

Guidelines for Boulder County Open Space

Agricultural Leases

Updated May 2023

Applicability

This process guides the manner in which Boulder County Parks & Open Space (BCPOS) agricultural lands are leased to farmers and ranchers. No agricultural lands are to be leased or assigned in ways other than those described below.

Purpose

The primary goal of the agricultural leasing process is to implement a standardized and transparent operating procedure for evaluating and selecting the best steward for a property, preferably one with a focus on applying regenerative practices and improving soil health. Additional goals are to:

- Use an approach that is compatible with the goals of the BCPOS's agricultural lands, water, and resource stewardship.
- Use a fair and efficient way to identify qualified farmers and ranchers interested in managing county agricultural lands.
- Maintain and support working agricultural lands, including the preservation of water resources, by keeping county agricultural lands in productive agricultural use.
- Provide opportunities for young farmers and historically disadvantaged farmers, including people of color and indigenous people, to farm and steward open space agricultural lands.
- Help existing agricultural operations be successful and improve stewardship wherever possible.
- Integrate agricultural management practices that support priority ecological values or sensitive species where critical or important habitat have been identified.
- Maintain an agricultural program within the means and staff capacity of BCPOS's Agricultural Resources Division.
- Maintain and support a diversity of agricultural operations and uses on county agricultural lands, consistent with the Cropland Policy.
- Minimize the failure rate of agricultural operations on county open space lands.

Ethics and Transparency

BCPOS employees responsible for the care and stewardship of county assets have a responsibility to ensure that their conduct does not violate the public trust. To that end, staff commits to act in a manner that does not give the appearance that they have violated the public trust. Appropriate actions include:

- Acting in the best overall interest of the county and its residents.
- Interacting with all farmers and ranchers with courtesy, consideration, and even-handedness.
- Assuring that there is a fair, competitive access to agricultural leasing opportunities.
- Protecting information gained confidentially from public disclosure to the extent permitted by law.
- Reporting unethical practices or corruption whenever discovered or suspected to a responsible manager.

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BCPOS employees commit to implement the leasing process with as much transparency as possible. This means that copies of documents related to the agricultural leasing process, including lists of available properties and Requests for Proposals (RFP), will be posted on the Boulder County website. After a lease has been awarded, all documents related directly to the selection process, such as proposals, questions and answers related to proposals, proposal evaluations and decisions, lease agreements, etc., become public records and are available for public inspection in accordance with county policy and the requirements of the Colorado Open Records Act (CORA) and may be obtained by submitting a CORA request through the County Attorney's office.

Decision to Offer Boulder County Open Space Agricultural Land

BCPOS staff members commit to indicate any agricultural property/properties being offered for lease on the county website as early as possible so that potential proposers can be alerted to upcoming opportunities. This announcement will include information about the location and any unique characteristics for the property and the timeline of the proposal process. The decision about availability is subject to change at any time based on new information, staff capacity and limitations, or other considerations, but such changes will be updated on the county website in a timely manner.

Factors to be considered in making the decision to offer BCPOS agricultural properties for lease to a new tenant shall include whether:

- An existing BCPOS farmer or rancher under lease with the county has indicated an intent to stop leasing the property.
- An existing BCPOS farmer or rancher has violated the terms of a current lease from the county.
- A newly acquired agricultural property or recently restored agricultural property has become available.
- The property is likely to be productive for agricultural use without significant impacts to other department land protection or use goals, such as natural habitat or trail connections.
- The property has adequate access, irrigation water (*except in the case of a dryland property*), soil, and infrastructure for the proposed agricultural use.

