

Eagle County Open Space Commercial Activity Rule

1. Intent: Eagle County creates this rule to establish an equitable process for Users to request and the County to approve Commercial Activity use on Open Space as defined herein. The rule provides a process for Users to obtain permission to conduct Commercial Activity on Open Space so long as such use will not conflict with the public's use of Open Space; is not prohibited by conservation easement or management plan; or does not devalue or diminish the conservation values of Open Space. Commercial Activities will not take precedence over the enjoyment of Open Space by Eagle County's residents and visitors. If a Commercial Operator chooses to avail itself of using Open Space in compliance with this rule, it must conduct its use in a manner that protects natural resources, recognizes recreational and educational opportunities, and celebrates conserved lands in Eagle County.

2. Scope: This rule shall apply to all Commercial Activity held on Open Space as defined herein. The scope of these rules do not apply to any Special Events or Programs as defined below or as stated in the Special Event and Programming Rule. For Users that wish to conduct Commercial Activities in addition to Special Events and Programs, such Users may need to obtain permits for both the Commercial Activity and Special Event or Program. The Commercial Activity rule and permitting procedures contained herein may be changed, updated, or modified at any time by Eagle County.

3. Violation: Violations of the Commercial Activity Rule shall be subject to Eagle County Open Space Rules and Regulations 9.1 which states Commercial Activities on Open Space, without the prior, express written consent and permission from the Director or his/her Designee or commercial activity permit, are strictly prohibited. The Commercial Activity Rule is incorporated by reference into the Eagle County Open Space Rules and Regulations and sections 19.1, 19.2, and 19.3 and dictates enforcement and fees for violations that may be assessed in accordance with Eagle County Open Space Rules and Regulations, and dictates enforcement and fees for violations that may be assessed in accordance with Eagle County Open Space Rules and Regulations section 20. Additionally, violations of Eagle County Open Space Rules and Regulations, documented complaints, damages to natural resources by Commercial Users, and/or violations any conditions or terms of the applicable Commercial Activity permit will be considered during the application process for subsequent years and may result in the denial or limitation of Commercial Activities on Open Space.
 - 3.1. Appeals: Revocation or temporary suspension of Commercial Activity permits may be appealed by Commercial Operators by submitting a formal letter of appeal with five (5) days of formal acknowledgement of revocation or suspension. Appeal review will be a staff level review and may require additional resources and/or documentation by the Commercial Operator.

During the term of any permit suspension, the Commercial Operator shall not conduct any operations. Staff also has the ability to issue a notice to correct any continuing violation in lieu of a suspension or revocation. Commercial Operators

will comply with notices to correct issued by staff within ten (10) days of receipt of notification. Failure to timely correct such violations is grounds for immediate suspension or revocation.

Any staff decision regarding an application, permit renewal application, suspension or revocation shall be in writing specifying the reasons for the decision. Within ten (10) days of a decision, the applicant or permit holder may request that staff reconsider its decision by submitting a letter to Eagle County clearly stating the grounds for the request. In response, the Director may deny the request or issue a revised decision.

The decision of the Director under this Rule shall constitute a final administrative officer or agency decision appealable to the Eagle County Board of County Commissioners. No additional hearing or appeal rights shall be provided to applicants under this Rule. At all times, the permit holder or applicant bears the burden of proving it has not committed a violation or is qualified to hold a permit by a preponderance of the evidence standard. If an appeal is filed, the Director's decision shall be stayed until such appeal is finally resolved by the Board.

4. Definitions:

- 4.1. "Commercial Activities" are defined as activities that provide any service or product including, but not limited to, guiding, training, photography, instructing, outfitting, or any service for which a fee is charged. Programs and Special Events as defined in 4.7 and 4.8 herein do not require a Commercial Activity Permit.
- 4.2. "Commercial Operator" is a person or entity who facilitates an exchange of money for goods or services rendered on Eagle County Open Space or by access facilitated by Eagle County Open Space properties.
- 4.3. "Commercial User" is any person on Open Space who paid a fee to a permitted Commercial Operator or staff of a permitted Commercial Operator that uses Open Space in any manner permitted by rules including, but not limited to, bicycling, jogging, walking, equestrian, skiing, rafting, kayaking, hunting, and fishing
- 4.4. "Designee" is an Eagle County Open Space Department staff member designated by the "Director" and/or BoCC.
- 4.5. "Director" is the Director of the Eagle County Open Space Department
- 4.6. "Open Space" means any property or facilities owned, leased or otherwise managed, operated, under permit, trail easement, leased, or designated as Open Space by the Eagle County Board of County Commissioners including, but not limited to, trails, waters, buildings, structures, roads, parking lots, or facilities on such lands by Eagle County, Colorado.
- 4.7. "Program" means an educational program that is curriculum driven and generally supports the mission of Eagle County Open Space. Programs have 25 or fewer participants.

