Land Use
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BOULDER COUNTY PLANNING COMMISSION
AGENDA ITEM #5

October 16, 2013

Hearing Room, Third Floor
Boulder County Courthouse

STUDY SESSION: Staff Report on Rights of Nature Movement
Background and discussion of the Right of Nature movement per request made by Planning Commission on June 11, 2013
Action Requested: Information Item - Public Testimony Will Be Taken
Staff Planner: Peter Fogg – Manager, Long Range Policy Team

Summary

During public hearings before both the Parks and Open Space Advisory Committee and the Boulder County Planning Commission on Docket BCCP-08-0003: Environmental Resources Element Update, members of the public testified and submitted written commentary advocating that language recognizing the rights of nature be incorporated into the Update. Staff described some of the general concerns with taking such action, but in an effort to be responsive in a measured way to the advocates for rights of nature the language in the Element Overview section and draft Goal B.3 were revised to identify "naturally occurring ecosystems and their native species populations" as important environmental resources to which a variety of management strategies would be applied in order to promote their viability and integrity. This language was approved by Planning Commission as part of the revised Element on June 16, 2013, accompanied by direction to staff to provide more information on the right of nature movement, its objectives, status, and application, at a later public hearing study session. This memo was prepared in response to that directive[1].

Organization of the Report

Staff has conducted research into the rights of nature movement and met with three of its local advocates – Steve Jones, President of the Boulder County Audubon Society; Ruby Bowman, resident of Longmont; and Dan Leftwich, attorney and founder of MindDrive Legal Services, LLC in Boulder – to discuss differing viewpoints and possible alternatives for addressing rights of nature in some fashion. A summary of that meeting is included in **Attachment A** as well as a partial bibliography of the sources reviewed in preparing this report (**Attachment B**). **Attachment C** includes correspondence from the public. Staff also met with Jane Utti, Executive Director of Farmers

[1] As a point of clarification, the terms "ordinances", "laws", "measures" and so forth when applied to rights of nature are meant to convey the same meaning – an action by a governmental entity formally recognizing and bestowing rights of nature with enforceable standing. This may be stretching protocols or semantics, but different governments use different terms for their official acts.

Alliance for Integrated Resources (FAIR) at her request to have a conversation about what adoption of a rights of nature policy might mean to agrarian operations and uses of agricultural lands.

Books, theses, films, international movements, conferences and so forth have been devoted to the subject of rights of nature. The intent of this report is to provide Planning Commission with an overview of key precepts, applications, and issues both advocating for and cautioning about the use of rights of nature as a legislative or regulatory tool in land use decisions. In order to distill the information gathered by staff into what is hopefully a useful format for Planning Commission and others, the report is organized using the following headings:

I. Foundation and Purpose of the Rights of Nature Movement

In basic terms, the objective of rights of nature advocates is to treat nature…its ecosystems, species, land forms, and all their innate, interdependent functions…as something other than property which is to be regarded and disposed of as such by human actions, desires and institutions. It is to recognize that ecosystems and natural communities are entities that have an independent right to exist and flourish. Another way to express the issue that the rights of nature movement strives to overcome is that until an entity is recognized as having rights, it is seen as a "thing" for the use of those holding rights…us. By treating nature as property or a thing to be used as we choose in a property or economic value context, which often results in accelerating the degradation and disruption of its life-sustaining functions, we are causing great harm to ourselves and the planet we live on.

Advocates assert granting rights to nature gives nature standing to be defended and protected in court if necessary by people, government and communities On the other hand advocates contend that environmental laws and regulations, however well intended, typically just slow down degradation and destruction by imposing quid pro quos or other obligations on a proponent of some activity in return for obtaining permission and permits to proceed with the activity. This does not constitute real protection or any recognition of rights.

II. Brief History and Current Status of Rights of Nature Initiatives

A seminal moment that helped galvanize the rights of nature movement occurred in 1972 when Christopher D. Stone published *Should Trees Have Standing? Toward Legal Rights for Natural Objects.* He argued that there are historical and current precedents where otherwise "voiceless" objects i.e. corporations) or groups (i.e. mentally disabled persons) have been granted rights through lawyers or other persons to represent their interests and seek legal redress from harm. Nature falls into the same voiceless category and thus is deserving of similar representation and protection.

In 2008 the South American nation of Ecuador rewrote their constitution to include articles granting rights to nature. Bolivia established 11 rights of nature by adopting the Law of Mother Earth in 2011. Internationally, coalitions of people and groups have been in contact

with each other through the auspices of organizations like the Global Alliance for the Rights of Nature to further the movement.

Beginning in 2006, over three dozen municipalities and local governments have adopted some form of rights of nature ordinances, resolutions, or other documents. They vary in population from 600 (Sugar Hill, NH) to 307,484 (Pittsburgh, PA). States with one or more of these local governments include Pennsylvania, Virginia, Maine, Maryland, New Hampshire, New Mexico, Ohio, New York, and California. One of the most recent adoptions was by the City of Santa Monica, CA which adopted a Sustainability Bill of Rights in March of this year. Included in the Bill of Rights was a subsection stating that:

> "Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City."

