

Rocky Flats Coalition of Local Governments Board Meeting Minutes

February 7, 2000

8:00 AM – 12:00 PM

East Boulder Community Center

Board members in attendance: Sam Dixion (Director, Westminster), Mary Harlow (Alternate, Westminster), Tom Brunner (Director, Broomfield), Hank Stovall (Alternate, Broomfield), Mike Bartleson (Alternate, Broomfield), Lorraine Anderson (Director, Arvada), Ken Fellman (Alternate, Arvada), Carol Lyons (Alternate, Arvada), Lisa Morzel (Director, City of Boulder), Mike Weil (Alternate, City of Boulder), Amy Mueller (Alternate, City of Boulder), Paul Danish (Director, Boulder County), Carolyn Dulchinos (Alternate, Boulder County), Andrew Muckle (Director, Superior), Jeff Holwell (Alternate, Superior), Michelle Lawrence (Director, Jefferson County), Patricia Holloway (Alternate, Jefferson County), Nanette Neelan (Alternate, Jefferson County).

Coalition staff members and consultants in attendance: David Abelson (Executive Director), John Marler (Technical Advisor), Katie Ewig (Program Assistant), and Barb Tenney (Icenogle, Norton, and Seter, P.C.).

Members of the Public: Erin Rogers (RFCAB), Gerald DePoorter (RFCAB), John Corsi (Kaiser-Hill), Troy Timmons (Kaiser-Hill), Anna Martinez (DOE), John Rampe (DOE), Jeremy Karpatkin (DOE), Steve Gunderson (CDPHE), Tim Rehder (EPA), Rob Henneke (EPA), Doug Young (Rep. Udall), Nancy Hunter (Rep. Schaffer), Theresa Benda (Gov. Owens), Jerry Harden (USWA 8031), Doris DePenning (Friends of Foothills), Hildegard Hix (Sierra Club), DeAnne Butterfield (CRNA), Keary Mullins (NW Metro Chamber), Nancy Hollinger (Blue Mtn. Homeowners Assoc.), Bob Nelson (Citizen).

Public Comment

Doris DePenning, representing the Friends of the Foothills and Coal Creek HOA Coalition, voiced her concerns about the proposed land swap amendment that is part of the second staff revision of the Udall's Open Space bill. She also asked that the phrase "with allowances for transportation uses" be removed from the Coalition's position regarding protecting the buffer zone as open space. She would like to see stronger language in the bill that guarantees the buffer zone is preserved as open space in perpetuity under the management of the federal government as well as more stakeholder involvement in decisions regarding future use and protection.

Hildegard Hix, representing the Rachel Carson Group of the Sierra Club, also commented on Coalition's position on the Udall bill. She opposes the language about allowances for transportation uses, and requests clarification on what exactly "transportation uses" refers to (i.e. paved bicycle trails, walking trails, a regional parkway, etc.). She also expressed concern about possible land exchanges and annexations. Hildegard concluded by asking the Coalition to consider adding language to HR 2179 clearly stating that 1) the present boundaries of the site and

the buffer zone shall remain as they are now, in perpetuity, and 2) that the buffer zone be maintained only as open space with no allowances for motorized transportation uses.

Both Hildegard Hix and Doris DePenning presented written copies of their comments to the Coalition.

Business Items

- 1) **Elect/Appoint 2000 Officers** – In accordance with the procedures for selection of officers of the Board, Michelle Lawrence was appointed as the new Chairman of the Board, Paul Danish was appointed to the Vice Chairman position, and Sam Dixon was selected by drawing to fill the position of Secretary/Treasurer. Ken Fellman motioned to approve the election of the new officers. Lisa Morzel seconded the motion. The motion passed 7-0.
- 2) **Motion to Approve Minutes** –Lisa Morzel motioned to approve the January minutes with the following changes: 1) an asterisk noting when Sam Dixon arrived to the meeting and 2) replacing the language “distributed Mary Harlow’s and Sam Dixon’s comments” with “distributed Westminster’s comments” under the discussion of the March lobbying trip to D.C. Lorraine Anderson seconded the motion. The motion passed 7-0.
- 3) **Executive Director Report** – David Abelson began his report by distributing the proposed Hazardous Substance Easement that would amend the Colorado Hazardous Substance law. He noted that it has important implications regarding enforcement of post-closure stewardship responsibilities, namely in that it does not guarantee that post-closure provisions could be enforced. David then passed out a letter from Frank Stewart (DOE-Golden Field Office) about NREL’s windfarm expansion plan, which proposes to reuse buildings 130 and 131 in the Industrial Area as well as build a test facility in the buffer zone. NREL has asked to brief the Board or hold a special meeting to discuss this proposal. The third item David Abelson addressed was the ongoing stewardship dialogue. The consultants hired for Phase I, CDR and Associates, will be presenting their final report and recommendations on February 24th from 3 to 5 p.m. at Arvada City Hall. One important issue that will need to be addressed at the meeting is the nature and scope of the second phase of the stewardship dialogue. The final item David brought up was the recent e-mail from DeAnne Butterfield regarding the possibility of starting a comprehensive regional open space planning conversation.
- 4) **Approval of Checks** – Ms. Tenney advised the Board that although it has no legal obligation to do so it may consider adopting a procedure to approve the payment of financial claims made to the Coalition in fulfillment of each director’s fiduciary duty in holding his or her office as a board member of the Coalition. Lorraine Anderson motioned to approve the checks as well as to receive from David Abelson a monthly list of checks and quarterly financial reports, in addition to the Board meeting minutes as part of the comment agenda. Sam Dixon seconded the motion. The motion passed 7-0.

