

Fountain Creek Watershed District Board
Technical Advisory Committee
Meeting Minutes
August 12, 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 Introductions

Ken Sampley called the meeting to order at 1:03 p.m.

In attendance were the following designated members of the Fountain Creek Watershed Technical Advisory Committee:

<u>Name</u>	<u>Organization</u>
Rich Muzzy	PPACG
Carol Baker	Colorado Springs Utilities
Kim Headley	Pueblo County
Elaine Kleckner	El Paso County
Greg Langer	Natural Resource Conservation Service
Duane Greenwood	City of Fountain
Dennis Maroney	City of Pueblo
Jim Heckman	Fountain Sanitation District
Jim McGannon	Forestry/Landscape Consultant
Ken Sampley	City of Colorado Springs

Also in attendance were: Dan Kogovsek, Cole Emmons, Ferris Frost, Graham Thompson, David Kinnischtzke, Mike Drabing, Roberta Rivgstrom, James Kulbreth, Gary Rapp, Sean Frisch, Paul Banks, Tad Foster, Steve Brown

2. Approve Agenda of August 12, 2009

Upon motion duly made, seconded and unanimously carried, the agenda for the August 12, 2009 meeting was approved with the addition of an agenda item to discuss the District Board meeting after approval of the minutes.

3. Approve Minutes of July 29, 2009 TAC Meeting

Upon motion duly made, seconded and unanimously carried, the minutes for the July 29, 2009 TAC meeting were approved with the correction of the spelling of Jim Houlk. His name should be spelled "Jim Houk" and not "Jim Houlk."

4. Update on District Board Meeting of July 31

Items presented by the TAC to the Board included two land use items for the confluence Vista Project and TAC membership. The Board approved the membership of the TAC and the two land use items with conditions.

5. Election of Chairperson, Vice Chairperson, and Secretary

Following a discussion, upon motions duly made, seconded and unanimously carried, the following persons were elected as Chairperson, Vice Chairperson and Secretary.

- a. Chairperson: Ken Sampley
- b. Vice Chairperson: Dennis Maroney
- c. Secretary: Rich Muzzy

6. Colorado Sunshine Law Compliance

Following a discussion, upon motions duly made, seconded and unanimously carried, the following actions were taken in compliance with the Colorado Sunshine Law, C.R.S. 24-6-101, *et seq.*:

- a. **Designated place where meeting notices will be posted:** In the same locations as notices of meetings of the El Paso County and Pueblo County Boards of County Commissioners are posted.
- b. **Fixed the time and place of regular meetings:** The dates, times and locations of Technical Advisory Committee meetings will be the second Wednesday of every month at 1:00 pm or on an as needed basis. It was the consensus of the TAC that the meetings would take place at the Fountain City Hall.
- c. **Designated the District Secretary as the custodian of the records.**
- d. **Designated where minutes and records will be maintained:** With the District Secretary with copies to be maintained by legal counsel.
- e. **Designated the audio recording as the official record of the meetings.**
- f. **Order the audio recording of executive sessions (except attorney/client communications)**
- g. **Designated Official Newspapers for publication of required notices:** The same newspapers selected by the El Paso County and Pueblo County Boards of County Commissioners for the publication of County notices.

7. Review, Discussion and Recommendation to District Board 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)

The item was reviewed for consistency with the Strategic Plan for the Fountain Creek Watershed, March 2009 prepared by the Fountain Creek Vision Task Force and the Fountain Creek Watershed Study, January 2009 prepared by the United States Army Corps of Engineers (USACE). The TAC also considered submittals prepared by the applicant to address land use requirements of El Paso County.