To staffs knowledge, no legal actions have been brought in any of these jurisdictions either challenging the rights of nature action or suing an entity on behalf of nature.

III. Application of Rights of Nature by Local Jurisdictions in the United States (Context)

In one way, the City of Santa Monica's Bill of Rights differs from other rights of nature actions in that it does not name specific activities that are prohibited or "unlawful" to engage in within its corporate limits which would otherwise harm or damage nature. A number of the other 30-some jurisdictions which have adopted a rights of nature measure have taken a more focused approach by identifying some specific activity within the ordinances or laws considered particularly onerous and threatening to natural communities and ecosystems. Examples include:

- Tamaqua Borough, PA – disposal of sewage sludge and coal fly ash into abandoned mining pits;
- Pittsburg, PA – prohibition of hydraulic fracking within corporate limits;
- Sugar Hill, NH – ban on corporations from acquiring land or building structures to support any "unsustainable energy system";
- Mora County, NM – prohibition on oil drilling and fracking;
- Barnstable, NH – banned corporate water withdrawals from three bedrock wells.

Some of these jurisdictions have adopted rights of nature protections under the broader umbrella of the Community Rights movement, which in its essence is a movement within many local governments (over 125 thus far) to assert their rights to regulate activities that have been beyond their authority due to claims of state and/or federal pre-emption. This movement challenges conventional law and seeks to exercise self-governance[2]. The staff

[2] It should be noted that a number of these Community Rights ordinances and resolutions have been overturned in court.

research also found a variety of interpretations or views on how rights of nature tools should be applied and used. In general there appear to be three, each somewhat distinctive and reflecting the intent or philosophies of the proponents *(see Mark, Jason. Earth Island Journal cited article in the attached bibliography*):

1) Use rights of nature to establish new legal conventions by revamping the current legal system which seems to favor property and corporate rights over other rights;

2) Use rights of nature as a "tactical wedge" to stimulate a rethinking about human relationships with the environment as a whole; and

3) Use rights of nature to press a confrontation between existing laws and values that will move people to reassess some of the basic assumptions of their societies and priorities.

All three have been employed with the common understanding that the effectiveness of any of them will only become apparent over time, and that they may overlap or be phased depending on how they are received, accepted or upheld.

IV. Concerns About the Absence of Rights of Nature Ordinances and Policies

Perhaps the most pressing concern raised by advocates for the adoption of measures granting rights to nature is that environmental laws do not protect nature; they simply retard the rate of damage, loss, and fragmentation that is inflicted every day. By categorizing nature as property, having no voice or defined rights for relief from having those rights violated, most environmental regulations actually legalize and manage its degradation rather than preventing it. As Steve Jones, President of Boulder Audubon Society and member of BORN, wrote after our meeting on July 26th (*see Attachment A)*:

> "…one of our major goals is for local governments to acknowledge that native species have the right to exist—this isn't accomplished by our simply saying 'We will do everything possible to protect native species', since that approach reinforces the outdated model of humans as caretakers/guardians of nature and does not imply that other naturally-occurring species have the same level of rights to exist as humans (and incidentally, corporations!)."[3]

Beyond the precept that nature has inherent rights which deserve recognition and respect, advocates as well as ordinances adopted by some jurisdictions note that human welfare is inextricably bound to the welfare of the environment. As we do to it we, in the long run, are doing to ourselves and consigning to future generations. The planet is losing species, ecological diversity, and environmental integrity at a growing and alarming rate. A new paradigm is needed in the human/nature relationship.

Advocates acknowledge that changing long-established laws, customs, and notions of "rights" is a time-consuming and complex task, but go on to point out that many of the rights and institutions we enjoy and take largely for granted today began with ideas that seemed radical, implausible, upsetting, even ridiculous in the days when they emerged and took

[3] E-Mail dated August 21, 2013.

form. The rights of nature movement merits support and the chance to flourish and thrive as does nature itself.

V. Concerns About Enacting Rights of Nature Ordinances and Policies

In general terms, most of the concerns about adopting ordinances or policies have been presented to Planning Commission in previous hearings on Docket BCCP-08-003: Environmental Resource Element Update, and are enumerated in Attachment A of this report. They are not duplicated in this memo. The scope of fundamental legal issues alone, touched on in the above-referenced Attachment, are considerable and not without consequence.

Staff came across several other questions which are difficult to answer or which were not addressed in detail within the limited research we conducted. Three of them are:

- "Homogenization" of nature – this concern focuses on what actually counts as "nature" and how we (humans) are to judge and mediate between competing and divergent needs either within or between different ecosystems. *(see Fish, Laurel. Stanford Undergraduate Research Journal cited article in the attached bibliography)*.
- Scale – this concern is a subset of homogenization in that the application of "rights" is typically not an all-or-nothing proposition, that the application of rights in the case of nature "…requires an intimate understanding of the entities in question and a precise determination of the borders/constituents of an ecosystem or species." An ordinance providing a blanket or vague description of what in nature is being covered will significantly complicate administration and enforcement (*see Burdon Peter. Australian Humanities Review cited article in the attached bibliography)*
- Application and implementation – this concern rests on staff research that indicates the translation of rights of nature legislation into codes, criteria, zoning and other implementation standards and procedures for processing land use or other applications have not been developed by jurisdictions that have adopted these rights. How are the rights granted to be applied and enforced on a day-today basis? By way of example, the Boulder County Comprehensive Plan is statutorily authorized and designed to provide policy guidance, but that guidance is to be acted upon through the development and refinement of programs, plans, regulations, budgets, and so forth. Otherwise the BCCP becomes little more than a resting place for intentions and platitudes.

