



Land Use

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BOULDER COUNTY PLANNING COMMISSION AGENDA ITEM #8 – Evening Session

May 21, 2014

Hearing Room, Third Floor
Boulder County Courthouse

Docket BCCP-08-003: Boulder County Comprehensive Plan Update: Environmental Resources Element Update

Report on small stakeholder group discussion regarding the rights of nature proposal presented to Planning Commission on April 4, 2013 and language alternatives to that proposal for addition to the ERE, per direction provided by the Planning Commission on June 19 and October 16, 2013.

Staff Planner: Peter Fogg – Senior Planner

Action Requested: Approval Direction and/or Approval – public testimony will be taken

Summary

On October 16, 2013 the Planning Commission held a public study session on the background, issues and status of the rights of nature movement. At the conclusion of that meeting the Commission directed staff to convene representatives advocating for and against incorporating rights of nature language into the Environmental Resources Element (ERE) of the Boulder County Comprehensive Plan to continue active discussions in an effort to develop some language both sides could agree upon for inclusion into the ERE that would provide more specific goal and policy guidance on protection, conservation and recovery of species and ecosystems in the county. A group was formed and met on two occasions with staff from the Land Use and Parks and Open Space Department. While the conversations were spirited and revealed some shared concerns for the value and importance of retaining and sustaining species and ecosystem integrity in Boulder County, an agreement on specific language that both sides could live with was not reached. This memo describes the options and alternatives that were proposed and discussed during those two meetings. Staff is requesting the Planning Commission to provide direction and action on how it wishes to proceed with this issue.

Attachments:¹

- A. Environmental Resources Element Text Approved by Planning Commission on June 13, 2013
- B. October 16, 2013 Planning Commission Study Session Staff Report on Rights of Nature Movement
- C. Advocate/Opponent Working Group Members and Staff
- D. Chronology: Rights of Nature – Discussions with Planning Commission During the ERE Update of the Boulder County Comprehensive Plan
- E. Pre-Meeting Information for Rights of Nature Conversation on Language Options
- F. Summary of Working Group Options/Alternatives Proposed, Discussed, and Concluding Positions

¹Attachments A, C and D were sent to Working Group participants in advance of the first meeting. Attachment E. has been reviewed by the Working Group and edited accordingly.

Background

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.

While this wording was approved by Planning Commission as part of the revised Element on June 16, 2013, a majority of the Commission remained interested in learning and hearing more the rights of nature approach to species and ecosystem protection. During the hearings before them on the ERE Update, public input both in written statements and verbal testimony on including language recognizing the rights of nature as an adopted county position was virtually tied between supporters and opponents. After a later study session on the Rights of Nature movement (Attachment A), Planning Commission directed staff to gather representatives of rights of nature advocates and opponents to further discuss their perspectives and positions with the desired outcome of reaching some agreement on more explicit language addressing species and ecosystem protection for incorporation into the ERE.

Staff contacted parties who had been active and regular participants in the Planning Commission hearings, inviting them to convene in a small group to work on the charge put forth by the Commission. The group members, and county staff in attendance, are named in Attachment B. In preparation for the two scheduled meetings, Attachments A, C and D were sent to them.

The May 6th 2014 Meeting

The meeting began with introductions and a review of the mailed materials. Staff explained why the Audubon proposal was chosen as a point of beginning for discussion, namely that it avoided the use of the term ‘rights of nature’ while assigning explicit responsibility and actions to be taken “...ensur[ing] that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County...”. Numerous questions were raised and debated such as:

- what lands would be covered by this proposal (all lands in the county? just county-controlled lands? just publicly-controlled lands?);
- how would private lands be affected and by using what tools for implementation or “enforcement” (land use regulations? guidelines? voluntary cooperative agreements?);
- how far back in time did “naturally occurring” extend (e.g. pre-European settlement?) and who or what defined “naturally occurring”;
- who exactly were the “our” and “we” included in the text;
- were the two “all”s to be taken literally and if so what were the timelines or deadlines for developing and implementing the referenced conservation and recovery plans?
- what was lacking in the ERE goals that necessitated adding more language to the Element?

It also became clear that the rights of nature option could not be avoided in the group’s conversation since it was the trigger that led to the Planning Commission’s directive to continue the discussions. Since several of the questions raised could not be conclusively answered, the group agreed on a list of five alternative statements or options to be discussed at the second meeting (Attachment F). The focus would be to identify what did or did not “work” in each of them that earned support from or presented problems for individual group members, and what then might be done to one or more of the alternatives to reach some consensus or informed consent.²

²For definitions of these terms as employed in the group process refer to the Proposed Conversation Process section of Attachment E.

The May 13th 2014 Meeting

After groundrules were reviewed and some questions answered and responded to that were raised by E-Mails during the time following the first meeting, the group responded individually to each of the five alternatives – what he/she liked or found problematic with them. The conversation then turned to proposing and discussing modifications, revisions, and additional ideas in the search for some mutually acceptable text. These are summarized under each alternative in Attachment F.

“ADVOCATES” refers to Michael Thomason and Ruby Bowman, supporters of rights of nature, while “OPPONENTS” refers to Jane Utti and Suzanne Webel, opposed to including rights of nature in any adopted county position.

