

**FREMONT COUNTY  
PLANNING COMMISSION MEETING MINUTES  
JUNE 2, 2009**

CHAIRMAN TOM PILTINGSRUD BROUGHT THE JUNE 2, 2009 MEETING OF THE PLANNING COMMISSION TO ORDER AT 7:00 P.M.

**MEMBERS PRESENT**

Tom Piltingsrud, Chairman  
Bill Jackson  
Herm Lateer  
Dean Sandoval  
Mike Schnobrich  
Tom Doxey

**STAFF PRESENT**

Bill Giordano, Planning Director  
Brenda Jackson, County Attorney  
Vicki Alley, Planning Assistant

**MEMBERS ABSENT**

Keith McNew

**1. CONFIRMATION OF APPROVAL OF THE FEBRUARY 3, 2009 PLANNING COMMISSION MEETING MINUTES**

**2. PUBLIC HEARING - 3<sup>RD</sup> AMENDMENT TO THE FREMONT COUNTY MASTER PLAN**

Request for approval of various amendments to the Fremont County Master Plan as proposed by the Tallahassee Area Community, Inc.

*REPRESENTATIVE: Lee J. Alter, Chairman, Government Affairs Committee, Tallahassee Area Community, Inc.*

**3. OTHER ITEMS FOR DISCUSSION**

Discuss any items or concerns of the Planning Commission members.

**4. ADJOURNMENT**

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Chairman Tom Piltingsrud called the meeting to order at 7:00 pm and the Pledge of Allegiance was recited.

**1. CONFIRMATION OF APPROVAL OF THE FEBRUARY 3, 2009 PLANNING COMMISSION MEETING MINUTES**

Chairman Piltingsrud asked if there were any changes, additions or corrections to the February 3, 2009 Fremont County Planning Commission Meeting Minutes. Hearing none he said the minutes stand approved as written.

**2. PUBLIC HEARING - 3<sup>RD</sup> AMENDMENT TO THE FREMONT COUNTY MASTER PLAN**

## **Ground Rules**

Chairman Piltingsrud provided some ground rules for the conduct of the Public Hearing - As far as I know, this is the first official request, at least in my six years on this board, to amend the Master Plan from citizens of the County. So tonight is an important and perhaps a momentous event. This will be a Public Hearing so all may testify. If you wish to just reinforce one side or the other, you may do so via the pre-printed slips and we will include them in the record. Please be respectful of the process, and not talk while someone else is talking. This hearing is being recorded, and it is difficult for the staff to prepare minutes from that recording if there is a lot of background noise.

Keep your comments brief when you follow the applicant's testimony. Please do not restate something that has been stated before. You can simply state you support the earlier position, or again reflect it via writing on the slip. If you wish to speak tonight, please fill out a pre-printed form and give it to me.

If we receive, for example, three-hundred (300) minutes of testimony from the applicant and the public, that equates to five (5) hours. We would still have the County staff position remarks, as well as Planning Commission questions and deliberations to follow. As we approach 9:30 to 10:00 pm, I will ask the Planning Commission to determine whether to table the public hearing and agenda item to next month. We all came from day jobs and daily responsibilities tonight, and it is important that we have fresh minds when hearing, and deliberating, regarding your testimony. We want this process to be done professionally. A marathon meeting is not needed, and would not serve any of us. I also understand that many of you have a fair commute tonight back to your homes.

This agenda item is technically a public request to amend the 2001 Master Plan, currently in effect. However, you may know that the Planning Commission is in the process of revising this Master Plan. We have made some progress in that revision, but a lot still needs to be done. That revision has not yet engaged the issue of mining in the Master Plan. So your testimony tonight is appreciated and timely. After the Planning Commission completes the revised Master Plan, and I cannot tell you now when that will be accomplished, we will be holding Public Hearings on that revised Master Plan before we forward it to the Board of County Commissioners. I am saying here that you will get another opportunity in the future to comment regarding any issue or provision of the revised Master Plan you wish to bring to our attention. Further, Planning Commission meetings are always open to the public as we continue with our revisions to the Master Plan.

Before I ask the applicant to present his amendment, I am going to ask the County Attorney, Ms. Brenda Jackson, to give all of us her legal opinion on a number of issues that are important to our deliberations here tonight. Those issues involve state law, the powers of a statutory county such as Fremont where we live, and recent cases that define the law that we must live with.

The county has distributed approximately twenty (20) copies of her opinion. I would ask that the public give the Planning Commission some time to read that opinion following her oral brief, as they have not yet seen it. I apologize that this may lengthen tonight's process; however, it is important that the Planning Commission understand the law as seen by the County Attorney. We all have a duty to understand the law, even when we are not in

agreement with what that law says. Should you feel her opinion does not clearly state the law, she is always open to a differing legal opinion for her consideration.

