

**Fountain Creek Watershed, Flood Control and Greenway District
BOARD OF DIRECTORS**

MINUTES

August 28, 2009

The meeting was held at:
City of Fountain, City Hall
116 S. Main Street, 2nd Floor
Fountain, CO 80817

1. CALL TO ORDER AND ESTABLISHMENT OF A QUORUM:

El Paso County Commissioner Dennis Hisey called the meeting to order at 1:06 p.m.

In attendance were the following duly designated members of the Board of Directors of the District:

<u>Name</u>	<u>Appointing Authority</u>
Dennis Hisey	El Paso County
Jeff Chostner	Pueblo County
Gabe Ortega	City of Fountain
Barbara Vidmar	City of Pueblo
Max Stafford	EPC Small Municipalities
Jane Rhodes	Pueblo City-County

A quorum was noted.

2. APPROVAL OF AGENDA:

Upon motion duly made, seconded and unanimously carried, the agenda for the August 28, 2009 meeting was approved.

3. APPROVE MINUTES OF PRIOR BOARD MEETING

Upon motion duly made, seconded and unanimously carried, the minutes of the Board meeting of July 31, 2009 were approved.

Director Jane Rhodes announced that she had taken a position with respect to the LaFarge Sundance Land Use Applications and wished to recuse herself from consideration of agenda items 4 and 5. Ms. Rhodes then left the Board of Directors' table and took a seat in the audience.

**4. EXECUTIVE SESSION. PURSUANT TO C.R.S. §24-6-402(4)(b),
COUNSEL FOR THE DISTRICT IS REQUESTING AN EXECUTIVE
SESSION WITH THE BOARD OF DIRECTORS REGARDING THE
FOLLOWING MATTERS: CONFERENCE WITH THE BOARD'S**

**LEGAL COUNSEL FOR THE PURPOSE OF RECEIVING LEGAL
ADVICE ON SPECIFIC LEGAL QUESTIONS RELATED TO THE
LAFARGE/SUNDANCE LAND USE APPLICATIONS, AND AN
ALLEGED CONFLICT OF INTEREST ARISING FROM THE CITIZENS
ADVISORY GROUP MEETING OF AUGUST 14, 2009.**

Upon motion duly made, seconded and carried 5-0, the Board went into executive session from 1:20 p.m. until 2:05 p.m. Present in the executive session were Board members Hisey, Chostner, Ortega, Vidmar and Stafford along with attorneys Cole Emmons and Dan Kogovsek. No decisions were made by the Board during the executive session.

**5. REVIEW, RECEIVE RECOMMENDATIONS BY THE TECHNICAL
ADVISORY COMMITTEE (“TAC”) AND THE CITIZENS ADVISORY
GROUP (“CAG”), DISCUSSION, AND DECISIONS CONCERNING THE
FOLLOWING:**

A. Request by LaFarge (Applicant) and Sundance Investments (Land Owner) for approval of a special use for mineral and natural resource extraction of sand and gravel. The mining will take place on a 514 acre parcel between the Union Pacific railroad tracks and Fountain Creek. A portion of a second, smaller parcel to the north, consisting of a total of 64.35 acres, will be used for a scale house and access improvements. The Fountain Creek Watershed, Flood Control, and Greenway District has full land use authority for the portions of this land use application that are located within the 100 year floodplain corridor as defined in §§ 32-11.5-103(9)(a) and 32-11.5-205(3), C.R.S., and recommending land use authority for portions of this land use application that are located outside the 100 year floodplain corridor. The site is located adjacent to the southern boundary of the City of Fountain, is zoned RR-5 (Residential Rural) and I-2 (Limited Industrial) by El Paso County, Colorado, and is in the South Central Comprehensive Plan (1988) area. This application is being processed concurrently with a Variance of Use to allow concrete and asphalt batch plants in the I-2 Zone. (Schedule No. 57000-00-097, 57000-00-125)

B. Request by Lafarge (Applicant) and Sundance Investments (Land Owner) for a variance of use to allow concrete and asphalt batch plants in the I-2 zone. Batch plants are only allowed by special use in the I-3 (Heavy Industrial) and M (Manufacturing) zones of El Paso County, Colorado, hence the need for the variance of use. The Fountain Creek Watershed, Flood Control, and Greenway District has full land use authority for the portions of this land use application that are located within the 100 year floodplain corridor as defined in §§ 32-11.5-103(9)(a) and 32-11.5-205(3), C.R.S., and recommending land use authority for portions of this land use application that are located outside the 100 year floodplain corridor. The site is located adjacent to the southern boundary of the City of Fountain, is zoned I-2 (Limited Industrial) by El Paso

County, Colorado, and is in the El Paso County South Central Comprehensive Plan (1998) area. This application is being processed concurrently with a special use for mineral and natural resource extraction of sand and gravel. (Schedule No. 57000-00-097)

The District's attorney, Cole Emmons, advised the Board that it could hear presentations on both the special use application and the variance application at the same time but that separate votes would be required on each application at the end of the hearing.