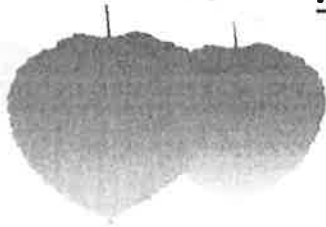
While the conversations were creative and earnest in attempting to find a middle ground, group members found the legal, philosophical, and consequential differences in their perspectives too great to overcome or resolve. Consequently they shared their bottom line preferences from the options they covered and agreed they could not agree on a unified statement to deliver to the Planning Commission.

Conclusion and Staff Recommendation

While the desired outcome was not achieved, the airing of differences and flirtations with possible agreement on language was useful in identifying reasons for the gulf that exists between advocates and opponents. Staff has no specific recommendation for Planning Commission but seeks direction on how the Commission would like to proceed and the role they want staff to assume. Two specific options the Commission may want to consider are:

- 1) Retain the Environmental Resources Element text as approved by Planning Commission on June 13, 2014 without additional changes; or
- 2) Discuss the alternative statements deliberated by the working group and craft language for voting.

ATTACHMENT A



Boulder County Comprehensive Plan

Environmental Resources Element


Approved by Planning Commission 6/19/2013

Overview

Boulder County values and strives to preserve, conserve and restore the unique and distinctive natural features, ecosystems and landscapes of the county using sound resource management principles and practices at both a site-specific level and on a broader, landscape scale. Boulder County's important environmental resources include naturally occurring ecosystems and their native species populations. Species of Special Concern are an integral component of this management approach. The list of Species of Special Concern includes locally threatened or endangered flora and fauna that the county seeks to protect. Habitat for these Species of Special Concern is particularly vital, since it often presents our best chance to protect native species.

In addition to identifying Species of Special Concern, this Element designates areas of important habitat at two scales: the "site-specific scale" and the broader, "landscape-scale." At the site-specific scale, important environmental resources typically consist of an easily definable area such as an individual parcel of land or a distinct geographical location where specific resources exist. Designations at the site-specific scale include Critical Wildlife Habitats, Rare Plant Areas, Wetlands, Riparian Areas, and Significant Natural Communities (formerly referred to as Critical Plant Associations). Environmental resources designated at the landscape-scale are much larger and holistic in approach. At this scale, the designations of High Biodiversity Areas and Environmental Conservation Areas seek to preserve broader ecological processes and functions. These areas often encompass multiple resources also designated at the site-specific scale. Natural Areas and Natural Landmarks designations are intended to encompass and protect





unique and distinctive natural features and landscapes in the county. The fundamental and essential sustaining resources of air, soil, and water are also considered and addressed.

While this Element calls specific attention to the aforementioned designated environmental resources (Environmental Resources), it also recognizes that these are not the only environmental resources of significance and importance that should be considered in land use decisions and cared for through management practices. With this in mind, Boulder County's overarching intention is to maintain the overall health and integrity of our rich and diverse environment to the greatest extent possible as our knowledge and understanding of environmental functions and interconnections evolves. The term "environmental resources" as used in this Element consists of both the designated "Environmental Resources" and undesignated environmental resources.

To provide some context for the goals and policies, a brief explanation of the environmental resource designations and their importance to the ecosystems of Boulder County follows. For the most part, these designations are those that already are utilized by reference in the Boulder County Land Use Code. Designations added or amended in updates to this Element will also be protected through administration of the Code and in conformance with applicable Federal and State law. The criteria used to determine these designations are periodically reviewed and updated resulting in updated lists of Species of Special Concern and updated maps of the Environmental Resources Element. Descriptions of these designations follow.

Environmental Conservation Areas

Environmental Conservation Areas (ECAs) encompass the largest remaining relatively natural or restorable forests, shrublands, grasslands, and agricultural landscapes in Boulder County. Even with the current amount of relatively undeveloped public land in the county, and the conservation and preservation efforts of public land managers on these lands, broad shifts in animal and plant communities are occurring as a result of development, habitat degradation, climate change, and the exclusion or disruption of natural processes. ECAs are a planning tool developed by the County and its agency partners for analyzing land use and land management decisions in the context of the cumulative effects of development, roads, trails and increased human presence at a landscape-scale on these large and complex ecosystems. This land use decision-making tool is used as a strategy for maintaining the wide-ranging animal species, native plant communities, and natural ecological processes that operate at this landscape scale.

ECAs are a framework for ecosystem management that identifies and designates valuable ecological areas and delineates corridors of connectivity between them regardless of ownership. With this designation, land use and land management decisions within and adjacent to ECAs and their connectors can be made within a framework that seeks to: protect species that may be wide-ranging, ecologically specialized or disturbed by human presence; encourage the return of species lost from the county; prevent additional habitat fragmentation; and limit increases in invasive non-native species in these ecologically-significant areas. Such planning and decision-making processes may include resource management plans, the location

and extent of new development, future land and easement purchases for open space purposes, and the location of trails and other public facilities.