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Choice of Lease Method

BCPOS staff will use either negotiated leases or competitive sealed proposals to select a farmer or rancher to lease county agricultural properties. Typically, BCPOS staff will utilize competitive sealed proposals but reserve the option to use negotiated leases in special instances in which:

- **Option Years**—By far the most common type of lease for agricultural properties is an option year lease offered to returning tenants who are in good standing with the county, both in terms of rental payments and full compliance with the original lease terms and conditions. Option years are frequently offered as part of the original lease language (typically a one-year lease, plus 2–3, one year options). All options are contingent upon both the landlord and the tenant agreement to extend the lease and the good standing of the tenant. The landlord reserves the right to not extend options to tenants who are not in good standing at the conclusion of each year. We value good returning tenants as the best stewards, in part because of their experience with the peculiarities of each property and its current operations.
- **Short Notice**—A property becomes available on short notice either from a current tenant ending a lease prematurely or a new property acquisition becomes available with short notice relative to the growing season.
- **Proximity and Purpose**—A property becomes available that is near and/or has congruent or complementary purposes to another property subject to an existing lease.
- **Other Considerations**
 - An existing property or new acquisition becomes available which, in the sole discretion of the BCPOS Ag Resources staff, requires a temporary tenant steward to maintain the property and/or other resources in good condition and for the best interests of the county.
 - In most cases in which a lease is negotiated, BCPOS staff will issue a Request for Proposal (RFP) before the next growing season or at the end of the lease developed under the negotiated lease in order to allow all potential tenants the opportunity to make a proposal.
 - In instances in which emergency grazing leases may be required to sustain livestock, prevent weed infestation, or prevent overgrazing, BCPOS staff can and will attempt to lease a property for shorter periods of time than a full year or growing season. The BCPOS Ag Resources staff will endeavor to make such a temporary assignment if a suitable emergency grazing pasture is available. The assignment, duration, terms, and conditions (especially specific grazing practices or restrictions) shall be at the sole discretion of the staff.
 - The property could significantly improve the viability of a farm or ranch operation on a different BCPOS property currently under lease by the county, either due to its relative proximity to that operation and/or the water rights or water delivery means pertinent to the property.
 - The incorporation of the property into the operations of an existing lease could free up another property for competitive sealed proposals.
 - The property could mitigate impacts of an existing operation to its neighbors.
 - The property could offer an additional opportunity for a diversified agricultural operation consistent with the goals of the Agricultural Resource Division policies.
 - An administrative efficiency could be gained.
 - The property needs considerable work and/or timely intervention to restore it to optimum agricultural viability.

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Decision on Type of Lease

There are four standard types of agricultural leases in use on BCPOS agricultural properties:

1. Cash Rent
2. Crop Share
3. AUD Grazing (*can be separate or a part of a Cash or Crop Share lease*)
4. Emergency or Prescriptive AUD Grazing

These types of leases derive from the BCPOS Cropland Policy and past practice where the preference has been for issuing one-year agricultural leases with tenant options for two one-year renewals under the current terms and conditions. The term of a lease may be extended under special circumstances, such as an EQIP-funded irrigation or infrastructure project or if the award of the lease is based in part upon the intention of the proposer to achieve organic certification after a three-year transition period. Other alternative, or “flexible” types of lease arrangements may be possible, but the four standard types will work well with a vast majority of agricultural operations in Boulder County.

Special consideration, requirements, restrictions, lease rates, etc. may be given to certain crops or practices that are cultivated on only a portion of a leased property.

Under a lease agreement, the county controls the agricultural operation through binding lease specifications and payment terms as set by the county and as agreed to by the tenant.

Under an agricultural lease, the county, as landlord, surrenders exclusive possession of the property to the farmer or rancher, as tenant, for a specified time in return for a periodic payment. If the farmer or rancher operates legally, maintains proper insurance, and makes payments on time, the lease remains in place for the term and the tenant possesses the discretion to exercise any further options to renew the lease, as set forth in the lease. Leases generally provide the tenant with exclusive possession of the property and is non-transferable without the county’s approval, and tenant responsibilities and limits on possession or use are further specified in the lease terms. The BCPOS Department Director has been delegated the power to enter leases for up to three years with revenue up to \$50,000.00 per year. The Board of County Commissioners must approve leases for a term of more than three years or if revenue is estimated to be more than \$50,000.00 per year.