In summary, consideration about pursuing some rights of nature initiative in a legislative form ought to first determine if the questions and concerns identified above warrant more understanding and resolution before taking action or if action first is more important and needed in order to get at those questions and concerns.

VI. Concluding Comments

The rights of nature is a multi-faceted topic and draws in discussion from philosophical, historical, ethical, scientific, morality, legal, cultural and other perspectives. The overview presented above is intended to focus the scope and quantity of information to those points that will be useful to Planning Commission in their role as an advisory body on land use matters to the Board of County Commissioners and as keepers of the Boulder County Comprehensive Plan.

Staff has expressed their position on rights of nature action in previous hearings. In our subsequent meeting with Mr. Jones, Mr. Leftwich and Ms. Bowman (Attachment A) we talked about options for some "middle way" to identify the rights of nature issue in the BCCP text without placing it in Goal or Policy language. Staff is prepared to discuss this with Planning Commission and to respond to other questions, thoughts or direction from Planning Commission as requested.

ATTACHMENT A

RIGHTS OF NATURE DISCUSSION – JULY 26, 2013

Advocates
Steve Jones – President, Boulder County Aududon Society
Ruby Bowman – active citizen, Longmont
Dan Leftwich – Attorney, MindDrive Legal Services, LLC

Staff
Therese Glowacki – Parks and Open Space
Justin Atherton-Wood – Parks and Open Space
Conrad Lattes – County Attorney
Bill Davidson – Land Use
Pete Fogg – Land Use

Advocate Comments:

- Boulder County native species have been collapsing since 1990; urban generalist species are taking over;
- management plans are being done piece by piece v. looking at the bigger, integrated picture;
- BCCP does not express a sense of urgency about native species/ecosystem losses and extirpations of those with non-protected federal/state status;
- conflicts about land uses must be resolved with ecosystems in the equation as equals to other claimed rights;
- rights come from existence, not laws;
- advocating for principles - principled commitments and actions - to be part of the BCCP, not legislation;
- the BCCP is a community-wide document that can get education, ideas and concepts about the importance of instilling and respecting the rights that nature should be afforded in land use decisions;
- draft ordinance (distributed by Drew) distinguishes between natural v. non-natural beings e.g. corporations
- Boulder County works every day for the rights of nature within existing limitations that can't be overcome or controlled without taking more assertive actions to recognize rights of nature
- the county wants it both ways with the BCCP – some say it's advisory, others say it's regulatory – so some consistency or clarification is needed here
- incentivizing management to protect and honor keystone species needs attention and action

County Staff Comments:

- the county has limited jurisdictional authority to bestow rights (US and state constitutions do this);
- the BCCP is not an appropriate document within which to legislate actions;
- legal interpretation is rights must be backed up with enforcement remedies or they are not rights; however...
    - ➢ no examples found in staff research of jurisdictions or in correspondence with Thomas Linzey (counsel for Community Environmental Legal Defense Fund) having translated "rights of nature" ordinances into criteria, regulations, zoning, definition of standing, administrative procedures or other implementation tools to be applied and enforced in making land use decisions *(many "rights of nature" ordinances appear to have been adopted to prevent or ban a specific activity or*

activities – oil and gas drilling, fracking, hazardous/toxic waste disposal, filling of wetlands, etc., and under the broader auspices of adopting "Community Rights" ordinances)

- question of who has standing to assert rights of nature and when/under what conditions or circumstances is not clear but has potentially enormous ramifications for other recognized, legal activities e.g. agriculture
- BCCP goals and policies are not solely statements of a philosophy, principles or desired state of something but are obligations that carry meaning in terms of taking actions to implement them;
- the Environmental Resources Element is one of several mandates county staff operates under...staff have internal debates every day about what's the right or correct thing to do in managing these resources especially when there are competing needs/conflicts between threatened or non-protected species and ecosystems;
- nothing is in absolute balance in the ecosystem...it's always changing and shifting...how does one deal with conflicts and competition between the needs of threatened species (protected or not) v. the needs of ecosystems?
- Boulder County includes multiple jurisdictions (federal, state, municipal) which have their own land use authority granted by statutes and laws that are independent of county governance or ordinances but which can have direct impacts of ecosystems and species;
- other approaches or actions toward the stewardship of ecosystems at a local and regional level may be worth exploring to address identified concerns (this would be in addition to property-specific management plans)
- ERE Goal B.1 says:

  "Boulder County shall conserve and preserve environmental resources including its unique or distinctive natural features, biodiversity, and ecosystems through protection and restoration in recognition of the irreplaceable character of such resources and their importance to the quality of life in Boulder County."