This item was presented and considered in conjunction with a request by the applicants for approval of a variance of use to allow concrete and asphalt batch plants in the I-2 Zone. The item began with a presentation by representatives of LaFarge and its consultant, Banks and Gesso, on the major considerations associated with the proposed mining of sand and gravel from the site, the activities and operations of the facility and its concrete and asphalt batch plants, mitigation measures proposed, and the eventual creation of two water storage reservoirs and return to agricultural use of the remainder of the property. Information available through the website was passed out. It was clarified the LaFarge does not own the property but will lease it from Sundance Investments. Concerns expressed about the proposed mining of the property included:

- Impacts of the development on Fountain Creek hydraulics and erosion of adjacent property;
- Location of the project and proposed activities relative to the floodplain;
- Possibility that the project would go longer than 15 years;
- Potential downstream impacts to Fountain Creek;
- Alignment of the proposed regional trail;
- Visual Impacts – discussed what the mining cells will look like after the project is complete and potential uses;
- Bank stabilization;
- Encroachments into and damage of the adjacent riparian habitat;
- Potential adverse impacts on water quality, with the primary concern being the possibility of increased selenium concentrations and the need to provide information on how impacts would be quantified and mitigated;
- Visual impacts to adjacent properties, motorists on Interstate Highway 25, and future trail users;
- Traffic impacts to the Interstate Highway 25 interchange at mile marker 122.
- Dust and noise impacts; and
- Potential impacts on wildlife and specifically adjacent heron nesting areas.

TAC members discussed the project and the concerns noted above and the portion of the mining cells that would be located in the floodplain. Two areas which represent about 15% of the total mining that is proposed would be located in the floodplain. Representatives of LaFarge discussed three options regarding mining in the floodplain:

- a) No Mining in floodplain
- b) Mining in floodplain
- c) Modified mining in floodplain which would consist of mining about 11 feet below surface of the water table.

Two memo submitted by or on behalf LaFarge were reviewed: 1) Responses to Questions that were raised at a previous TAC meeting regarding the project; and 2) Compliance of the Project with the Fountain Creek Watershed Strategic Plan and Corps Study.

Some members felt that additional information was needed from the applicants to address the concerns noted above before approving the request for a special use while other members felt that the proposal had sufficient detail for its conceptual level and that concerns could be addressed by attaching conditions to the approval of the special use request. These conditions would require that the applicants address concerns and provide additional information to the TAC and Fountain Creek Watershed District in the future. Following considerable discussion, a motion was duly made, seconded and passed on a vote of 5-4 that the special use be approved, subject to the following conditions:

Following discussion by committee members was an opportunity for public comment and the TAC received input and comments from citizens, engineering consultants, an environmental scientist and interested parties. The following public comments were made:

Tad Foster discussed the potential for water quality concerns regarding selenium. Mining will expose the shale formations which have high concentrations of naturally occurring selenium and by exposing the formations to oxidation could increase concentrations of selenium in Fountain Creek and the stream segment is already close to exceeding the water quality standard for selenium. Possible suggestions given were; a) Have the applicant submit water quality data; b) obtain an NPDES permit; and c) maintain water quality sampling data.

Graham Thompson, representing Frost Livestock, discussed the potential geomorphic and hydrologic concerns to the creek. Graham passed out two figures (Segment 6 and 7) from the Army Corps of Engineers Watershed Study showing geomorphic changes over time for the section of the creek where the project is proposed. Concerns were expressed regarding the bankfull bench approach proposed by the applicant in areas where there was already stable riparian vegetation.

Ferris Frost, concerned citizen representing Frost Livestock and Concerned Citizens of Fountain Valley discussed concerns regarding further erosion in area where the access road is proposed, location of batch plant being too close to the stream and causing undercut banks, chemicals used in making asphalt and the potential for getting into the stream, wetland and riparian degradation, impacts to the ecology and sustainable agriculture that is practiced.

Roberta Ringstom, concerned citizen talked about water quality impacts regarding the mining, potential contamination from other sources such as trucks, discharge of water from the ponds and the increased flows.