BCPOS staff commits to document the choice of lease type expected to be offered and its rationale in any Request for Proposal. This decision is subject to change at any time based on new information, staff capacity limitations, or other considerations, but such changes will be updated on the county website in a timely manner.

Factors to be considered in the decision on type of lease agreement will include:

- Condition of the property for agricultural productivity.
- Other open space values or uses provided by the property.
- Administrative efficiencies, cost-effectiveness, and staff capacity.

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Competitive Sealed Proposals

County staff commits to use the following guidance for the competitive sealed proposal lease method as the default process:

➤ *Contents of the Request for Proposal*

An RFP issued by the county will include at minimum the following information:

- A statement that the lease shall be offered to the responsible proposer whose proposal represents the best value to the county in terms of expected quality, cost recovery, and efficiency and, as a result, is determined to be most advantageous to the county, taking into consideration the criteria that are set forth in the RFP.
- A statement of specifications, expectations, performance requirements, type of lease to be offered, term including renewal, insurance requirements, and any special instructions for agricultural use of the property.
- A detailed map of the property to be offered including such information as property boundaries, boundaries of the agricultural use area, access, fencing, water availability, topography, buffer areas, and special instructions for use of the property.
- The specific criteria and the relative weight of each criteria that will be used to evaluate the proposals (*see further guidance below*).
- The lease rate at which the property will be offered.
- Proposal submission requirements and schedule (including time and place for the mandatory pre-bid meeting and tour), requirements for electronic and paper sealed submissions (including a checklist of items to be considered for responsiveness), location or electronic mail address for proposal submission, and the time and date after which proposals will no longer be accepted.
- A request for responses to the following:

Describe any affiliation with an historically disadvantaged group, including, but not limited to age, gender, race, ethnicity, sexual orientation, disability, gender identity, economic status, education, or other underrepresented background.
Describe the proposed operation with special attention to practices that: <ul style="list-style-type: none">- enhance soil health- efficient water usage- soil and water conservation- reduce carbon emissions- are economically and environmentally sustainable- describe a commitment to continued education and skills development
Describe your experience with the type of proposed operation, including experience using the necessary equipment, and any relevant education
Provide a list of necessary equipment for each stage of the proposed operation. Indicate one or more of the following: 1) the equipment is owned, 2) there is a written agreement to use, 3) rental agency information on equipment, or 4) a complete plan for alternative access to equipment
Complete the attached Enterprise Budget for the proposed operations for this property. This budget only applies in relation to operations on the property.

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- A statement that the proposer understands that information submitted is prepared at the proposer's expense and becomes a county record. Therefore, proposers should give specific attention to portions of their proposal (that should be easily separable from the non-confidential portions) that they consider to be confidential business information and provide any justification why such materials should not be disclosed by the county in response to an open records request, if the County attorney determines that such portions meet the criteria for an exception from disclosure under the Colorado Open Records Act (CORA).
- A requirement for provision of the name, address, telephone number, and electronic mail address of a single contact person or representative for the proposer.
- A statement that the county reserves the right to reject any or all proposals and to waive any minor informalities or irregularities; and
- A model of the agricultural lease agreement expected to be offered.
- A notification that failure to comply with the RFP process requirements and/or submission of a proposal to anyone other than the County Purchasing Office will result in immediate rejection of the proposal from consideration.

➤ *Proposal Evaluation Criteria and Scoring*

Each RFP will contain the specific criteria and the relative weighting of each criteria that will be used to evaluate the proposals. In general, this will be consistent with the standard criteria and weighting, although documented exceptions stating the rationale may be made to provide the best value to the county for a specific property.