- new ERE Goal B.3 recommended by POSAC and adopted by Planning Commission says:

  "Boulder County shall promote the viability and integrity of all naturally occurring ecosystems and their native species populations by applying a variety of environmental resources management strategies in a manner that is consistent with current ecological principles and sustainable conservation practices."

Conclusion:

Advocates would be open to some reference in the Introduction text of the ERE to the need for redoubling efforts and actions to protect species and ecosystems from displacement, diminishment, damage or extirpation, and to make stewardship the premier management directive. An ordinance, goal or policy invoking "rights of nature" is desirable but not necessary at this time.

County staff will provide a report to Planning Commission covering the research done on rights of nature actions, the concerns and constraints associated with them in the context of law, the conversation summarized above, a subsequent conversation requested by FAIR (Farmers Alliance for Integrated Resources) held on August 6th, and Boulder County's long-standing commitment to environmental protection and preservation. Staff will not recommend that a rights of nature ordinance or reference to such be included in the BCCP, leaving it to Planning Commission to discuss how they wish to proceed.

ATTACHMENT B

PARTIAL BIBLIOGRAPHY

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Community Environmental Legal Defense Fund (CELDF) website https://www.google.com/#q=celdf Includes the text of Pittsburgh's Community Protection from Natural Gas Extraction Ordinance, Section 4.2 – Rights of Natural Communities.

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Fogg, Peter. Personal E-Mail communication with Thomas Linzey, Counsel for the Community Environmental Legal Defense Fund. July 9 and 10, 2013. (Inquiry as to what actions those jurisdictions having adopted rights of nature ordinances have taken to define implementation, review criteria, standing and enforcement measures for use by the jurisdiction, general public, and other stakeholders like developers.)

Gold, Mark. *"Sustainability Bill of Rights: A New Paradigm to Protect the Environment and People"* Huff Post Los Angeles April 11, 2013.

Klinkenborg, Verlyn. *"Hey, You Callin/ Me an Invasive Species?"* New York Times Sunday Review Observer editorial. September 8 2013.

Lake, Osprey Orielle. "*Rights of Nature and an Earth Economy Community*" Tikkun Magazine. January 28, 2013.

Mark, Jason. *"Natural Law: From Rural Pennsylvania to South America, a Global Alliance is Promoting the Idea that Ecosystems Have Intrinsic Rights"* Earth Island Journal. Spring 2012.

Merchant, Brian. *"125 Cities Passed Laws Placing Rights of Citizens, Nature Above Corporations"* The UtoPIANIST (http://utopianist.com/) February 10, 2011

Stone, Christopher D. *"Should Trees Have Standing? Toward Legal Rights for Natural Objects"* 45 Southern California Law Review 450. 1972.

Yeoman, Barry. *"Rebel Towns: Call It Municipal Disobedience – Municipalities Like Sugar Hill, NH Are Defying Laws They Deem Illegitimate"* The Nation Magazine. February 4, 2013.

ATTACHMENT C

Fogg, Peter

From: Steve Jones <curlewsj@comcast.net>
Sent: Monday, September 16, 2013 8:29 AM
To: Fogg, Peter
Subject: Boulder County Audubon comments concerning rights of nature discussion

Date: 16 September 2013

To: Peter Fogg and Boulder County Planning Board

From: Stephen Jones, President, Boulder County Audubon Society

Re: Rights of nature discussion

Dear Peter, Planning Division staff, and Planning Commission members,

Thank you for your thorough and insightful characterization of our discussion concerning including rights of nature language in the Boulder County Comprehensive Plan, and thank you for taking the time to discuss this issue so patiently with us. There is just one area of your memo that we are concerned about, and that is the characterization that we do not consider it important to include the word "right" in the Environmental Resources Element. I believe what I said was that we would be open to alternate wording proposed by staff so long as that wording produced the same level of community commitment to protecting native species. But I believe I also added that I couldn't think offhand of how that goal could be achieved without acknowledging, in some way, native species' rights to exist.

Here's why. During discussions about land management, zoning, annexations, and so forth, many of the participants, including corporations, governments, and property owners, have legal standing. Native ecosystems and their wildlife populations do not. It's no coincidence that when a new gas well is proposed or a new big-box store planned, the debate makes front page headlines in the local papers; whereas when our actions jeopardize remaining habitat for threatened species such as white-tailed jackrabbit or northern harrier the discussion rarely makes even the back pages. Since ecosystems and wildlife have no rights or legal standing, they have no voice, and they can get pushed aside during the planning process.

Consider this. Where is Boulder County's recovery plan for white-tailed jackrabbit? When did we last meet with other local agencies and municipalities to plan nesting habitat enhancement and expansion for northern harriers, which are critically imperiled? Why has there been no public discussion about the imminent loss of an entire ecosystem, bristlecone pine forest, in the mountains of Boulder County? Where can I find a document describing our commitment to eventually reestablishing black-footed ferrets in Boulder County, including step-by-step details of what needs to be done for that to be accomplished?

