-mile canal corridor including sections in Arapahoe, Denver, and Adams Counties. As part of its conveyance, Denver Water will reserve the right to continue to use the canal for water works purposes, and it will protect the property's conservation values through a conservation easement granted to the Conservancy. During the transition period through December 31, 2026, Denver Water will perform certain maintenance work to elevate the condition of the property, and Arapahoe County will begin to take over property management responsibilities from Denver Water. Closing on the acquisition is scheduled for June 13, 2024.

By the time of this study session on June 10, 2024, we expect to have finalized the terms of the conservation easement in cooperation with the Conservancy, Denver Water, and the City and County of Denver. The conservation easement will be recorded in Arapahoe, Denver, and Adams Counties prior to the property conveyance; the latest draft is attached. BOCC approval of the conservation easement is not required because

Arapahoe County will automatically succeed as the landowner under the terms of the conservation easement once it takes ownership of the property.

The conservation easement establishes the property's conservation values that the Conservancy will be required to monitor and protect:

- ensure that the property will be perpetually maintained as a linear open space park with a multi-purpose public recreational trail and canal,
- maintain public access and recreational use of the property,
- permit stormwater uses of the property that are consistent with the preservation and protection of the other conservation values, and
- preserve the environmental and urban natural ecosystem values of the property.

The conservation easement also restricts future conveyances of the property. The only permitted owners will be the counties in which any portion of the High Line Canal is located, as well as state and federal agencies.

Furthermore, the conservation easement describes the permitted and prohibited uses of the property. It reserves the right of Denver Water to use the property for water works purposes and the right for any landowners to make use of the property for public necessity, health, and safety purposes. The conservation easement does not supersede applicable governmental regulations; however, the landowners should undertake their activities in a manner consistent with the protection and preservation of the conservation values to the extent feasible. Additionally, the landowners should restore, as much as commercially reasonable, the affected property in order to minimize impact to the conservation values.

Along with the conservation easement, we are finalizing stewardship procedures that will govern how the Conservancy considers potential projects on the High Line Canal and enforces the conservation easement.

By the time of this study session on June 10, 2024, we will have completed other tasks necessary for closing, including drafting the final closing documents to be signed by the Chair, an intergovernmental agreement with Denver Water, and an authorization to Denver Water to perform maintenance on the property. Previously, we have examined more than 1,000 existing encumbrances on the property that will be assigned to Arapahoe County; reviewed records kept by the Colorado Department of Public Health and Environment for properties in the vicinity of the canal; conducted inspections of the entire property to be acquired; and reviewed the final legal description, maps, and GIS files of the property.

After the closing on June 13, 2024, we will enter the transition period during which we will begin a number of new High Line Canal-related tasks and negotiations. One of our first priorities will be to extend the recreation lease covering the Denver and unincorporated Arapahoe County sections of the property before it expires January 1, 2025. We also will explore entering into new stormwater agreements covering portions of the canal,

and we will implement new management plans and procedures for the property in cooperation with our partners. We will keep the BOCC informed as we progress through the transition period.

Fiscal Impact: Denver Water is donating the High Line Canal property to Arapahoe County, and therefore the County will not incur any costs at closing. However, the acquisition will require Open Spaces to incur new costs for property maintenance, additional staff to manage the property, and services provided by the Conservancy and possibly Denver Water.

Alternatives: Unless Arapahoe County staff become aware of any issues with the property or the transaction that necessitate extending the closing date or terminating our acquisition agreement, there are no anticipated alternatives to closing on the acquisition on June 13, 2024.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Staff Recommendation: N/A

Concurrence: N/A