Round Robin

Superior – Andrew Muckle stated that open space issues are Superior’s main concern right now.

Broomfield – Hank Stovall said that Broomfield’s top concern right now is surface water on Rocky Flats not meeting standards. Other concerns are the new Kaiser-Hill contract, the controlled burns planned for portions of the buffer zone in March, the stewardship dialogue, and the relationship between future use and cleanup levels. Hank also announced that the Risk Assessment Corporation would be presenting the results of Task 5 (the calculation of soil action levels) at a meeting in Broomfield on February 11.

Boulder – Lisa Morzel announced that starting in April Amy Mueller would be the second alternate for the City of Boulder. Lisa also stated that one of Boulder’s main concerns is that the entire buffer zone is permanently protected as open space under federal ownership, with no bisection for a major road. Other concerns include not sacrificing the quality of the cleanup in order to reach a 2006 closure and ensuring a skilled workforce through closure.

Boulder County – Paul Danish expressed concern about the controlled burns in the buffer zone and stated that there was no consulting between DOE and Boulder County government officials like DOE has claimed.

Jefferson County – Regarding the Udall bill, Patricia Holloway said that Jefferson County is supportive of the buffer zone being designated as open space.

Westminster – Sam Dixon stated Westminster’s opposition to a NAS review of RAC’s soil action level findings and their concern over the controlled burns in the buffer zone. Sam said that Westminster’s biggest concern regarding the cleanup of Rocky Flats is protection of water quality. Other major concerns are the use of caps and unknown extent of underbuilding contamination in the Industrial Area.

Arvada – Ken Fellman supported DeAnne Butterfield’s concept of starting a regional open space dialogue. Lorraine Anderson briefly described Arvada’s recent trip to Washington, D.C. and stated that they had met with several congressional staffers to talk about Rocky Flats-related issues, including stewardship and cleanup levels.

Cleanup and Closure Issues: RFCA and 2006

John Rampe began by giving a brief overview of the RFCA, which does the following: 1) provides a regulatory framework by integrating CERCLA, RCRA, and other statutes and regulations; 2) provides boundaries for the goals of site cleanup and closure; 3) provides process and groundrules for regulatory cleanup decisions; and 4) outlines requirements and goals for public involvement in cleanup decisions. John said that while the RFCA vision represents a broad set of goals and preliminary schedule, the current cleanup plan goes a step further and is more specific and detailed. Superimposed on the RFCA is the 2006 Baseline, which details the scope of work that will need to go through the RFCA decision-making process before it is implemented. Until a RFCA action is approved (which means the scope of work has received public input and is approved), the action cannot be implemented. To summarize, the RFCA process translates Baseline assumptions into cleanup decisions.

John Rampe then outlined the process of turning an assumption into a cleanup decision and the criteria for the decision making process. The process includes (among many things) looking for consistency with the RFCA, consistency with the Closure Strategy, compatibility with the End State Vision, and community values and preferences.

In response to concerns that the new contract and baseline to not adequately address water quality issues, Jeremy Karpatkin told the Board that although water quality questions are not addressed in the 2006 Baseline the RFCA language is still binding. John Rampe admitted that meeting the current on-site water quality standards at all times post-closure may not be achievable, but that the Water Balance Study needs to be done first to determine how much water will be left on-site post-closure. In addition, recontouring and revegetation at the site may correct water quality problems, so these options need to be explored as well.