One other thought comes to mind concerning including rights of nature language in the Comprehensive Plan. Most everyone in our community, except perhaps County legal staff, believes that natural beings have a right to exist. For most of us, this is a moral imperative, just as we believe that all humans should have equal rights. We know that sooner or later rights for natural beings will be codified in our guiding documents, just as they already have been in Ecuador, Bolivia, and many North American municipalities. I'm hoping we can continue to work to figure out how to do this, even if there are uncertainties and legal or political roadblocks to overcome. I know that our hearts are in the same place, and I look forward to continuing to work toward a progressive and fruitful outcome.

To sum up, we remain open to various language options, just so long as they establish standing for natural beings, give them a full voice in future discussions, and commit us to doing everything within our power to protect them and their habitat.

Thanks again for considering our comments,

Steve

Stephen Jones, president

Boulder County Audubon Society

curlewsj@comcast.net; 303-494-2468

Fogg, Peter

From: marshall@indra.com
Sent: Sunday, August 25, 2013 5:26 PM
To: #LandUsePlanner
Cc: marshall@indra.com
Subject: Comp Plan

To Whom it May Concern:

Twenty million bison once thundered across the Great Plains, below a sheltering sky. That sky could not protect them. By the late 1800s, the plains were silent. Nearly all of the bison had been slaughtered. Today, most of the half million remaining bison are in captivity. Tourists pull off the highway when they see roadside signs advertising a "Buffalo Herd Outlook". Children sit on car roofs and giggle, pointing at the small herds of bison. Behind them are semis, thundering down the highway.

We can't step back in time and stop the slaughter of the bison. We do have a chance to stop other slaughters. Let's give our children a healthier planet. The rights of natural beings should be included in the Boulder County Comprehensive Plan.

I will paraphrase a challenge proposed by Joanna Macy: We can either become hospice workers to a dying planet or midwives to the birth of a new
culture. Let's choose the latter. Let's design societies that recognize
the rights of nature. Yes, it is possible. For example, we can choose to recognize the rights of the northern harrier, lark bunting, loggerhead shrike, and burrowing owl to breed and flourish in Boulder County. Let's accept the challenge and support life.

Modern life might distance us from other native beings. It does not separate us. We are as dependent on the health of our planet as were the Plains Peoples. As dependent as those cultures who once sought simple shelter, food and clothing from bison. We are connected.

Sincerely, Kristen Marshall

Fogg, Peter

From: Shari Malloy <smalloy@indra.com>
Sent: Tuesday, August 20, 2013 10:18 PM
To: Lanning, Meredith
Cc: Gardner, Deb; Jones, Elise; cdominico@bouldercounty.org; Fogg, Peter; Atherton-Wood, Justin; Davidson, William
Subject: support for sentence inclusion in Bldr. Co. Comp Plan

Dear Meredith
Please forward my comments (below) regarding my support of inclusion of the following language in the Environmental Resources part of the Boulder Co. Comprehensive Plan.

Dear Planning Commission Members,

Please include the following language in the Environmental Resources part of the Boulder County Comprehensive Plan.

"Boulder County acknowledges the rights of all naturally occurring ecosystems and their native species populations to exist and flourish,"

Inclusion of this sentence is essential to the protection of native species including plants and wildlife. Current "protections" are not sufficient. 150+ municipalities have adopted this language into their comprehensive plans. Surely Boulder County can/should do likewise.

Thank you for your important public service,

Shari Malloy
2113 Rangeview Lane
Longmont CO 80501

Fogg, Peter

From: kbb <brighamk@peak.org>
Sent: Friday, September 13, 2013 8:25 PM
To: Fogg, Peter
Subject: letter to Planning Commission for Hearing September 18

Re: Rights of Nature for Planning Commission Hearing September 18

Dear Peter and Planning Commission members:

I think it is crucial to include rights of nature language in the Environmental Resources Element Update of the Boulder County Comprehensive Plan.

The county must be committed to maintaining healthy native ecosystems and thriving populations of native wildlife species.

Including rights of nature language is a fundamental way to achieve this goal by giving citizens a legal means to protect animals and plants, as living beings which cannot defend themselves. For example, the vitality of our river systems is critical to the future of the county.

Rights of Nature language has by now been adopted in around 150 municipalities in the U.S. Boulder County was once an environmental leader; however, after decades of investment by its citizens, county government is lately sadly stumbling. Yet voters will likely continue to vote to back their investment and standard of living.

I believe, subliminally, or if we stop to think about it, the natural green environment around Boulder County attracted us to this place to live and enriches our daily lives here. I haven't met a thoughtful person who does not believe native species have a right to exist and thrive. I haven't met an individual who admits to wanting a bear killed. But I know quite a few,
and have heard of many more people, who are outraged at the recent shooting of 2 bears.

This is a recognized rights movement around the country and the world, and it is not going away. Let us meet it boldly, now, and lead the proud state of Colorado.

Kitty Brigham
1004 Plateau Rd., Longmont

Fogg, Peter

From: Priscilla Stuckey <priscilla@priscillastuckey.com>
Sent: Monday, September 16, 2013 12:05 PM
To: Fogg, Peter
Subject: support "rights of nature" in Comprehensive Plan

Dear Boulder County Planning Commissioners,

Please add this language to the Boulder County Comprehensive Plan: "
We acknowledge the rights of naturally occurring ecosystems and their native species populations to exist and flourish in Boulder County."