- 4.7.1. Educational programs that fit the definition of a “program” but exceed 25 participants may be permitted on a case by case basis.
 - 4.8. “Special Event” means a community event that requires a larger amount of oversight from Eagle County Open Space staff for which a fee may be charged. Special Events are events that exceed 25 participants.
 - 4.9. “User” is any person on Open Space that uses it in any manner permitted by rules including, but not limited to, bicycling, jogging, walking, equestrian, skiing, rafting, kayaking, hunting, and fishing.
5. Commercial Use Permitting Procedure: The procedure outlined below is intended to inform the written consent and/or permit process for Commercial Activities for all Open Space.
 - 5.1. Applicants must fill out an online Application: [Application is available online here.](#) (Appendix A) or contact the Eagle County Open Space Department to facilitate completion of such form.
 - 5.2. All Commercial Operators must submit an application annually to Eagle County Open Space on or before March 15th for the year the Commercial Activity will take place.
 - 5.3. Commercial Activity applications must be signed by an authorized agent of the Commercial Operator.
 - 5.4. A Commercial Activity Application must include, but is not limited to, the following components:
 - 5.4.1. *Operating Plan* that includes the following: Proposed activity description; anticipated number of users and size of groups; specific dates, timing, or frequency of proposed activities; client safety plan; natural resource protection plan; and parking plan.
 - 5.4.2. *Maps* of where the proposed activities will occur on Open Space.
 - 5.4.3. Signed *Stewardship Affidavit* (Appendix B).
 - 5.4.4. *Outfitter License (if applicable)*.
 - 5.4.5. *Application Fee* in accordance with the fee schedule.
 - 5.5. Approval/ Denial: Eagle County will provide Commercial Operators a “permit” (Appendix C) for the proposed activities if its review determines the proposed activities to be in accordance with property specific conservation easements, management plans, and/or standards that do not diminish the conservation values and public benefits of Open Space, as determined by Eagle County staff. Eagle County reserves the right to establish capacity limits, designated areas, or implement other management actions that may limit Commercial Activities to enhance and protect Eagle County Open Space properties. Within fourteen (14) days of permit issuance, the Commercial Outfitter shall provide a Certificate of Insurance listing Eagle County, Colorado as additionally insured in accordance with the insurance requirements found in Appendix E.

- 5.5.1. Transfers: Permits for Commercial Activity are non-transferable and are intended for a specific use(s) by a specific Commercial Operator. If a Commercial Operator transfers ownership of a business or organization that is permitted for Commercial Activity on Open Space, the new Commercial Operator will have thirty (30) days to submit a new Commercial Activity Application if they intend to operate Commercial Activities on Open Space.

- 5.6. End of season reporting: All permitted Commercial Operators on Eagle County Open Space will report the total number of Users and total gross receipts from Commercial Activities generated on Open Space properties on or by February 15th for the preceding permit season (Appendix D). Non-compliance with end of season reporting may be cause for denial of Commercial Activity application in subsequent years.

- 5.7. Renewal: Applications for Commercial Activity on Open Space are required annually.

- 5.8. Review standards:
Eagle County will annually review the Commercial Operator for compliance with permitting requirements, specific Open Space property rules and regulations, and other criteria as deemed necessary. Eagle County reserves the right to suspend or deny approval for Commercial Activities due to non-compliance with Commercial Activities permit conditions and/or repeated violations of rules and regulations.

- 5.9. Fee schedule: In order to recover administrative and management costs, Eagle County developed a fee schedule for reviewing Commercial Activity Permit Applications. Eagle County reserves the right to modify or alter the fee schedule at any time, in its sole discretion. Commercial Activity Application Fees are due upon issuance of permit.