High Biodiversity Areas

High Biodiversity Areas (HBAs) are locales that have a concentration of rare environmental resources. If managed well, they represent the greatest opportunities for preserving specific aspects of Boulder County's natural heritage. The boundaries of HBAs encompass those lands that provide the habitat and ecological processes upon which the resources depend for their continued existence. These areas have been identified and ranked -- by the CSU Colorado Natural Heritage Program -- as having *outstanding significance* (B1), *very high significance* (B2), or *high significance* (B3).

Natural Landmarks

Natural Landmarks are prominent landscape features that distinguish a specific locality in Boulder County. They are important for the views they afford, their value as scenic vistas and backdrops, and the intrinsic value they hold as wildlife or plant habitats, natural areas, park and open space preserves, and open land areas. However, the single criterion for designation shall be its visual and scenic prominence as a landscape feature. They provide a record of Boulder County's natural heritage.

State and County Natural Areas


State and County Natural Areas are physical or biological areas that are unique and important to the natural heritage of the state and/or the county. Each area either retains or has reestablished its natural character, although it need not be completely undisturbed. It typifies native vegetation and associated biological and geological features and provides habitat for rare or endangered animal or plant species or includes geologic or other natural features of scientific or educational value. State Natural Areas are designated as such by the Colorado Natural Areas Program.

Significant Natural Communities

Significant Natural Communities are areas that are recognized by the presence of a critical plant association that is limited in its distribution and occurrence. These areas have multiple important environmental resources that co-occur and interact. These areas have species and processes that are relatively undisturbed by human actions and currently exist in their natural state. These areas are also referred to as Critical Plant Associations in the Boulder County Land Use Regulations.

Critical Wildlife Habitats

Critical Wildlife Habitats are the unique habitats which have a crucial role in sustaining populations of native wildlife and in perpetuating and encouraging a diversity of native species in the county.



Wetlands and Riparian Areas

Wetlands and Riparian Areas have unique and critical functions in the ecosystem. Wetlands are generally described as lands transitional between terrestrial and aquatic systems where the land is covered by shallow water or soils are saturated during the growing season. Wetlands have high biodiversity, are relatively rare, provide unique wildlife habitat, filter water, and buffer floods. Riparian Areas are a unique combination of terrestrial plant communities and aquatic systems associated with flowing water that provide unique habitat and important movement corridors for wildlife.

Rare Plant Areas

Rare Plant Areas are sites that are known to have a high likelihood of having occurrences of Plant Species of Special Concern.

Species of Special Concern

Species of Special Concern include the flora and fauna in the county whose populations may be threatened or endangered, locally rare, experiencing long-term non-cyclical population declines, isolated or restricted to distinct local habitat types, or native species which have ceased to exist within Boulder County.

To summarize, restoring, protecting and preserving our natural environment and all of its interdependent components upon which all things depend have been core values and objectives of Boulder County since the adoption of the first county-wide comprehensive plan in 1978. Numerous initiatives, plans and programs have been diligently pursued and implemented in this quest, and have benefited from the involvement of many stakeholders and interested parties in both the public and private sectors. The Environmental Resources Element is both a compass and a tool for use in sustaining and advancing these efforts.

Goals of the Environmental Resources Element

B.1 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.

B.2 Boulder County sustains and protects native species, natural ecosystems and the biodiversity of the region by designating High Biodiversity Areas, Natural Areas, Natural Landmarks, Significant Natural Communities, Critical Wildlife Habitats, Species of Special Concern, Wetlands, Riparian Areas, and Rare Plant Areas. Other resources and designations may be identified in the future. These designated areas and species lists also provide a point of reference for continued monitoring of long-term ecological change.

B.3 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.

B.4 Boulder County recognizes that climate change is having significant impacts on our environmental resources. As the body of climate science knowledge grows and potential effects are better understood, Boulder County shall incorporate the best scientific information into planning and decision-making to adapt to and offset those impacts.

B.5 Boulder County shall continue to protect air, water and soil resources and quality, as well as restore resources in a degraded condition to enhance overall environmental health. Pollution of air, water, and soil, and pollution caused by noise or light, shall be eliminated or minimized to the greatest extent possible in order to prevent potential harm to life, health and property, and to reduce incremental degradation of the environment.

B.6 Boulder County shall continue to protect prominent natural landmarks and other unique scenic, visual and aesthetic resources in the county.

B.7 Boulder County shall conserve and preserve Environmental Conservation Areas (ECAs) in order to perpetuate native species, biological communities, and ecological processes that function over large geographic areas and require a high degree of connectivity to thrive.

B.8 Boulder County shall protect environmental resources both at the site-specific scale and landscape scale through a variety of means such as partnerships with private landowners, non-governmental organizations, and other governmental agencies; education and outreach; advocacy at the state and federal level; and other programs consistent with the goals and policies of the Comprehensive Plan.

Environmental Resource Policies

Introduction


The general policies below (ER 1.01 to ER 1.08) pertain to all environmental resources. Additional policies follow the general policies that expand on and are unique and specific to Air, Water, Soil and Noise (ER 2.01 to ER 2.03), Environmental Conservation Areas (3.01 to 3.05), and Natural Areas and Natural Landmarks (ER 4.01 to ER 4.03).