I recently attended a conference where a thirty-something presenter said, "One of my first assignments in elementary school was to scour the endangered species list. So I grew up with a sense of the Earth not so much as something that abides but as something that could go away." My heart broke. She and her generation are the first to feel the reality that life on Earth as we know it could be destroyed.

We are in the middle of the Sixth Great Extinction--the one brought about by human acts. The Fifth Extinction was caused by an asteroid from outer space tens of millions of years ago. Human beings have now grown as powerful as that asteroid. We are driving life as we know it to destruction.

The legal system of the modern era is upside down. The current law imagines that humans are the apex of creation. The current law sets humans above and apart from the rest of nature. Recognizing that nature has rights restores the proper order, the real-world order: humans are dependent on countless Earth-others for everything, down to our very lives. Our well-being depends on their well-being. To put it in business terms, we are a wholly owned subsidiary of the ecosystem.

Putting "rights of nature" language into the Comprehensive Plan begins a process of restoring the proper balance, of recognizing that the right of the ecosystem to function in a healthy way must trump the so-called right of humans to destroy it irrevocably.

Please put "rights of nature" language into the Comprehensive Plan.

Priscilla Stuckey, PhD

Founding Board Member, Boulder Rights of Nature
http://priscillastuckey.com

Available now: *Kissed by a Fox: And Other Stories of Friendship in Nature*
"A tenderly woven collection of essays . . . [an] entertaining and emotionally resonant book." —Publisher's Weekly

WINNER of the 2013 WILLA Award in Creative Nonfiction

Fogg, Peter

From: Suzanne Webel <suzannewebel@gmail.com>
Sent: Monday, September 16, 2013 1:03 PM
To: Fogg, Peter; Davidson, William; Boulder County Board of Commissioners; Atherton-Wood, Justin; Stewart, Ron
Subject: Planning Commission and BOCC: NO on Rights of Nature

I am writing in support of the Land Use Department, County Attorney's office, and Parks & Open Space Department Staffs'
thorough research and balanced approach to the Environmental Resources Element of the Boulder County Comprehensive Plan, which was approved by the Planning Commission on June 11, 2013.
Furthermore, I agree with Staffs' conclusions and recommendation to NOT include any part of the so-called rights of nature concept in the BCCP. Therefore, I urge you -- the Planning Commission and Board of County Commissioners -- to REJECT this concept in its entirety.

The BCCP provides many broad and overarching protections for the natural resources of Boulder County, stating that "Boulder County shall conserve and protect environmental resources including its unique or distinctive natural features, biodiversity, and ecosystems through protection and restoration, in recognition of the irreplaceable character of such resources and their importance to the quality of life in Boulder County"
(ERE Goal B.1). The document goes on to state that "Boulder County shall promote the viability and integrity of all naturally occurring ecosystems and their native species populations by applying a variety of environmental resources management strategies in a manner that is consistent with current ecological principles and sustainable conservation practices" (ERE, Goal B.3).

The Revised BCCP includes special protections for:

1) Environmental Conservation Areas
2) High Biodiversity Areas
3) Natural Landmarks
4) State and County Natural Areas
5) Significant Natural Communities
6) Critical Wildlife Habitats
7) Wetlands and Riparian Areas
8) Rare Plant Areas
9) Species of Special Concern

In addition to the BCCP, many other Municipal charters, City and County Open Space planning documents, the Boulder Valley Comprehensive Plan, the Boulder County Land Use Code, many USDA Forest Service plans, State and National Park plans, Inter-Governmental Agreements, and myriad other agency documents already have extremely rigorous protection of the environment built into them which affect all levels of civic life in Boulder County. These various levels of protection have been discussed publicly for many years and follow legal doctrines that honor time-tested principles.

However, these multiple protections are not enough to satisfy a few environmental extremists, who are quietly pushing for the inclusion of a "Sustainable Rights of Nature Ordinance" which would, among other things:

1) "Eliminate the authority of a property owner to destroy, or cause substantial harm to, natural communities and ecosystems"
2) Accord "inherent, inalienable, and fundamental rights of Nature to all Natural Beings" including humans and "all living species of plants, animals, and algae"

3) Include a Statement of Law that "All Natural beings, Natural Communities and Ecosystems possess the inalienable right to exist, flourish, regenerate, and evolve"
4) Declare that "The Precautionary Principle Is Needed To Protect These Rights"
5) Find that "It shall be unlawful for any person, government entity, corporation (etc) to intentionally or recklessly violate the rights of Natural Beings, Natural Communities or Ecosystems"
6) Enforce "Damages" measured by the cost of restoring the Natural Community or Ecosystem to its [original] state before the injury.

The proposed "Rights of Nature Ordinance" would have enormous detrimental implications for all public and private lands, agriculture, medicine, backyard gardens, animal ownership, public land access and trail use, property rights and many other existing rights of Boulder County residents. It would create unimaginable social and legal nightmares for all of us. In fact, I believe that is exactly what its advocates intend: to deliberately paralyze almost all legitimate and necessary activities routinely undertaken by individuals, governments, and corporations countywide.

