

Federal court clears way for Jefferson Parkway land swap to take place by Monday

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A federal appeals court on Friday cleared what may have been the last major obstacle standing in the way of a complex land swap designed to secure a crucial right-of-way for the Jefferson Parkway, rejecting an emergency motion seeking to block the \$10 million deal.

Friday's order comes from the same three-judge panel on the U.S. 10th Circuit Court of Appeals that on Wednesday issued a temporary injunction halting the transaction, only to reverse itself a day later after being swayed by the response from the U.S. Department of Justice.

The town of Superior and environmental groups WildEarth Guardians and Rocky Mountain Wild filed the motion seeking an injunction this week after a federal judge last week dismissed a lawsuit over the land swap that was filed in late 2011. The plaintiffs wanted the transaction put on hold while they appeal their lawsuit's dismissal.

That lawsuit was intended to block the deal -- and, by extension, the parkway -- on grounds including the lack of a comprehensive environmental assessment of its impacts. Opponents say building the road along the route currently proposed, which skirts the eastern edge of the federally owned Rocky Flats National Wildlife Refuge, could turn up soil laced with dangerous levels of plutonium in the area, which was the longtime site of the Rocky Flats nuclear weapons plant.

Jeremy Nichols, climate and energy program director of WildEarth Guardians, expressed disappointment Friday in the court's ruling.

"We intend to follow through with our appeal, but this basically guarantees that the highway authority will get the land and build the tollway," Nichols wrote in an e-mail to the Camera. "We hold out some hope that this misguided road can still be thwarted, but, for now, this continues to be a setback for smart growth and open space along the Front Range."

Deadline looms

The land transfer involves the trading of a 617-acre parcel near the southwestern corner of Rocky Flats National Wildlife Refuge, known as Section 16, for a 300-foot-wide transportation right-of-way on the eastern edge of the refuge that runs parallel to Indiana Avenue.

The right-of-way is viewed as a critical piece of the proposed toll road, which proponents say will nearly complete a high-speed beltway around the Denver metro area.

The deal involves multiple local governments, the Colorado State Land Board and the lawsuit's primary defendants, the U.S. Fish and Wildlife Service and the U.S. Department of the Interior. It was already extended twice in 2012, and while opponents argue it could be extended again while the 10th Circuit reviews their appeal, stakeholders say it faces a critical deadline at the end of this year.

Officials with the Jefferson Parkway Public Highway Authority earlier this week confirmed that the estimated \$10 million needed to purchase Section 16 -- supplied by sources that include the city of Boulder, Boulder County, Jefferson County and other governmental entities -- is set aside in escrow accounts.

If transactions don't take place by Monday, officials said, the money will be returned to its sources, something the Department of Justice noted in its brief -- filed on behalf of the Fish and Wildlife Service and the Department of the Interior -- would "likely sound the death knell for the transaction."

Construction 2 years out

Bill Ray, interim director of the Parkway Authority, on Friday thanked the many governmental entities that have acted as partners in the land deal and applauded the appellate court's decision to deny the injunction.

"The Section 16 acquisition is a major acquisition of open space and preservation of wildlife habitat for the benefit of people throughout the metro area," Ray said. "We're certainly pleased that the court recognized and reaffirmed the validity of the (Rocky Flats National Wildlife Refuge Act) and the intent of Congress to go forward with the transportation corridor."

Ray reiterated that the land deal's expected closing on Monday does not mean construction will begin immediately on the parkway. He said there is much more to do, starting with a meeting of the Jefferson Parkway Authority Board of Directors to see how they would prefer to proceed once the land has been obtained.

"This is an important step, but it only one step in a very long process," Ray said, noting that he believes construction of phase one of the parkway is still at least two years away. "This hopefully will lead to success, but there is certainly no guarantee of success. There is permitting that needs to be done, environmental reviews to be gone through, engineering work to be performed.

"There is whole lot of stuff."

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