

Pitkin County Open Space and Trails Board
FEDERAL CONGRESSIONAL LAND EXCHANGE POLICY
(adopted January 20, 2011)

Whereas, Federal public lands comprise some 83% of Pitkin County and create the mosaic of extraordinary scenery, habitat, recreation and natural resources that are of immeasurable value to the health, welfare and enjoyment of Pitkin County's residents and visitors;

Whereas, any loss of these Federal public lands or of public access thereto is a serious concern for Pitkin County and should be avoided whenever possible;

Whereas, Pitkin County created an Open Space & Trails Program in 1990 and as of January 1, 2011 has invested more than \$82 million over the past twenty years to secure over 18,700 acres of additional conserved private lands for the benefit of Pitkin County's residents and visitors;

Whereas, Pitkin County prefers that new public land acquisition is secured through purchase rather than exchange;¹

Whereas, public access to Pitkin County's Federal public lands is also of immeasurable value to our residents and visitors;

Whereas, Federal land disposal through Congressional land exchanges within Pitkin County have the potential to harm the health and welfare of Pitkin County residents and visitors and undermine the value of its ongoing investment in its Open Space and Trails Program;

Whereas, Congressional intervention into this arena by mandating the approval of land exchanges that privatize federal lands within Pitkin County can bypass the procedural and substantive safeguards that apply when federal agencies process proposed administrative land exchanges; and

Whereas, without a strict Pitkin County policy on proposed Federal land exchanges, tracts of public lands may be exchanged and privatized at the request of private landowners which exchanges are not in the public interest and diminish our public lands "commons" so important to future generations of residents and visitors;

Now, Therefore, the Pitkin County Open Space Board hereby adopts the following policy to guide its response to any request that it endorse or support any proposed Congressional action that will result in the privatization of Federal public lands within Pitkin County:

1. The Open Space and Trails Board will analyze such proposed federal land exchanges within Pitkin County and advise the Board of County Commissioners on the proposal's conformity with this policy;

2. The Open Space and Trails Board will consider endorsing or supporting a proposed land exchange involving Federal public lands within Pitkin County only after all of the following conditions are satisfactorily met:

A. To insure public awareness and input, written notice of the proposed exchange has been provided in the following manner to each affected jurisdiction, neighboring landowner, and other interested parties: publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The applicant has also notified authorized users, the jurisdictional State and local governments, and the congressional delegation and other local, regional, or national organizations with institutional interest in public land management. At a minimum, the notice shall include: (1) The identity of the parties involved in the proposed exchange; (2) A description of the Federal and non-Federal lands being considered for exchange; (3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable, and a summary of the appraisal information as required by paragraph C, below.ⁱⁱ In addition, each affected jurisdiction will be provided 10 days advance notice of any public meeting which discusses the proposed exchange. Each affected jurisdiction will be provided written notice of any material change in the proposed exchange in the same manner as required for the initial proposal pursuant to this paragraph.

B. The proposed exchange is consistent with and furthers the Mission of the Open Space & Trails Program, including but not limited to preserving or enhancing recreational opportunities, wildlife habitat, agricultural heritage, scenic viewplanes and public access.

C. The Open Space and Trails Board has approved an appraisal (“County Appraisal”). The Open Space and Trails Board must accept the scope of work adopted by the appraiser prior to the appraiser’s commencement of the County Appraisal. The subsequent appraisal must demonstrate that any increase in the market value of the proponent’s property is less than the before-exchange market value of the Federal lands included in the exchange. The County Appraisal, to be provided by the exchange proponent, shall conclude the market value of the proponent’s property both before and after the proposed exchange. The Open Space and Trails Board may, at its discretion and prior to its consideration of the County Appraisal, contract a review of this appraisal. The cost of such review shall be paid by the proponent. It is recognized that only in extraordinary circumstances will the federally-required *Yellow Book* appraisal of the federal lands included in the exchange address the County’s needs.ⁱⁱⁱ

D. When the proposed exchange involves public or private lands in other counties, there is a comment regarding the proposed exchange from that county's Open Space and Trails Board or Board of County Commissioners dated at least thirty days after the appraisals in Paragraph "C" above have been made public.

E. There is no net loss of equal quality publicly owned acreage in Pitkin County or of other acceptable publicly owned lands within the Roaring Fork watershed.

F. There is no net loss in public access to public lands in Pitkin County.

G. The federal agency conveying lands into the private sector shall reserve such rights or retain such interests as are needed to protect the public interest, including but not limited to, cross country ski, hiking, biking, or equestrian trails, road R.O.W.'s, water rights, and hunting rights, or shall otherwise restrict the use of Federal lands to be exchanged, as otherwise provided by 36 CFR 254. 3(h).

H. Proponents of a land exchange must demonstrate that the lands to be acquired are adopted acquisition priorities for the agency that will administer them, and that purchase of said lands is not a viable means of acquiring them.

3. This policy is intended to guide Pitkin County, and those who would solicit its support, in evaluating potential federal legislation proposing to authorize a land exchange that privatizes federal public lands in Pitkin County. Nothing contained herein is intended to modify or override any existing federal law or regulation that is otherwise applicable to the proposed exchange. Any information provided to Pitkin County in furtherance of this policy will be provided by the County to the Congressional Delegation as part of the Congressional Record of the proposed land exchange.

ⁱ Note that this preference for acquisition by purchase was also adopted by the Sierra Club in 2001.

ⁱⁱ For comparison- Federal Notice Requirements for USFS Administrative Exchanges are as follows

TITLE 36 – CFR 254.8 subpart a - LAND EXCHANGES

254.8 - Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include: (1) The identity of the parties involved in the proposed exchange; (2) A description of the Federal and non-Federal lands being considered for exchange; (3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable; (4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and (5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

iii The Montana Board of Land Commissioners (as revised in 2004) has a similar land exchange policy to address the weakness of the federal 'Yellowbook' standards where public property is largely surrounded by private lands. The Montana Policy provides as follows:

"In general, trust land must be valued in two ways. First, the highest and best use of the land with discounts applied to the land for access or other limiting factors. Second, the highest and best use of the land without any discounts. The department will then arrive at a value for trust land proposed for exchange, and make a recommendation to the board... This valuation process will apply to exchanges with federal or state governmental entities at the discretion of the department."

This policy recognizes that it is entirely appropriate to also obtain an appraisal that eliminates any "discount" based on access constraints or other limiting factors otherwise found in the Yellowbook.

For another example of a "before and after" appraisal requirement, see, e.g. the appraisal of full economic benefit as provided in Section 170(h) of the Code of the Internal Revenue Service.