General Policies for Environmental Resources

The following policies apply to all environmental resources in Boulder County

ER 1.01

Boulder County plans and attendant regulations shall be formulated to insure that land uses avoid where possible and otherwise minimize the destruction or adverse modification of



environmental resources. Land use proposals shall be evaluated on a case-by-case basis for their potential impacts to environmental resources identified in the BCCP as well as those resources that may be identified on the site and in the vicinity of the proposal during a county development review process. The applicant may be required to complete other studies, inventories, or reports that address the proposal's potential impacts on environmental resources and include recommendations for mitigation of those impacts.

ER 1.02 Boulder County shall continue to identify and designate environmental resources that have significance to Boulder County. Such designations, and attendant maps, will be based on criteria that use science, collaboration with experts, and on-the-ground verification to the extent practicable. Boulder County may periodically reevaluate such criteria and designations.

ER 1.03 Scenic vistas shall be preserved as much as possible in their natural state.

ER 1.04 Boulder County shall work with federal, state, municipal and other public or quasi-public entities that have a jurisdictional or property interest in unincorporated lands within or surrounding any designated environmental resources to achieve their protection.

ER 1.05 Boulder County shall work in partnership with private land owners and non-governmental organizations to protect, conserve, and restore designated environmental resources using a variety of tools.

ER 1.06 Boulder County shall use its open space program as one means of achieving its goals for protecting environmental resources.

ER 1.07 Boulder County shall encourage all private landowners to seek assistance from appropriate governmental and non-governmental entities to protect Boulder County's environmental resources.

ER 1.08 Boulder County shall modify plans, policies and regulations as necessary to adapt to climate change in order to reduce species and ecosystem vulnerability and other potential adverse impacts on environmental resources. These measures will guide environmental resource management implementation aimed at protecting biodiversity and ecological resiliency.

Air, Soil, Water, Noise and Light Policies

In addition to the general policies above, the following policies also apply specifically to air, soil, water, noise and light.

ER 2.01 Boulder County shall seek to protect overall public and environmental health by enforcing regulations concerning air, soil, water, noise and light pollution at the local level in accordance with applicable law.

ER 2.02 Boulder County shall evaluate land use proposals and other planned activities considering their cumulative impacts on public and environmental health. Sufficient mitigation and minimization of any impacts shall be required for the proposal or activity to be approved. These proposals and activities shall at a minimum comply with air, soil, and water quality standards, as well as noise level and lighting standards, established by county and state agencies or the Boulder County Land Use Code.

ER 2.03 Boulder County shall take a watershed approach to addressing water quality and water quantity including supporting and participating in local and regional watershed partnerships.

Environmental Conservation Areas Policies

In addition to the general policies above, the following policies apply specifically to Environmental Conservation Areas.

ER 3.01 Boulder County shall designate and map Environmental Conservation Areas as well as Overland and Stream Habitat (Riparian) Corridors at a landscape scale.

ER 3.02 Boulder County shall encourage the removal of development rights from ECAs through transfer, donation, acquisition, trade, or other incentives.

ER 3.03 Development within ECAs shall be located and designed to minimize the cumulative impacts on the environmental resource values of ECAs.

ER 3.04 Development outside of ECAs shall be located and designed to minimize impacts on and connectivity between ECAs.

ER 3.05 Boulder County shall encourage and participate with the appropriate public entities and private land owners in the development of coordinated management plans to conserve, preserve and restore the environmental resource values of ECAs.

Natural Landmarks and Natural Areas Policies

In addition to the general policies above, the following policies apply specifically to Natural Landmarks and Natural Areas.

ER 4.01 Natural Landmarks and Natural Areas identified in the Environmental Resources Element and as may be identified from time to time by the state under the Colorado Natural Areas Act, shall be protected from destruction or harmful alteration.

ER 4.02 Boulder County shall submit any County Natural Area that may be of state-wide importance to the Colorado Natural Areas Program for designation as a State Natural Area.

ER 4.03 Boulder County shall coordinate with local, state, and federal agencies and municipalities, as well as with willing private landowners, to protect natural resource values within Natural Landmarks and Natural Areas. This may include: identification of specific resources of concern including scenic values; recommendations for long-term management; mitigation of existing or foreseen impacts; or protection through acquisition of land interest.



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BOULDER COUNTY PLANNING COMMISSION

AGENDA ITEM #5

October 16,
~~September 18,~~ 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 directive¹.

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
- II. Brief History and Current Status of Rights of Nature Initiatives
- III. Application of Rights of Nature by Local Jurisdictions in the United States
- IV. Concerns About the Absence of Rights of Nature Ordinances and Policies
- V. Concerns About Enacting Rights of Nature Ordinances and Policies
- VII. Concluding Comments

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 staff's 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;
- Pittsburgh, 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-governance². 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

³E-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-to-day 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

Boulder Rights of Nature (BRON) website <http://boulderrightsofnature.org/about-us/>

Burdon, Peter. "*The Rights of Nature: Reconsidered*" Australian Humanities Review. Issue 49, November 2010. Ecological Humanities.

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.

City of Santa Monica, CA. Staff Report to City Council Meeting March 12, 2013 – "*Introduction and First Reading of an Ordinance Establishing Sustainability Rights*"

Ibid. "*An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights*" April 9, 2013.