David Abelson asked how to resolve the apparent inconsistencies between the scope of work outlined in the new contract with Kaiser-Hill, in particular water quality issues and the use of caps, and the requirements of the RFCA. Tim Rehder agreed that there were some inconsistencies and that it appears that some assumptions have been written into the contract without undergoing the decision-making process required under RFCA. Steve Gunderson stressed that while several controversial decisions regarding cleanup actions will have to be made in the future, whatever actions are taken must still be consistent with RFCA.

Hank Stovall asked how money would be found if a change order requiring additional funds were to occur. John Rampe responded that there were several possible options under that scenario, including reprioritizing the internal budget, requesting additional funds from DOE Headquarters, or adjusting the cleanup schedule. Andrew Muckle then asked what the process is if DOE and the regulators disagree on a remedy or cleanup action. Steve Gunderson reiterated that all cleanup actions must be consistent with RFCA, and Tim Rehder added that the milestones set every year by the regulators are another way to ensure compliance with the RFCA and cleanup schedule. Sam Dixon asked how the regulators plan to oversee decisions on such unresolved and controversial issues as water quality standards and underbuilding contamination. Steve Gunderson replied that several factors will be considered, such as whether the proposed action is protective of human health and the environment, the cost of the proposed action, and worker safety issues. Tim Rehder added that as of now under RFCA surface water will have to be cleaned to a drinking water standard, not to an open space user level as agreed to in the DOE-Kaiser-Hill contract.

Washington D.C. Lobbying Trip

David began the discussion by asking the Board about their commitment to be in D.C. to start lobbying on March 7th. Tom Brunner reminded the Board that they had committed to be in D.C. on March 7th at the January Board meeting, and therefore should uphold that commitment. David told the Board that he has scheduled several meetings on the 7th and needs to know who will attend. David also announced that the House Nuclear Cleanup Caucus briefing scheduled

for Tuesday may be postponed until Thursday. Paul Danish said he would not be going to D.C. at all. Patricia Holloway said she will be in D.C. on the 7th but probably will not be able to attend the meetings. Lisa Morzel said she is planning on attending the meetings on the 7th.

The discussion then turned to draft #2 of the lobbying packet. David told the Board that in the packet he wanted to stress the local governments' support for the vast majority of the cleanup, while at the same time pointing out the many uncertainties that will be faced by the regulators, DOE, and Kaiser Hill during the cleanup. Lorraine Anderson said that she thought the draft packet was too long and that all the Coalition directors should be listed on the last page. It was agreed upon by the Board to take pages 2 and 3 out of the packet. Ken Fellman thought a one or two page summary sheet in addition to the packet would be of value to pass out when lobbying. Hank Stovall said that overall the packet looked good and that when presenting the lobbying material in the meetings other views and concerns could be voiced in addition to those contained in the packet.

Regarding page 7 of the packet, which has a bullet stating, "DOE and Congress must support efforts aimed at protecting the buffer zone as open space with allowance for transportation uses", Lisa Morzel stated that she was unsure if we should include the language "allowance for transportation uses". She felt that "transportation uses" is yet to be defined and that because it is so murky it may be best to leave it out for now. Lisa also requested that the word "permanently" be added to that statement. In addition, Lisa asked that the Coalition's support of the Udall bill be mentioned in the lobbying packet. Ken Fellman disagreed about taking out the language about allowance for transportation uses, stating that the language is in the Coalition's IGA and that it is essential to maintain flexibility for potentially having a transportation corridor in some portion of the buffer zone. He asked that the discussion of this topic, and the Udall bill in its entirety, be postponed until its designated time on the agenda.

Andrew Muckle suggested mentioning somewhere in the packet the size of the population that the Coalition governments represent (approximately 800,000). Michelle Lawrence suggested changing "DOE must keep Congress informed about progress towards 2006" (page 9) to "progress towards safe cleanup and closure". Paul Danish suggested adding "and long-term maintenance requirements at the Site" to that statement as well. This change was accepted by the Board, as was Ken Fellman's suggestion to remove the illustration on page 11. David thanked the Board for their input and said he would fax out the new version with the changes by close of business Tuesday, February 8th.

Discussion of H.R. 2179, "Rocky Flats Open Space Act"

The discussion began by reviewing the issues that the Coalition raised in its 8/18/99 letter to Congressman Udall and the subsequent changes made in the second staff revision of the Open Space Act to address the Coalition's concerns. David then asked for Board comment on staff revision #2 of the Rocky Flats Open Space Act.