Commercial Activity Application Fee (tentatively beginning in 2022)	\$150.00
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- 5.9.1. Staff developed the Fee schedule based upon estimated application review time, program oversight and program implementation and are intended to cover the administrative costs of overseeing and implementing the Commercial Use policy on Open Space.

- 5.9.2. Application fees shall be paid to the Eagle County Treasurer's Office and be transferred to the Open Space Fund.

6. Exceptions and clarifications:
 - 6.1. Organized group activities hosted by registered 501(c)(3) organizations or local governments including Programs and Special Events that are not Commercial Activities, and have received approval for a Special Event or Program from Eagle County are not subject to the Eagle County Commercial Activity Rule.
 - 6.2. Commercial Activities where Eagle County is the primary sponsor or host are exempt from the application fee.
 - 6.3. If a registered 501(c)3 organization operates a “fee for service” model where it collects registration fees or charges a fee for Special Events or Programs, additional permits may be needed.
 - 6.4. Eagle County desires to provide consistent access to Open Space for all of its Users, including its residents, visitors as well as Commercial Operators where deemed appropriate. Should conflicts arise, Commercial Operators shall be prepared to work with Open Space to mitigate the conflict.

7. Refunds: Commercial Activities application fees are non-refundable.

Appendix A
Commercial Activity Application
Online here: <https://forms.gle/VHmFa3746LXi9s7y6>
(draft)

Contact person (Authorized Agent): _____

Business Name: _____

Applicant/ business address: _____

Phone Number- Business: _____ Contact cell phone: _____:

Email: _____ Website: _____

Please select the Open Space property where you would like to operate Commercial Activities
Please note unlisted trails, properties, or access points are either closed to Commercial Activities or not within Eagle County Open Space's jurisdiction. Please contact the Open Space department if you have questions about individual properties.

Operating Plan: (Please upload your current operating plan here or provide a brief summary of proposed Commercial Activities on Open Space including but not limited to: Overview of Commercial Activities to take place on Open Space, estimated of number of users annually on Open Space, group sizes, specific dates and/or times and frequency of use, plans addressing client safety and natural resource protection, and a parking plan).

Maps: (Please upload maps of where your proposed commercial activity will take place- If you are proposing to only use the boat ramps at the selected properties, you may skip this section.)

Special Events/Programs: Do you intend to host Special Events or Programs on Open Space? Separate written permission may be needed. Y/N

By submitting this application the contact person and Commercial Operator listed above hereby agrees to abide by all posted rules and regulations on site as well as rules and regulations that are presented in the Eagle County Open Space Rules and Regulations. Violations of Eagle County Open Space Rules and Regulations may result in revocation of the issued permit and/or denial of future Commercial Activity permits.

By submitting this application, I acknowledge that if a Commercial Activity permit or written permission is granted, I will be required to maintain adequate records and report annually, to Eagle County, the number of users on Eagle County Open Space associated with the proposed Commercial Activity as well as the total amount of gross receipts generated on Open Space by Commercial Activities as permitted by the Commercial Activity permit.

By submitting this application, I acknowledge that if Eagle County issues a Commercial Activity permit to me, I will provide to Eagle County a current Certificate of Insurance naming Eagle County Government as additionally insured.

By submitting the application, I acknowledge that if a permit is granted, all users associated with the Commercial Activity proposed herein are aware of, and will abide by the Eagle County Open Space Rules and Regulations, included but not limited to resource protection, operating hours, and any and all conditions stated in the permit.

Additionally, I certify that I have read and understand the Eagle County Open Space Stewardship Agreement for Commercial Activities and understand that documented violations of the stewardship agreement may result in revocation of the issued permit and/or denial of future Commercial Activity permits.

I hereby certify that I am of legal age and am authorized to do business in the State of Colorado. I have personally examined the information contained in this application and certify that this information is correct to the best of my knowledge. I hereby acknowledge that this is an application only, and that the use and occupancy of Open Space is not authorized until a Commercial Activity permit or written permission is signed and issued by an authorized officer.