"*City Council Passes Environmental Bill of Rights*" Santa Monica Daily Press March 14, 2013.

Cullinan, Cormac. "*If Nature Had Rights*" Orion Magazine. January/February 2008.

Fish, Laurel. "*Homogenizing Community, Homogenizing Nature: An Analysis of Conflicting Rights in the Rights of Nature Debate*" Stanford Undergraduate Research Journal. Volume 12, Spring 2013.

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

curlwsj@comcast.net; 303-494-2468

ATTACHMENT C

ENVIRONMENTAL RESOURCES ELEMENT- RIGHTS OF NATURE: ALTERNATIVE LANGUAGE WORKING GROUP

Advocates:

Ruby Bowman – citizen, Longmont

Michael Thomason – Board member, Boulder Rights of Nature

Opponents:

Jane Utti – Executive Director, Farmers Alliance for Integrated Resources

Suzanne Webel – Board member, Boulder Area Trails Coalition and Boulder
Boulder County Horse Association

Boulder County Staff Support:

Therese Glowacki, Mac Kobza, Justin Atherton Wood – Parks and Open Space

Bill Davidson, Peter Fogg – Land Use

ATTACHMENT D

CHRONOLOGY: RIGHTS OF NATURE

Discussions with Planning Commission During the Environmental Resources Element Update of the Boulder County Comprehensive Plan

The cover-to-cover update process of the Boulder County Comprehensive Plan (BCCP) began in the summer of 2011. The first Element to receive attention was Environmental Resources, which contained the greatest number of subtopics and policy direction of all the Elements in the Plan, and which has been a cornerstone of the Plan since its original adoption in 1978. In late 2012, spokespersons for the Boulder Rights of Nature (BRON) approached the Boulder County Commissioners with a request to adopt a rights of nature position as a county official policy. The Commissioners, while interested in the concept, felt such an action deserved more analysis and a broader public vetting; they suggested that the issue be taken up with the Boulder County Planning Commission (PC) as part of the BCCP update. BRON proceeded to follow that suggestion. The following is a chronological summary of the proposal's movement through the Environmental Resources Element revision process with the Parks and Open Space Advisory Committee (POSAC), Planning Commission and county staff from early 2013 to the present day.

BOULDER RIGHTS OF NATURE (BRON) ORIGINAL PROPOSAL

Incorporate the following language into the BCCP:

“Boulder County acknowledges the rights of naturally occurring ecosystems and their native species populations to exist and flourish.”

ENVIRONMENTAL RESOURCES ELEMENT UPDATE

A. Parks and Open Space Advisory Committee Public Hearing – February 28, 2013

Staff draft language for Goal B. 2 of the Environmental Resources Element:

“**Goal B.2** Boulder County seeks to manage natural resources in a manner that is consistent with current ecological principles and sustainable conservation practices. To that end, in the management of these unique resources, Boulder County shall encourage the following: the allowance of natural processes to occur, the reintroduction of natural disturbances (e.g., fire and grazing), the maintenance or reintroduction of native species, the restoration of degraded resources, the elimination of undesirable non-native species, efforts to minimize human impacts, and the development of long-term ecological monitoring programs.”

ACTION: POSAC discussed the BRON proposal and heard staff's misgivings about associated legal and implementation issues. POSAC voted to amend the staff's draft to capture some of the essence of BRON's proposal but softened the imperative language "...acknowledges the rights..." in response to staff's concerns. B. 2 was revised and forwarded as POSAC's recommendation to the Planning Commission.

B. Planning Commission – April 4, 2013

“**Goal B.2** Boulder County seeks to *promote the viability and integrity of all naturally occurring ecosystems and their native species populations, and [POSAC Feb. 28, 2013]* to manage its environmental resources in a manner that is consistent with current ecological principles and sustainable conservation practices. To that end, in considering land-use decisions and in managing these unique resources, Boulder County shall encourage the following: minimizing human impacts, allowing natural processes to occur, reintroducing disturbances (e.g., fire and grazing), maintaining or reintroducing native species, restoring degraded resources, eliminating undesirable non-native species, and developing long-term ecological monitoring programs.”

ACTION: PC heard from advocates and opponents, as well as staff’s concerns, about incorporating rights of nature language into the BCCP. PC asked staff to further investigate and consider additional language establishing and recognizing the rights of native species and naturally occurring ecosystems. Staff prepared some revisions and additions for PC’s May 15th hearing that placed greater emphasis on the importance of preserving, conserving and restoring naturally occurring ecosystems and their native species populations, but continued to assert its reasons for not supporting inclusion of rights of nature language.