I will now ask the County Attorney, Ms. Brenda Jackson, to give us an oral summary of her opinion, and following her oral opinion, I will declare a fifteen (15) minute recess to allow Planning Commission members to read the opinion, which are nine (9) pages.

Following that recess, I will reconvene the Planning Commission, and hear the Applicant's presentation, then take Public testimony, the Planning and Zoning Staff recommendations, and I will give the applicant the opportunity to make a final statement. Then the Planning Commission will have discussion and questions to either the staff or the applicant, and finally, a motion and vote on the proposed amendment. I would ask the Planning Commission to hold questions until after the staff comments are given. That may or may not happen tonight. I want to reiterate that this Planning Commission has always sought public input, even at normal Planning Commission meetings where public comment is not required. This is your night to tell us what you believe the Master Plan should reflect.

### **County Attorney Opinion**

Ms. Brenda Jackson, County Attorney, provided this summary of her opinion - I was asked to give a formal opinion late last week and worked on it most of the day yesterday, and finalized it today. I apologize for the lateness in getting it to the board members. I didn't have a lot of notice myself.

Powers of County Government - Essentially, the opinion I have written goes through an analysis, beginning with the powers of county government. I think oftentimes governmental officials as well as members of the public misunderstand the powers of county government. The county government, it is very clear, is an arm of the state government. The Colorado Supreme Court and statutory law support this, which means that counties have only those powers that the state grants counties through legislature or through court decisions. So unless there is an express grant of power, or an implied need to implement a power that is expressly granted, the county cannot act. The county must have express legal authority to act or we simply do not have power to do that. This creates a symbiotic relationship with the state, in that, when the state chooses to regulate in a certain area, counties are preempted, and cannot regulate in a manner that differs from that of the state. So the counties must follow state law. We are created by statute. We must follow statutory law.

Purpose and Function of the Master Plan – The second legal issue that I set out in my opinion basically states what a Master Plan is. A Master Plan is a guide to the Board of County Commissioners and an advisory document on the development of the county. This should encompass all kinds of development. The statutory requirement for a Master Plan contains probably twelve or fifteen items that must be included in a Master Plan in order to guide development of the county. Generally, the Fremont County Master Plan is updated every ten years or in between as periodically necessary, although that has not been typical practice in Fremont County to update it more frequently than every ten years. A Master Plan is not regulatory, it is not legally enforceable or binding, it is an advisory document. The only way to make a Master Plan binding is to incorporate provisions of the Master Plan into the Zoning Resolution, because the Zoning Resolution is the law of the county as far as land use goes. So the Master Plan, in and of itself, has no sole binding authority. It is an advisory

document. This is important because the Master Plan contains broad general principles with respect to land use and future development of the county. The Master Plan does not contain regulations or enforceable law. If you want to enact regulations or enforceable law, the only county authority that can do that is the Board of County Commissioners. They are the only ones who have police authority and they are the only ones who can pass a county-level law. The Planning Commission is an advisory board to the Board of County Commissioners.

State Interest Regarding Mining – The state of Colorado has been a mining state since its inception, and probably long before that time. The general legislature has declared that it is the interest of the state to promote and foster mining in this state. The state regulates reclamation portions of the mining. Reclamation is defined as operations that occur both during and after mining, so reclamation is not limited to what happens after the mining operation is done. It includes quite a number of things that occur during the mining operation itself. To the extent that the state chooses to regulate areas in any particular mining operation, counties are precluded from regulating in those areas. So the state may pull powers away from the county and accept those as areas where the state will regulate. They have done this in Designated Mining Operations (DMOs). DMOs include any mining operation that involves toxic or acidic chemicals or reagents in the mining process, and as of 2008 it includes uranium, all forms of uranium mining: in situ, open pit, and underground. Those are now considered DMOs and the state has assumed a greater level of regulation for those mining operations, including the requirement to submit an environmental plan, which is approved by the state and monitored by the state. It also includes all authority over water – groundwater and surface water, with respect to mining operations that are DMOs. So the state has taken that area of regulation and says this is now an area that the state will regulate. What this means, generally, is that counties lack the authority to regulate in those areas. We simply do not have the authority because the state legislature has said the state is going to regulate it, and counties by law are nothing more than facilitators for state government. Courts call counties arms of the state, political subdivisions of the state, however you want to phrase it, counties are required to carry out the administration of state government on a local level. DMOs become very important because obviously that is the issue in this amendment, the uranium in the Tallahassee area and the fact that uranium mining is now a DMO. What this means is that when the state assumes more regulatory authority, counties have less regulatory authority. The state is pulling that authority away from counties, so what counties used to have as of 2008, at least with respect to uranium mining, we have much less of than we did in the past.