And it would place those very advocates in charge of determining who can do what, anywhere, by giving "any resident of this community" the standing to bring crippling litigation against any other member of the community for any infractions of their philosophy, whether real or imagined. I am troubled by the impatience of its advocates with the public process, and by the fact that this radical agenda has so far escaped public scrutiny. I am disturbed by their arbitrary and liberal use of "all" throughout their manifesto, such as "all living species of plants, animals, and algae" and "all natural beings possess...."
and I would urge you to beware of any proposal that uses such rigid language. Their manifesto is at once too broad, asserting new paradigms about the health of the world and other unrealistic expectations; and too specific, presuming, for example, to give members of the community the right to obtain locally grown food.

Finally, it is not up to a small group of zealots to presume to ascribe "rights" to anyone or anything. And to claim that there are "inherent, inalienable, and fundamental rights of Nature that emanate from the Earth's own functioning" is bizarre, to say the least.

As a natural scientist, trails & public lands advocate, small business-owner, farmer, volunteer, land steward and avid environmentalist myself, I believe that the recently updated BCCP Environmental Resources Element is already more than sufficiently protective of our natural resources. Insertion of even a single sentence referring to any so-called rights of nature is inappropriate in the Boulder County Comprehensive Plan or anywhere else.

Thank you for your thoughtful consideration of this matter.

Suzanne Webel

Fogg, Peter

From: Elizabeth Simpson <dbtl@msn.com>
Sent: Monday, September 16, 2013 9:12 AM
To: Fogg, Peter
Subject: Rights of Nature mtg.

Hello Mr. Fogg,

I was asked to review the statement of the Rights of Nature group, and let you know about my response.

"We acknowledge the rights of naturally occurring ecosystems and their native species populations to exist and flourish in Boulder County."

The only thing I would change is the word 'acknowledge'. Acknowledging that they have rights is rather like a 'wet handshake' in its demeanor. I would rather see a word like 'support' - it implies that you will do something to see that they can continue to exist and thrive in Boulder county.

Have a great day,

~ Elizabeth

Fogg, Peter

From: Cathy Comstock <cathy.comstock@colorado.edu>
Sent: Saturday, September 14, 2013 4:11 PM
To: Fogg, Peter
Subject: Please champion our native ecosystems and species

Dear members of the County Planning Commission:

In your upcoming meeting, we have a chance to make a major and historic step forward for our precious ecosystems. It's remarkably easy, sensible and visionary at once. Please add the following language to the Boulder County Comprehensive Plan:

"We acknowledge the rights of naturally occurring ecosystems and their native species populations to exist and flourish in Boulder County."

This language is extremely important in forming the beginning of a shift that we must make if we truly want to preserve and protect our native species and ecosystems. As long as nature is seen as something for humans to use, all our protections keep amounting to lines in the sand which are redrawn over and again in the face of the pressures of those who will profit from that use. We've been with the present paradigm of trying to be careful about how much we use nature for our benefit since the '60's and '70's, and we have lost ground grotesquely in that time. Loss of species and deforestation, as I'm sure you know, occur at such horrifying and entirely unsustainable rates that most of us have become numb to facts and figures too extreme truly to comprehend.

If we continue in this manner, there will be little left to protect. Humans will be the huge losers, too, with one of the greatest gifts to our sanity, wholeness and health ripped shred by shred away from all of us by the unrelenting efforts of those who will profit from this terrible loss to all. It's essential that we change our paradigm before we have gobbled down the whole ecological cake, a slice at a time, until the critical and connected mass needed for environmental systems to work is just not operative.

Fortunately, we have international and national precedents for this change in framework, a change too long in coming, but perfectly suited to the wonderfully caring consciousness of Boulder County and the Planning Commission. I admire the county staff greatly, but they understandably tend to feel obligated to make their decisions much in the way lawyers do, oriented to safeguarding the status quo, not to opening up new possibilities and paradigms. That's where *you* come in. I am hoping you will respond to this urgent need with the wisdom I have seen from you in the past.

Please let me know if I can be of help of any kind. Thank you very much for your time and thoughtfulness.

Cathy Comstock, Ph.D.

Fogg, Peter

From: CRAIG YAGER <mtmanner@me.com>
Sent: Monday, September 16, 2013 11:50 AM
To: Fogg, Peter
Subject: Considering rights of nature

Dear Members of the Boulder County Planning Commission,
I am in favor of adding the following language to our Comprehensive Plan:

"We acknowledge the rights of naturally occurring ecosystems and their native species populations to exist and flourish in Boulder County."

I've been a resident here since 1954. Boulder County, historically, has taken the long view, a view that considers the far off future. If we will adopt and enforce language that validates the rights of nature, then we may help return our part of the planet to balance and sustainability, and provide a model for other communities. I encourage you to pass this proposal.

Thank you for your time and commitment to safeguarding our mutual good.