The criteria categories are:

Alignment with County Goals and Priorities: Equity and Diversity
Alignment with County Goals and Priorities: Sustainability
Suitability of Plan for the Property
Experience
Equipment
Finances

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The standard criteria in each category shall generally be consistent with the following:

ALIGNMENT WITH COUNTY GOALS AND PRIORITIES: EQUITY & DIVERSITY Scoring Matrix

5 points: Proposer is from a historically disadvantaged group, including, but not limited to age, gender, race, ethnicity, sexual orientation, disability, gender identity, economic status, education, or other underrepresented background.

4 points: (Intentionally left blank)

3 points: (Intentionally left blank)

2 points: (Intentionally left blank)

1 point: (Intentionally left blank)

0 points: Ineligible *or* No information given

ALIGNMENT WITH COUNTY GOALS AND PRIORITIES: SUSTAINABILITY Scoring Matrix

5 points: In accordance with the Cropland Policy and Boulder County's Strategic priorities, proposal demonstrates concrete plans that: a) enhance soil health, b) Practice efficient water use, c) reduce carbon emissions, d) economically and environmentally sustainable, e) describe a commitment to continued education and skills development.

4 points: The proposal demonstrates concrete plans that meet 4 of the 5 listed priorities

3 points: The proposal demonstrates concrete plans that meet 3 of the 5 listed priorities

2 points: The proposal demonstrates concrete plans that meet 2 of the 5 listed priorities

1 point: The proposal demonstrates concrete plans that meet only 1 of the 5 listed priorities

0 points: No information given

SUITABILITY OF PLAN FOR PROPERTY Scoring Matrix

5 points: Proposed use is consistent with existing infrastructure, makes full use of associated water availability, and other existing conditions while also improving soil and water conservation

4 points: Proposed use is consistent with existing infrastructure, water availability, and other existing conditions while maintaining current soil and water conservation

3 points: Proposed use requires some changes to existing infrastructure, makes use of available water and other existing conditions while maintaining current soil and water conservation

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2 points: Proposed use requires significant changes to existing infrastructure, or does not make full use of water availability or requires use of county equipment or staff for regular operations while improving or maintaining soil and water conservation

1 point: Proposed use requires significant changes to existing infrastructure, or does not make full use of water availability or requires use of county equipment or staff for regular operations while decreasing soil and water conservation

0 points: No information given

EXPERIENCE Scoring Matrix

5 points: More than 5 years' experience actively managing an operation of similar type and size including experience with the necessary equipment or more than 4 years directly relevant education and 2 years' experience actively managing an operation of similar type and size or more than 7 years' experience working directly under a manager/owner of a similar operation plus experience with the necessary equipment

4 points: (Intentionally left blank)

3 points: More than 3 years' experience actively managing an operation of similar type and size including experience with the necessary equipment or more than 3 years directly relevant education and 2 years' experience actively managing an operation of similar type and size including experience with the necessary equipment or more than 5 years' experience working directly under a manager/owner of a similar operation plus experience with the necessary equipment

2 points: (Intentionally left blank)

1 point: Less than 3 years' experience actively managing a similar operation and less than 3 years directly relevant education and less than 5 years' experience working directly under a manager/owner of a similar operation

0 points: No experience or education with a similar operation or no information given.

EQUIPMENT Scoring Matrix

5 points: Thorough list of necessary equipment for each stage of the proposed operation. Either a list of owned, written agreement to use, or rental agency information on equipment, or a complete plan for alternative access to equipment is included. Full budget information for equipment operation and expenses is included in Enterprise Budget.

4 points: Thorough list of necessary equipment for each stage of the proposed operation. Either a list of owned, written agreement to use, or rental agency information on equipment or a complete plan for alternative access to equipment is included. INCOMPLETE budget information for equipment operation and expenses in Enterprise Budget.

3 points: List of necessary equipment for each stage of the proposed operation, but INCOMPLETE list of owned, written agreement to use, or rental agency information, or complete plan for alternative access to equipment. INCOMPLETE budget information for equipment operation and expenses in Enterprise Budget.

2 points: INCOMPLETE List of necessary equipment, INCOMPLETE list of owned, written agreement to use, or rental agency information, or complete plan for alternative access to equipment. INCOMPLETE budget information for equipment operation and expenses in Enterprise Budget.