C. Planning Commission – May 15, 2013

Environmental Resources Element: Overview Narrative (staff’s proposed revisions highlighted)
“As described in the goals and policies of the Environmental Resources Element that follow, Boulder County values and strives to preserve, conserve and restore the unique and distinctive natural features, ecosystems and landscapes of the county using sound resource management principles and practices at both a site-specific level and on a broader, landscape scale. ~~To that end,~~ *Boulder County’s important environmental resources include naturally occurring ecosystems and their native species populations. [POSAC Feb 28 2013] Species of Special Concern are an* integral component of this management approach; ~~and the list of Species of Special Concern~~ consists of the ~~specific~~ locally threatened or endangered flora and fauna that the county seeks to protect. *Habitat for these Species of Special Concern is particularly vital, since it often presents our best chance to protect native species.[POSAC Feb 28 2013]* “

“To summarize, restoring, protecting and preserving our natural environment and all of its interdependent components upon which all things depend have been core values and objectives of Boulder County since the adoption of the first county-wide comprehensive plan in 1978. Numerous initiatives, plans and programs have been diligently pursued and implemented in this quest, and have benefited from the involvement of many stakeholders and interested parties in both the public and private sectors. The Environmental Resources Element is both a compass and a tool for use in sustaining and advancing these efforts.”

“**Goal B.2** Boulder County seeks to ~~promote~~ *enhance* the viability and integrity of all naturally occurring ecosystems and their native species populations ~~and to manage its environmental resources~~ *by applying a variety of environmental resources management strategies* in a manner

that is consistent with current ecological principles and sustainable conservation practices. ~~To that end, in considering land use decisions and in managing these unique resources, Boulder County shall encourage the following: minimizing human impacts, allowing natural processes to occur, reintroducing disturbances (e.g., such as fire and grazing), maintaining or reintroducing native species, restoring degraded resources, eliminating undesirable non-native species, and developing long-term ecological monitoring programs.~~”

“**Goal B.7** Boulder County shall seek **work** to sustain **and protect** natural ecosystems and to maintain and enhance the biodiversity of the region by designating and protecting environmental resources through preservation, conservation, and restoration. These designations include High Biodiversity Areas, Natural Areas, Natural Landmarks, Significant Natural Communities, Critical Wildlife Habitats, Species of Special Concern, Wetlands, Riparian Areas, Rare Plant Areas, as well as other resources and designations that may be identified in the future. These protections shall also provide a baseline of ecological processes and functions for monitoring long-term ecological change.”

ACTION: PC’s direction to staff mostly involved cleaning up, condensing, and clarifying language in the May 15th ERE draft. Of specific note PC directed staff to substitute qualifying verbs and adverbs such as “seek”, “strive”, “work to”, etc. with “shall” to make the goals and policies more definitive and proactive. Rights of nature was touched upon but did not generate much discussion or public input. Staff proceeded to follow PC’s direction for the June hearing.

D. Planning Commission – June 19, 2013

“**Goal B.3 B.2** Boulder County ~~seeks to~~ **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.”

ACTION: PC approved the text changes to the Environmental Resources Element of the BCCP. They also directed staff to return for a public hearing at a near future date with a more specific report on the background, issues, and status of the rights of nature movement so that consideration of incorporating additional language on ecosystem and species protection and recovery could continue.

E. Planning Commission – October 20, 2013

Having done some outside research, staff presented a report (with a bibliography) on the rights of nature movement, which covered in limited fashion:

- the foundation and purpose of the movement;
- a brief history and current status of rights of nature initiatives;
- applications of rights of nature by local jurisdictions in the US;
- concerns about the absence of rights of nature ordinances and policies;
- concerns about enacting such ordinances and policies; and
- concluding remarks.

ACTION: Staff reiterated their concerns and issues about the legal authority to enact rights of nature and the lack of any examples or guidance from other jurisdictions about how such rights have been incorporated into regulations, codes, and processes or procedures for applying them to actual land use proposals and decision-making. Members of the public spoke both for and against including rights of nature language into the BCCP. Staff also noted that to date, written comments and testimony from the public at hearings have been equally divided between advocates and opponents.

Planning Commission's direction to staff was to continue active discussions with proponent and opponent stakeholder groups in search of some mutually acceptable language that more directly addresses the county's assignment in protecting and preserving natural ecosystem and dependent species. A similar charge was given to staff by the Board of County Commissioners on February 11, 2014 at the conclusion of their study session on the revised Environmental Resources Element text and maps. Stakeholder group meetings have been set for May 6th and 11th with the goal of presenting a consensus or language options to the Planning Commission on May 21st.

ATTACHMENT E

Pre-Meeting Information for Rights of Nature Conversation on Language Options for the Boulder County Comprehensive Plan

Direction Provided and Objective:

After several months of hearings¹ on updating the Environmental Resources Element of the Boulder County Comprehensive Plan, both the Planning Commission (*October 16, 2013*) and the Boulder County Commissioners (*February 11, 2014*) directed county staff to work with the stakeholder groups involved in the public participation process on the proposal to establish rights of nature as an adopted component of the BCCP. and position of Boulder County. At the same time, both the Commission and Commissioners acknowledged that legal constraints and unknown consequences are attached to adopting a formal rights of nature position at a local level. The objective of continued discussion with the stakeholders should therefore be to strive to craft mutually acceptable language in the form of a goal for inclusion into the Environmental Resources Element of the BCCP that more succinctly and proactively addresses species and ecosystem protections than is currently found in the Element and that provides direction to proceed in further developing implementation tools, while avoiding incorporating the term “rights of nature”. Two meetings have been set for this purpose... May 6th and May 13th at the Land Use Department, Caribou Room, from 3:00 – 5:00 PM

Participant Roles:

- Stakeholder invitees – describe and share your interests, concerns and ideas for reaching some agreement that meets the objective.
- Parks and Open Space staff – respond to questions and provide information/perspectives on POS programs, capacities, data and inventory bases, etc.
- Land Use staff – facilitate and record the discussions, provide responses/information to the stakeholders as requested, draft report for the May 21st Planning Commission hearing (*to be reviewed by stakeholders prior to being publicly posted and delivered to Planning Commission*)
- Any other attendees – observer status only during the meetings.