Upon motion duly made, seconded and passed by a 5 to 4 vote, the Proposed Mineral and Natural Resource Extraction Special Use Permit was approved subject to the following conditions:

1. Minimum 400 feet Setback from Fountain Creek for Batch Plant & Gravel/Sand Processing Operations.
2. Minimum 100 feet Setback from Fountain Creek Riparian Habitat or Top of Creek Bank for Mining Operations.
3. Minimum 100 feet Setback from Fountain Creek Top of Bank for Detention/Fresh Water Pond.
4. Annual Ground Water and Fountain Creek Water Quality Pollutant Monitoring Testing Report shall be submitted to the Fountain Creek Watershed District. Selenium levels shall be included in said pollutant monitoring. Testing shall be performed upstream, on-site, down stream and at all site water discharge points. A Base Line Surface Water and Ground Water Quality Report shall be submitted prior to start of any site construction. Applicants shall mitigate any significant increase in pollutant levels attributed to their operations. Applicants shall participate in regional mitigation efforts to meet potential future Total Maximum Daily Load (TMDL) standards that may be imposed on the Fountain Creek Watershed by the US EPA/Colorado Department of Public Health & Environment Water Quality Control Division.
5. Bankfull bench bank stabilization shall be required along the adjacent westerly side of Fountain Creek at four specific locations as identified by Matrix Design Group on a modified US Army Corps of Engineers Fountain Creek Study Figure 4-12 Bankfull Channel Characteristics for Segment 7 originally dated 12/2006. Existing stable riparian areas between the four identified bank stabilization areas shall be protected.
6. Wetland enhancement restoration shall be required for any mining operation areas within FEMA designated 100-year flood plain.
7. Detailed final design plans for Fountain Creek bank stabilization and wetland enhancement restoration shall be reviewed and approved by the Fountain Creek Watershed District prior to construction of said improvements.
8. Applicants shall work with El Paso County, Colorado State Parks and the Fountain Creek Watershed District to develop a public access recreational trail along this reach of Fountain Creek.
9. Additional review and approval from the Fountain Creek Watershed District for the Special Use Permit shall be required for any proposed extension of special use permitted operations beyond the initial 15-year planned mining/extraction and material processing operation permit period.
10. Minimum 100 feet Fountain Creek Bank/Riparian Habitat Setback shall be required for any proposed reclaimed/restoration fresh water ponds.
11. Applicants shall obtain a site specific National Pollutant Discharge Elimination System (NPDES) Permit from US EPA/Colorado Department of Public Health & Environment Water Quality Control Division.
12. Detail Site Development Plans (30%, 60% & 90%) must be submitted to the Fountain Creek Watershed District for review and approval. Said Site

Development plans shall include Drainage Reports, Grading Plan, Erosion & Sediment Control Plan, Re-Vegetation/Restoration Plans.

13. Applicants shall provide the Fountain Creek Watershed District reasonable access to conduct annual monitoring inspections of site operations to help ensure the special use permit conditions of approval are being appropriately implemented and maintained.

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)

Upon motion duly made, seconded and passed by a 5 to 4 vote, approval of the Concrete & Asphalt Batch Plant Special Use Permit subject to the following conditions:

1. All of the conditions for the Proposed Mineral and Natural Resource Extraction Special Use Permit are followed as recommended for Item 7A.
2. The proposed site operation screening earthen berm along the westerly property line parallel to the Union Pacific Railroad must be constructed without lengthy gaps/breaks except for the existing drainage way separating proposed Phase 1 and Phase 2 Mining areas and the potential need for a narrow access road into the northern material processing area. As such the proposed lengthy gap in the site screening berm along the Concrete & Asphalt Batch Plants and the Sand/Gravel Processing area is not acceptable.

8. Review and discussion regarding establishing technical review criteria, structure, and procedures for submittals to be presented for TAC consideration.

Discussion of this item was postponed until the next meeting.

9. Other Business: None

10. Public Comment: None

11. Executive Session (If Required): None

12. Setting Date, Time, and Location of Next Meeting:

The next TAC meeting would be at their regularly scheduled date and time on September 9 at 1:00 p.m. at Fountain City Hall.

13. Adjourn: The meeting was adjourned at 5:10 pm