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1 point: INCOMPLETE List of necessary equipment, MISSING EITHER list of owned, written agreement to use, or rental agency information, or complete plan for alternative access to equipment OR MISSING budget information for equipment operation and expenses in Enterprise Budget.

0 points: No information given

FINANCES Scoring Matrix

5 points: Basic enterprise budget is filled out completely (to the extent of the proposed operation on the property); proposed operation is economically viable

4 points: Basic enterprise budget is filled out completely (to the extent of the proposed operation on the property); proposed operation requires outside funding to retain viability

3 points: Basic enterprise budget is incomplete

2 points: (Intentionally left blank)

1 point: (Intentionally left blank)

0 points: No information given

The weighting of each category shall generally be consistent with the following:

Criteria	Multiplier	Maximum points
Alignment with County Goals and Priorities: Equity and Diversity	2	10
Alignment with County Goals and Priorities: Sustainability	5	25
Suitability of Plan for the Property	5	25
Experience	4	20
Equipment	2	10
Finances	2	10
MAXIMUM TOTAL POINTS		100

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Notice of Request for Proposal

Boulder County Purchasing will contact prospective bidders through the 3rd party bid/RFP notification process administered by Rocky Mountain E-Procurement Systems and send such notice, with the RFP attached to a list of interested agricultural use parties (described below). Notice will also be posted on the county website. Proposal preparation time will be set to provide potential proposers a reasonable time to prepare their proposals with a minimum of twenty-one calendar days provided from the date of the Notice of RFP to the date by which proposals are due (unless waived in writing by the BCPOS Director such as for a re-solicitation). The notice will contain:

- A description of the agricultural property or properties offered for agricultural use.
- A link or web address to the Request for Proposals.
- The time and place of the mandatory pre-bid meeting and tour of the property.
- The time and place to submit any clarifying questions on the Request for Proposal to be answered in writing for all prospective proposers.
- The time until and place where proposals will be received.
- The expected date that the agricultural property or property will be offered for agricultural lease.
- A statement that the county reserves the right to reject any or all proposals and to waive any minor informalities or irregularities therein.
- A statement that the proposal is prepared at proposer's expense and becomes county record and therefore a public record.
- A statement of availability for potential proposers to be added to the list of interested agricultural use parties.

County staff commits to maintaining a list of interested agricultural use parties who would like to receive notice of opportunities (Bid List) for agricultural leases of county properties. Any person may request and be added to this list at any time by electronic message, signing up via the county website, or by letter sent to the BCPOS Agriculture Division. A person on the Bid List is retained on this list until they ask to have their name removed or their email has been returned as undeliverable.

Questions and Addenda to Request for Proposal

Significant clarifying questions submitted in writing by the time and to the place indicated on the Request for Proposal will be answered in writing by county staff. The clarifying questions and their answers will be sent to everyone who supplied contact information. Only the written answers to clarifying questions will change the Request for Proposal requirements or content.

Addenda will be distributed to prospective proposers and posted on the county website, within a reasonable time to be considered in preparing proposals.

Opening of Proposals

Each proposal will be time and date stamped. Before the opening of proposals, the identity of any proposer will not be disclosed, and the contents will not be available to BCPOS staff. Proposals that meet the RFP criteria and are judged responsive by Boulder County Purchasing will be forwarded to the BCPOS Lease Coordinator. Proposals received after the submission deadline indicated on the notice (unless amended) will be considered non-responsive and will not be opened or considered, and proposers of such proposals will be notified of this determination.

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Responsiveness of Proposals

A responsive proposal is one that complies with all material requirements of the Request for Proposal, as determined by the members of the proposal evaluation team. Considerations regarding the responsiveness of a proposal shall include:

- Compliance with all material requirements of the Request for Proposal.
- Submission of proposal in the form specified in the Request for Proposal, including any required signatures.
- Submission of proposal by the time and date and at the location or electronic address specified in the Request for Proposals or addendum.
- Submission of all other information required by the Request for Proposals or addenda.
- Submission of all required disclosure statements.