Proposed Conversation Process:

Consensus if possible, informed consent (“*not my/our preferred language but I/we can live with it and will say so if asked*”) if consensus cannot be reached. If neither can be accomplished, staff will report that to Planning Commission along with a summary of the conversation and options considered.

Desired Outcome:

Presentation of proposed language that meets the above objective to the County Planning Commission at their scheduled May 21st public hearing for discussion and adoption into the Environmental Resources Element.

¹ A summary chronology of those meetings will be sent to you by week’s end.

Proposed Process Groundrules (Initial Draft):

1. We're doing this work together – respect different views and opinions
2. Characterize your concerns and issues, not others
3. Ask for clarification and expansion of ideas presented
4. Pause, consider comments before responding
5. Look for common threads and themes

Boulder County Comprehensive Plan: Context and Function

Originally adopted in 1978. The Plan is an expression of values and aspirations at a county-wide or regional level. It consists of a number of topical Elements – Environmental Resources, Transportation, Cultural Resources, Geology, Open Space, Plains Planning Area, etc. – that are important to the county in their own right and in combination to the changing state conditions of the county as a whole. The baseline goals established in 1978 remain in effect today. In summary, four of them especially relevant to this conversation are:

- Urban development/development requiring urban services should be located in or adjacent to municipalities, not in the unincorporated areas
- The diversity of natural environments, open lands and rural character of the unincorporated county should be preserved, conserved and protected
- Productive agricultural lands and activities should be protected and supported
- Provision should be made for open space to protect and enhance the quality of life and enjoyment of the environment

Along with the goals, the Plan contains sets of policies that establish guidelines to be followed through on with more specific and detailed action plans, programs, land use regulations, budgeting and capital improvements planning, etc. Together, these goals and policies are not in and of themselves implementation tools; those are developed in response to the direction provided by the Plan and to both short and long term exigencies. Thus, goals and policies are focused on what needs to be done or is desired, not explicitly how those needs and desires are to be realized.

Status of the Rights of Nature Discussion: A Draft Proposal

The initial proposal from those advocating for a rights of nature goal statement to be included in the Environmental Resources Element Update was as follows:

“We (Boulder County) also acknowledge the right of all naturally occurring ecosystems and their native species populations to exist and flourish in Boulder County.”

Upon review, the county's Parks and Open Space Advisory Committee and Planning Commission revised the staff language to say:

“Boulder County ~~seeks to~~ shall promote the viability and integrity of all naturally occurring ecosystems and their native species populations, and to manage its environmental resources in a manner that is consistent with current ecological principles and sustainable conservation practices.”

After several months of additional hearings and conversations about “rights of nature”, the Boulder County Audubon Society offered the following in February of 2014 as an alternative, albeit not their first preference, to avoid the concerns raised about the

legality and efficacy of including “rights of nature” into the BCCP. This language would added as a second sentence to the revised goal cited above:

“Acknowledging our responsibility to ensure that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, we will develop conservation and recovery plans for all species listed as “imperiled” or “extirpated” in the Environmental Resources Element.”

It is this language that will be the starting point of our discussion at the May 6th meeting. Please consider it carefully and thoughtfully in the context of the effort by rights of nature advocates to find some common, supportable ground; of how it responds to the direction given to us by the Planning Commission and County Commissioners; and in how you and/or your organization might be able to work with it in a practical, cooperative manner.

An agenda with topics to cover, a review of this and other material, and list of participants will be sent to you by week’s end. Thanks again for your participation.

ATTACHMENT F

Summary of Working Group Options/Alternatives Proposed, Discussed, and Concluding Positions

1) No Change from Planning Commission Approved ERE Language

“Boulder County values and strives to preserve, conserve and restore the unique and distinctive natural features, ecosystems and landscapes of the county using sound resource management principles and practices at both a site-specific level and on a broader landscape scale. Boulder County’s important environmental resources include naturally occurring ecosystems and their native species populations.” *(from the Overview section – page 1, paragraph 1)*

“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.” *(Goal B.1)*

“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.” *(Goal B.3)*

ADVOCATES: B.3 is not strong enough, does not provide specific enough guidance for meeting the goals; “promote” is too weak a word (sounds like advertising vs. proactive); doesn’t meet our needs regarding rights.

OPPONENTS: Can live with it (B.3) as is but would prefer to delete “all” in first line; does address standards for meeting the goals, leaving it up to the county to develop specific measures for implementation.

2) Boulder County Audubon’s Proposal

“Acknowledging our responsibility to ensure that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, we will develop conservation and recovery plans for all species listed as ‘imperiled’ or ‘extirpated’ in the Environmental Resources Element.”