Ken Fellman stated that the possibility of a transportation corridor should not be foreclosed, nor should the possibility of a land swap. He said that by allowing the land exchange amendment the Coalition is not necessarily endorsing the swap but is endorsing the concept. Several local governments would like to see the 134 acres along Highway 93 owned by Charlie McKay become open space and a land swap with Charlie McKay could possibly preserve it. Patricia Holloway agreed with Ken, stating that Jefferson County would like to keep the land exchange options open but that Charlie McKay does not want to swap land with DOE. Lisa Morzel said that when the City of Boulder met with McKay he was not interested in a land swap, so she can't figure out who is pushing the idea. Ken Fellman said that if the Coalition forecloses the land swap idea, they would be making a policy statement that they don't care about development along Highway 93.

David reminded the Board of the other changes in staff revision #2 of the bill, namely the mention of the federal government's ownership post-closure and the addition of the word "permanently" to help guarantee the buffer zone will be kept as open space in perpetuity. David also pointed out that the change made to the Advisory Council would vest more responsibility with the Coalition. The Board agreed that these changes were acceptable.

Patricia Holloway asked Doug Young if the Lindsay Ranch would be protected in perpetuity. Doug replied that under the bill it would be protected as if it were a historical place regardless of whether it was actually on the historic registry or not. David suggested changing the language "allowed to remain" to "shall be preserved" to address this concern. The Board agreed to support such a change.

Regarding the part of the bill that addressed possible caps and facilities that may need maintenance post-closure, David asked whether the bill allows for the construction of facilities post-closure. Nanette Neelan asked if that would include waste storage facilities as well. Doug Young said that the language could be changed to narrow the definition of "facilities".

Ken Fellman asked if there was a way for the bill to say that the buffer zone would remain permanently as open space but cleaned to an industrial use level. His basic concern was that by saying the buffer zone is open space without defining what we see open space as being we are giving DOE a blank check to do an open space-level cleanup and then put a fence around the site. Doug Young stated that putting language in the bill to try to drive a higher level of cleanup would essentially kill the bill. He suggested that the soil action level and actinide migration conversations would be the better avenues by which to attain a higher level of cleanup.

Lisa Morzel then asked that if the Board supports the bill, this support should be taken to Washington in March. Lisa Morzel motioned to support the bill in its second staff revision form, with the addition of the discussion input on the Lindsay Ranch and the post-closure facilities clarification.

Ken Fellman asked to add to the motion the addition of “allowance for yet-to-be determined transportation uses”. After a lengthy discussion, Lisa amended her motion to include Ken’s suggestion to include transportation allowance language.

Lisa Morzel motioned to support Udall’s Open Space bill in its current (staff revision #2) form and take that support to Washington, D.C. in March with the following changes: 1) the addition of a provision for allowance of transportation uses along the Eastern or Southern alignment of Rocky Flats to be agreed upon by the Coalition per their IGA, 2) the removal of the word “containment” from Section 5(b) (4), and 3) the removal of the land exchange amendment. Sam Dixon seconded the motion

Before a vote could be taken, Ken Fellman motioned to amend Lisa’s motion to include support for the land exchange amendment. The motioned failed 2 to 5, with Arvada and Jefferson County voting yes. (Note: Patricia Holloway voted for Jefferson County on this motion).

A vote was then taken on Lisa Morzel’s motion. The motion passed 6 to 1, with Arvada voting against it. (Note: Michelle Lawrence voted for Jefferson County on this motion).

Ken Fellman stated that Arvada will not advocate against the bill in D.C., but will voice its own position in regards to the land swap amendment.

Public Comment

Jerry Harden, President of United Steelworkers Association 8031, brought up several concerns of workers at the site, in particular the fact that there is still no comprehensive workers compensation or insurance. Other issues include the beryllium bill and the proposed polygraph testing of top security clearance workers.

Anna Martinez announced the DOE briefing on the controlled burns on Thursday, February 10th in Building 60 at the site and invited those interested to attend.

Michelle Lawrence announced that the next Board meeting time would be changed to Thursday, March 2nd, from 2:00 to 5:00 p.m.

At 12:15 a.m. Tom Brunner motioned to go into Executive Session for the purpose of receiving legal counsel on certain contract matters. Lisa Morzel seconded the motion. The motion passed 7 – 0.

The Board reconvened from executive session into open session, having determined that no action had been taken during executive session. There being no further business to come before the Coalition, the Board adjourned.