Craig Yager
2535 7th St.
Boulder, CO 80304

Fogg, Peter

From: Terry Stuart <tsboulder@gmail.com>
Sent: Monday, September 16, 2013 11:45 AM
To: Fogg, Peter
Subject: Rights of Nature

Dear Peter,

On one hand, I think it's silly to think we need to include "Rights of Nature" in our planning and decision making processes. We live in the bubble of nature and life is fundamentally more important to humanity than money. From my point of view the concept behind Rights of Nature is to maintain that perspective while wrestling with the economic and regulatory aspects of those decisions. That thinking leads me to believe that, for the long term good of humanity, economic decisions have to be reconciled with ecologic impacts. I appreciate that there is a certain amount of subjective judgement in projecting environmental impacts, but the projected economic impacts are also subjective. However, I also find that the challenge of evaluating the value of nature is far more complex than projecting the economic return of a development. Of course neither evaluation an exact science, but I remember my frustration with "cost-benefit analysis" in EIS's that generally grossly undervalued most natural resources being destroyed by projects (mines, developments, etc.). I find it hard, even impossible, to put a value on nature, so it was a flawed concept that lead to the approval of projects I thought were unwise. To me the concept of "Rights of Nature" has the potential to bring a wiser, longer view to the consideration/approval process and with Boulder County's emeninence as an environmental leader I'd like to see Rights of Nature codified in our planing and decision making processes.

Sincerely, Terry Stuart
3743 Nelson Rd
Longmont, CO

Fogg, Peter

From: Burrell, Buzz <buzzburrell@mac.com>
Sent: Thursday, September 12, 2013 4:02 PM
To: Fogg, Peter
Subject: Spam: Rights of Nature

I appreciate with the following statement, and to a degree much more than most I live my life on the basis of these principles, yet do not believe it would be a good idea to include as part of the Boulder County Comprehensive Plan.

"Rights of Nature is the legal recognition that humans are a part of, not apart from, the earth community. This movement embodies the principle that ecosystems and natural communities are not merely property to be owned, but are entities that have an independent right to exist and flourish."

Here's why this is inappropriate to be in the Comp Plan:

1. This is an ideological statement, not a set of plans, and as such, would be out of place in a Comp Plan.

- Values may form a basis to develop plans, but if they all were listed, the Plan would be hundreds of thousands of pages long and subject to endless debate.
- If this an ideological conclusion Boulder wishes to endorse, that is great, but it should therefor be placed on the ballot so citizens could speak to it directly.
- Ideology is a slippery slope that tilts both ways - others often trying to insert language into public documents such as "rights of unborn babies", "freedom and democracy", and the like - which I and many people consider inappropriate, misleading, and thinly-disguised attempts to achieve a political outcome - let's not join them in this deception.

2. The statement intends to establish "legal recognition", but without extensive clarification of what that means - thousands of pages of legal definition or decades of court cases, each costing billions of dollars and unlikely to achieve clear outcome - there is no "legal recognition" - it becomes instead a political statement, which does not belong in Plans.

- With the adoption of this statement, would Boulder give away it's water rights from the western slope, the taking of which has massive effects on the riparian ecology outside our boundary's? Ban grocery stores from which 99% of the food is from out-of-state, coming from farms that have completely reversed their local ecology?
- What are the actual plans that would institute this statement? That is the key question, and the part that belongs in a Comp Plan, not lofty ideology.

3. These statements are inherently elitist - it is questionable how much nature would be protected, but it would effectively maintain the human status quo.

- "Rights of Nature does not eliminate property ownership, but seeks to eliminate the authority of a property owner to destroy, or cause substantial harm to, natural communities and ecosystems that exist and depend upon that property."

- This means all existing human development - the nice homes of the wealthy, established, caucasian people advocating for "Rights of Nature" - would stay the same as no plant or animal would be destroyed (they already were), while anything new, even if progressive, environmental, and achieving our Climate Action Goals - could be banned because a "natural community" inevitably would be harmed.

4. Political ideologies as sweeping as this one have a history of being interpreted to serve the political majority.

- Public processes as well as existing regulations and guidelines could be unfairly overruled with this generalized statement.
- That would be an unfair process, and not good government.

"Rights of Nature" is a statement of values, which are entirely valid, and should be discussed and considered where other personal statements are made - in the church, in the family, in essays, and in public discourse. To be effective and fair, the Comp Plan should consist of a description of what we are going to do.

Sincerely,

Buzz Burrell
Boulder

-----Original Message-----
From: Chris Morrison [mailto:chris-morrison@comcast.net]
Sent: Sunday, October 06, 2013 9:48 PM
To: Davidson, William
Subject: Rights of Nature

I am opposed to the Planning Commission considering embracing the "rights of nature" in their considerations.

If these "rights" are to be considered for Boulder County, it should be placed on the ballot and discussed openly. It should not be considered, much less embraced by an unelected board. These novel "rights" would trump existing laws and property rights. Embracing them without putting this idea on the ballot is a guaranteed way to spend public money on needless lawsuits and to alienate public support.

You should not even be considering anything that is only available as a
"DRAFT: NOT FOR GENERAL CIRCULATION".

Thanks, Chris Morrison
4100 Aurora Ave.
Boulder, CO 80303