ADVOCATES: Like the specificity of developing plans; “responsibility” maybe not the best word but it is proactive and was a word suggested by a Planning Commissioner; falls short of rights and could be stronger.

OPPONENTS: Do not support and/or have issues with the words “Acknowledging...”, “responsibility”, “ensure”, and “all” (used twice); “responsibility” sounds like/could be interpreted to mean “must do”; “ensure” is an unachievable standard; the “all”s are too vague and broad; who is the “we” in the 2nd clause.

3) Suzanne Webel's Proposal to Revise Audubon

"Acknowledging our responsibility to ensure that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, ~~we~~ **Boulder County** will develop conservation and recovery plans for ~~all~~ (*certain? selected? high priority?*) species listed as 'imperiled' or 'extirpated' in the Environmental Resources Element."

ADVOCATES: First clause is necessary because expresses a commitment; mixed opinion on "we" vs. "the county" in second clause; still prefer stronger language re: rights.

OPPONENTS: Could support with the strike-outs and replacement of second "all"

4) Jane Utti's Proposal to Revise Audubon

"Acknowledging our ~~responsibility~~ **county-wide interest** that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, ~~we~~ **the county** will develop conservation and recovery plans for 'all' (*caveat: if the county agrees to "all" – if not, drop "all"*) species listed as 'imperiled' or 'extirpated' in the Environmental Resources Element."

ADVOCATES: Do not support – "county-wide interest" is not strong or proactive enough.

OPPONENTS: Mixed opinion – if Goal B.3 is modified to include "...and that reflects protection of naturally occurring ecosystems and their native species population through protection of endangered or extirpated species." as the last clause, we may not even need to consider this (#4) alternative; current goals seem to "say it all".

5) Ruby Bowman/Michael Thomason's Proposal

"Acknowledging the rights of naturally occurring ecosystems and their native species populations to exist and flourish, Boulder County will develop conservation and recovery plans for all species listed as 'imperiled' or 'extirpated' in the Environmental Resources Element."

ADVOCATES: "Rights" is key and the correct language.

OPPONENTS: Do not support inclusion of rights in any form.

Other Options Discussed at the May 13th Meeting:

Ruby Bowman's Proposal: Include Following Language in the ERE Overview

"The overriding principle, which provides the framework for discussion, goals, and policies of the Environmental Resources Element, is acknowledgement of the interconnectedness of humans and the natural world: Humans are a part of, not apart from the earth community. As such, Boulder County recognizes that human-related activities can have a deleterious impact on the environment, resulting in native species extirpation, destruction and degradation of habitat and naturally occurring ecosystems, and water, air, noise and light pollution. As the diminution of the natural world occurs, so does our quality of life and the elements needed to sustain healthy human life.

With this in mind, Boulder County supports the rights of native species populations and naturally occurring ecosystems to exist, persist and thrive. With this statement, we recognize that human existence is inextricably dependent upon the well-being of the natural world. "

ADVOCATES: Basis is some language/discussion heard at Planning Commission and County Commissioner hearings; the Overview section of the ERE is a narrative, not goals and policies, so no legal issues should arise by mentioning rights of nature.

OPPONENTS: Issues with the wording e.g. what is the "earth community", "human-related activities" listed are all negative which is not accurate or objective, etc. A proposed revision was offered to replace "Humans are a part of..." with "Human beings are a part of nature, and human existence is dependent on the well-being of the natural world", and to insert this language in the Overview at page 2 paragraph 2 which starts with "To provide a context...", but only if the Advocates would be willing to "trade" its inclusion in return for dropping the reference to rights.

Suzanne Webel's Proposal: Rewrite of Goal B.3

"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, **including development of conservation and recovery plans for certain species listed as 'imperiled' or 'extirpated'**, in a manner that is consistent with current ecological principles and sustainable conservation practices."

OPPONENTS: Eliminates the need for making any others changes in the Environmental Resources Element; addresses Advocates' concerns about wanting more specific proactive wording and gives concessions to more environmental protection in exchange for giving up the "all" in the first clause.

ADVOCATES: Better language than current Goal B. 3 but not strong enough e.g. replace "promote" with "ensure" for a start, still prefer a reference to rights

Advocates Proposal: Rewrite Audubon and Include New Language in the Overview with Some Modifications

- Audubon Rewrite: "Acknowledging our responsibility to ensure that all naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, **we Boulder County will develop conservation and recovery plans for all species listed as 'imperiled' or 'extirpated'** in the Environmental Resources Element."
- New Language for the Overview Section: "Boulder County acknowledges the rights of native species populations and naturally occurring ecosystems to flourish and thrive".

OPPONENTS: Does not work – still includes "acknowledging...", "responsibility", "ensure", "rights", all of which are of legal concerns re: consequences, liabilities and impacts on landowners, etc; "rights" for nature is neither legally nor philosophically acceptable.

CONCLUSION

No consensus or general agreement/informed consent were reached. The final positions were the OPPONENTS being able to live with the Environmental Resources Element language as approved by Planning Commission in June of 2013, and the ADVOCATES being able to live with the Audubon proposal as modified above along with the inclusion of one new sentence, with the reference to rights, into the Overview section.