Applicant

_____/_____/_____
Date

Appendix B
Eagle County Open Space Commercial Operator Stewardship Agreement

Eagle County Government acquires and manages properties based on the Open Space Conservation Criteria as provided in Eagle County Resolutions 2004-015 and 2003-97, establishing the Eagle County Open Space fund. All Commercial Activities undertaken on Open Space recognize the values inherent in these Conservation Criteria and Commercial Operators understand their operations must not conflict with any stated purposes for acquiring and preserving Open Space and any and all posted rules and regulations, not limited to the rules and regulations listed in the Eagle County Open Space Rules and Regulations. Additionally, it is Eagle County's goal for all Commercial Activities, including guests and staff, to follow Leave No Trace principles including, but not limited to the removal of human waste, natural resource protections (including wildlife), and the consideration of other users. By checking the box below, the Commercial Operator named on this application pledges to conduct its operations and educate staff and clientele in a way that: protects Eagle County's natural resources; prevents and/or attempts to prevent conflicts between other commercial users and/or the public enjoyment of Open Space; and follows Leave No Trace principles.

Appendix C
Eagle County Open Space Commercial Activity Permit (draft)

___/___/___, 20__

RE: 20__ Commercial Activity Authorization

Dear: _____

This letter is intended to serve as authorization for the conditional use of Open Space for Commercial Activities for 20__ by (Commercial Operator). This authorization is required by the Eagle County Open Space Rules and Regulations Resolution. All conditions, rules and regulations, and additional agreements are stated in the Commercial Activity application, which was signed by _____ on behalf of _____ on _____

Eagle County will require annual reports of Commercial User numbers on Open Space as well as the total amount of gross receipts generated on Open Space by Commercial Activities allowed under this permit. The log formats have been provided. Completed log forms can be submitted by email, mail or in person either monthly or annually. All reports for 20__ are due by February 15th, 20__.

Authorized Use: _____ is authorized to use Open Space , easements and river access areas, including boat launches, in 2021 for Commercial Activities as submitted to Eagle County by the applicant on __/__/_. The authorized use includes:

Failure to comply with the above requirements or any Eagle County Open Space Rules and Regulations may result in the revocation of this authorization, fines, or other legal actions. Any violation of Eagle County Open Space Rules and Regulations contained within this permit or any established conditions of Commercial Activity may be taken into consideration when reviewing subsequent applications for commercial use and may result in the denial or limited use of Open Space for commercial activities.

Eagle County staff appreciates your efforts to be a good steward of Open Space.

Please contact me with any questions, comments, or concerns.

Sincerely,

Peter Suneson
Outreach & Education Specialist
Eagle County Open Space
(o) 970-328-8637
(c) 970-401-1054

Appendix D
Eagle County Open Space Commercial Use Log
(example)

Commercial Operator: _____

Date Submitted: __/__/__

Date	Location	Use/Activity	# of users served	notes	Revenue generated
1/1/20	Eagle River Preserve	Guided fly fishing	4		\$400.00
6/1/20	Two Bridges	rafting	8	Parking full at 8am	\$250.00

Gross receipts generated on Open Space during permit year 20__ \$_____

By signing below, I acknowledge that the number of users and total revenue generated via trips on Open Space associated with permitted commercial activities is represented accurately to the best of my knowledge.

Signed

Date

Business name: _____

Appendix E Insurance Requirements

Insurance. Commercial Operator agrees to provide a Certificate of Insurance evidencing the following and maintain at Commercial Operator's sole cost and expense, the following insurance coverage with limits of liability not less than those stated below:

a. Types of Insurance.

i. Workers' Compensation insurance as required by law.

ii. Auto coverage with limits of liability not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance, including coverage for owned, hired, and non-owned vehicles.

iii. Commercial General Liability coverage to include premises and operations, personal/advertising injury, products/completed operations, broad form property damage with limits of liability not less than \$1,000,000 per occurrence and \$1,000,000 aggregate limits.

b. Other Requirements.

i. The automobile and commercial general liability coverage shall be endorsed to include Eagle County Government, its associated or affiliated entities, its successors and assigns, elected officials, employees, agents and volunteers as additional insureds.

ii. Commercial Outfitter's certificates of insurance shall include subcontractors, if any as additional insureds under its policies or Commercial Outfitter shall furnish to Eagle County Government separate certificates and endorsements for each subcontractor.

iii. The parties hereto understand and agree that Eagle County Government is relying on, and does not waive or intend to waive, the monetary limitations or rights, immunities and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or otherwise available to Eagle County Government, its affiliated entities, successors or assigns, its elected officials, employees, agents and volunteers.