As soon as possible and generally within 24 hours of a determination of non-responsiveness, county staff will notify the proposer of the reason for such determination. If the non-responsiveness is determined to be minor, staff may choose to work with the proposer to resolve the deficiency and allow the proposal to be evaluated.

Evaluation of Proposals

Offer of an agricultural lease opportunity, if any, will be made to the responsible proposer whose proposal represents the best value to the county in terms of expected quality and efficiency, and as a result is determined to be most advantageous to the county, taking into consideration the criteria that are set forth in the Request for Proposal. In evaluating proposals, staff will only consider the criteria set forth in the Request for Proposal and any amendments to that invitation.

Evaluation Team

Proposals will be reviewed and scored by the proposal evaluation team consisting of no fewer than four persons with knowledge, expertise, and experience sufficient to make a fair and reasonable evaluation. Members of the evaluation team not necessarily constitute a standing committee but shall be appointed and/or volunteer to serve on an evaluations team for select properties or a select group of properties offered at one time.

Responsibilities of the proposal evaluation team members require that they:

- Disclose any real or apparent conflicts of interest and remove themselves from the team, as appropriate.
- Read the Request for Proposal and any addenda.
- Read and rate every proposal independently of other team members.
- Keep ratings confidential during the individual scoring prior to signing and dating the work.
- Do not discuss proposals outside of team meetings prior to a recommendation.
- Score consistently.
- Attend all team meetings, discussions, or interviews.

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Each member of the proposal evaluation team commits to use rating sheets or other written evaluation forms to score each proposal initially and independently. Evaluators will sign and date each of their rating sheets. Initial ratings may be amended following team discussion and the amended ratings recorded on amended rating sheets, but copies of all initial and amended rating sheets or evaluation forms will be maintained by the Ag Resources Division.

The proposal evaluation team will evaluate all responsive proposals and may choose to check references and/or enter discussions with one or more of the initially top-ranked proposals to promote understanding of the county's requirements and a proposer's proposal and capabilities. County staff commit to accord fair treatment to proposers with respect to any opportunity for reference checks, discussions, and/or revisions of proposals but such activities may be limited to a competitive range sub-set of proposers based on an initial ranking of proposals.

Offer of Lease

The proposal evaluation team will provide a ranking of all responsive proposals and a recommendation for lease to the BCPOS Director for approval. Each recommendation will include at minimum a justification for the selection and a summary of the compiled rankings, and any special terms or conditions to be included in the lease.

If approved by the BCPOS Director, the Ag Resource Division representative will offer a lease to the selected proposer. If accepted, the BCPOS Agricultural Resource Specialist and Lease Coordinator will prepare a lease in accordance with the terms of the Request for Proposal and the submitted proposal. If not accepted, the agricultural resource specialist will seek approval to offer a lease to the next ranked proposal. BCPOS staff will notify all proposers who submitted unsuccessful proposals of the results in a timely fashion.

Negotiated Leases

County staff will use the following guidance for the negotiated lease method:

- Preliminary Discussions—county staff may engage in preliminary discussions with a farmer or rancher who might be interested in using a county property for agricultural use to explore the feasibility of a proposed negotiated lease.
- Negotiations—county staff may negotiate with qualified farmers or ranchers regarding the terms of a proposed offer of lease. They commit to maintain a written record of the conduct of negotiations and the basis for any determination to continue or suspend negotiations with each qualified farmer or rancher. County staff may request a proposal from the qualified farmer or rancher to serve as the basis for an offer of a lease.

Acknowledgement

We gratefully acknowledge that the general format and a good deal of the content of this document were borrowed from the City of Boulder's Open Space and Mountain Parks (OSMP) department. In turn, we recognize that a good deal of our past BCPOS agricultural leasing procedures were used by OSMP to craft its current policy.