Steve Brown of LaFarge made a presentation to the Board in support of the applications. Ken Sampley, Chairman of the TAC, reported to the Board on the TAC's review of both applications on August 12, 2009. The TAC's 13 recommendations with respect to the special use application (gravel extraction) were marked and received as Exhibit 1. The TAC's 14 recommendations concerning the variance application (batch plant) were marked and received as Exhibit 2. Jay Winner, Vice Chairman of the CAG, reported to the Board on the results of the CAG's review of the LaFarge/Sundance applications on August 14, 2009.

Board member Jeff Chostner moved that the Board's consideration of both applications be tabled until the Board's next meeting. Second by Barbara Vidmar. Bill Park, Jonathan Moore and Ferris Frost spoke in favor of a continuance. Following a discussion, the motion to table passed 3-2 with Board members Chostner, Vidmar and Stafford voting in favor and Board members Hisey and Ortega voting opposed.

Director Jane Rhodes returned to the Board table to participate in the meeting as a member of District's Board of Directors.

6. DISCUSSION OF AND DECISION REGARDING INTERGOVERNMENTAL AGREEMENT WITH THE LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT AND THE CITY OF COLORADO SPRINGS

The District's attorney, Cole Emmons, reviewed with the Board a proposed IGA, with an effective date of August 28, 2009, between the District, Colorado Springs Utilities and the Lower Arkansas Valley Water Conservancy District concerning administrative funding for the District and funding for the completion of the Fountain Creek Corridor Master Plan. Jay Winner, Carol Baker and Utilities Attorney Mark Shea spoke in favor of the IGA. Upon motion duly made, seconded and unanimously carried, District Chairman Dennis Hisey was authorized to sign the aforementioned IGA on behalf of the District.

7. REPORT FROM TAC CHAIR

TAC Chairman Ken Sampley reported to the Board that 2 vacancies existed on the Technical Advisory Committee as follows:

- Lower Arkansas Representative – Vacant
- Federal Regulations/Military Installations
 - Fort Carson – Vacant

Mr. Sampley stated that the TAC would attempt to recruit a representative from Fort Carson but solicited the Board’s assistance in finding a suitable representative with technical expertise from the Lower Arkansas Valley.

8. REPORT FROM CAG CHAIR

A. DIRECTION REGARDING FORM OF MINUTES BY THE CAG

CAG Chair Ferris Frost reported to the Board that CAG member Mary Barber had volunteered to prepare detailed minutes of all CAG meetings and that the CAG preferred to keep narrative minutes of its meetings rather than action minutes. Following a discussion, upon motion duly made, seconded and unanimously carried, it was resolved that the CAG is authorized to keep and maintain minutes of its meetings using a narrative format.

9. APPROVAL OR RATIFICATION OF AND DECISIONS REGARDING RECEIPT OF \$100,000.00 FROM THE SDS APPLICANTS FOR STUDIES CONCERNING THE CONSTRUCTION OF FLOOD CONTROL AND SEDIMENT CONTROL FACILITIES.

Attorney Dan Kogovsek reported to the Board on his research to find a Pueblo financial institution paying the highest rate of return on funds. Kogovsek reported that the best rate of return was being offered by Legacy Bank which was paying 1.59% on a 1 year certificate of deposit. Following a discussion, upon motion duly made, seconded and unanimously carried, it was resolved that the District open an account at Legacy Bank and that the District invest \$100,000.00 in a 1 year “government funds” certificate of deposit. It was further resolved that Dennis Hisey, Jeff Chostner and Gabe Ortega were authorized to sign all required documents on behalf of the District to invest the District’s funds.

10. DISCUSSION OF AND DIRECTION REGARDING SELECTION OF AN EXECUTIVE DIRECTOR

The Board discussed the process for hiring an executive director for the District. Following a discussion, upon motion duly made, seconded and unanimously carried, Jane Rhodes, Jeff Chostner, Larry Small and Richard Skorman (alternate) were appointed as a search committee and were asked to report to the Board at its next meeting with proposed job search goals, job description and a timeline for selection of an executive director.

11. OTHER BUSINESS: None

12. PUBLIC COMMENT: None

13. EXECUTIVE SESSION (IF REQUIRED): None

14. DATE, TIME, AND LOCATION OF NEXT MEETING:

Upon motion made, duly seconded and unanimously carried, it was resolved that the next meeting of the District Board of Directors would take place at 1:00 p.m. on Friday, September 25, 2009, at the Fountain City Hall, 116 S. Main Street, 2nd Floor, Fountain, CO 80817.

15. ADJOURN:

The meeting adjourned at 3:45 p.m.

Larry Small, Secretary