



## Board Summary Report

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**File #:** 24-283

**Agenda Date:** 5/20/2024

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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; Michele Frishman, Grants & Acquisitions Manager, Open Spaces

**Subject:**

1:00 PM \*Denver Water IGA and Conservation Easement for High Line Canal

**Purpose and Request:**

For purposes of the County's pending acquisition of portions of the High Line Canal, staff will present a proposed intergovernmental agreement for Board of County Commissioners (BOCC) approval, the latest draft of the conservation easement that is planned for the perpetual protection of the property, and an informational update on the acquisition.

**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.

Intergovernmental Agreement with Denver Water

One of the items required to be completed before closing is an intergovernmental agreement (IGA) with Denver

Water that will govern each party's responsibilities pertaining to use and maintenance of the High Line Canal property acquired by the County. The latest draft of the IGA is attached.

The IGA addresses a variety of responsibilities of Denver Water and Arapahoe County. It commits Denver Water to fund and complete typical maintenance on the property up to \$1,017,900 during the transition period. This includes work such as noxious weed mitigation, mowing, mosquito treatments, and trash pickup. Denver Water will complete additional natural resource restoration to improve the condition of the property, which will be funded by the Stewardship Fund maintained by the Conservancy.

The IGA also requires additional assistance from Denver Water during the transition period, such as administering requests by third parties for new and modified encumbrances, advising the County on past management practices and procedures, and remaining available for consultation on a variety of matters. Furthermore, the IGA requires coordination with the County when Denver Water uses the property for water works purposes, when it no longer needs existing canal facilities, and when third parties propose new installations.

Finally, under the IGA, Denver Water must repair any damage it causes to the property and third-party improvements, and it must indemnify Arapahoe County, to the extent permitted by law, against claims for personal injury, death, or damage to property or improvements that result exclusively from water works purposes. Denver Water also must hold the County harmless for any damage or impacts to water works purposes exclusively caused by an Arapahoe County use of the property to which Denver Water has agreed, a third party's use of the property that is authorized by Arapahoe County and Denver Water, and a third party's unauthorized use of the property.

### Conservation Easement

We are working with the Conservancy, Denver Water, and the City and County of Denver to finalize the terms of the conservation easement, which must be completed before closing. It will be recorded in Arapahoe, Denver, and Adams Counties prior to the property conveyance. The latest draft of the conservation easement is attached.

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. Furthermore, 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 working with the parties to finalize stewardship procedures that will govern how the Conservancy considers potential projects and stewards and enforces the conservation easement. While not required, our goal is to finalize the procedures before the conservation easement is granted.

#### Other Milestones

Another item to be completed before closing is an authorization to Denver Water to perform maintenance on the property during the transition period. We are in the process of drafting this agreement.

We have completed other tasks necessary for closing, including reviewing more than 1,000 existing encumbrances on the property and advising Denver Water of the encumbrances that should not be assigned to the County; reviewing records kept by the Colorado Department of Public Health and Environment for properties in the vicinity of the canal; conducting inspections of the entire property to be acquired; and receiving the final legal description, maps, and GIS files of the property from Denver Water.

Finally, we have begun discussions with the City and County of Denver regarding its recreation lease covering the Denver and unincorporated Arapahoe County sections of the property. The lease expires January 1, 2025, and will be assigned to Arapahoe County at closing. One of our first priorities during the transition period will be to extend the lease with Denver before it expires.

**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 in June.

**Alignment with Strategic Plan:**

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

**Staff Recommendation:** Staff recommends approval of the Denver Water IGA in substantially the form attached. Formal approval of the conservation easement is not required because the County will automatically succeed as the landowner under the terms of the conservation easement once the County takes ownership of the property.

**Concurrence:** N/A