Summit County Decision – In January of 2009, the Colorado Supreme Court decided the case of Colorado Mining Association versus Board of County Commissioners of Summit County. This was a very controversial case out of Summit County involving cyanide leaching in mining operations. What Summit County did was pass a local ordinance that said no mining operation in Summit County may use cyanide leaching as a process. The state, in DMOs, has allowed cyanide leaching, and they say the state will regulate cyanide leaching because it is a toxic chemical, and that makes it a DMO. Summit County said, we don't care that the state regulates it, you are not going to use cyanide in our county. The Colorado Mining Association challenged that ordinance, the court of appeals upheld that ordinance, and the Supreme Court reversed it entirely. They said, in January of this year, that cyanide is a chemical reagent that the state has said is allowable in mining subject to regulatory

requirements at the state level, and therefore, counties like Summit County or Fremont County (both are statutory counties) may not prohibit it because the state allows it, and counties are merely facilitators for state law. To the extent that the state is allowing it, the Colorado Supreme Court has said that counties may not prohibit it. That really puts a damper on the proposed amendment because it addresses DMOs over which the state exercises more, not less, control. Whether or not we like how the state regulates these operations, counties must follow what the state tells us to do. So the county's hands, with respect to uranium mining, are certainly more tied than they ever used to be, and as of January 2009, even more so, according to the Colorado Supreme Court. Until the state legislature decides to change some of that, counties have fairly limited powers with respect to uranium mining or other DMOs.

Property Interests, Surface Rights, and Mineral Rights – This is a concept of property law that sometimes people misunderstand. Colorado allows minerals to be severed from the surface estate. What this means is, you can have two owners for a single piece of property, one owning beneath the surface and the other owning the surface, and they don't have to be the same person. The way the law deals with severed minerals is to say you have to share the surface. Holders of mineral rights are entitled to use as much of the surface as is reasonably necessary for them to extract their minerals. Remember, the policy of this state is that we encourage and foster extraction and development of mineral resources. That has been the policy of this state since it was formed. That is no big change in state policy. Colorado ranks third in the nation for uranium deposits, from the state mined land website. They have a uranium summary that was updated April 24<sup>th</sup> of this year, so it is fairly recent. In the Tallahassee area, we have three different property situations: those who own the surface only, those own the minerals only, and those who own both. It is the responsibility of local government to balance those interests. We can't cut off one set of property interests in order to support the other. It is a balancing process. The property law in this state, and pretty much nation-wide, says that surface and mining right holders must share the property. They are both equally entitled to use the surface for their purposes, in association with their property rights. County government does not have the authority to cut off a surface right holder's property interests, any more than we have the right to cut off a mineral right holder's interests in the same property. To the extent that any kind of county regulation has that effect, even though it doesn't say that, it probably is not legally supportable. We must respect all property interest rights as they exist.

Analysis of the Proposed Amendment - What does that do with respect to this amendment? Much of the amendment that is proposed, at least as I read it, is regulatory in nature. For example, defining solid waste differently than how solid waste is presently defined. We currently define solid waste in the Zoning Resolution. We track word for word the state definition of solid waste, which is also the federal definition of solid waste. The county does not have authority to change that definition and add something in there that the state does not include as solid waste. Mining waste and overburden from mining is treated differently than solid waste under the law. The state treats it differently, the law treats it differently, and counties must treat it differently. We cannot call it solid waste and then regulate it as solid waste because we simply do not have the legal authority to do that. We must have express legal authority for anything we want to do, or the county lacks legal authority to do it. That is the meaning of a statutory county, which is what we are. Even home rule municipalities

and counties who actually have some authority to regulate at a local level, much more than statutory counties, have limitations on their power as well. That is dictated by state law. To the extent that we are looking to regulate something, it must be compliant with state law or it is not legally supportable. My feeling is always, if we pass something, whether it is popular or not, and it is not legally supportable, it does no one any good in the long run. Those who rely upon it are disappointed when it is overturned, and oftentimes the consequences are much greater when it is overturned down the road, after the damage is already done than to catch it at the front and do it in a legally permissible manner. My analysis of the amendment as proposed is the last two and one half pages of the memorandum. The first few pages contain the legal background that I just went through. My reading of this amendment is that most of it is regulatory in nature, so it belongs more appropriately in the Zoning Resolution as local regulations and local law rather than advisory in the Master Plan. It has no teeth in the Master Plan unless it is also incorporated into the Zoning Resolution. The Zoning Resolution for mining Conditional Use Permits (CUPs) requires that a CUP applicant show that the application meets the intent and the language of the Master Plan, but the Master Plan is a general document, so there are a lot of ways to make applications fit with the Master Plan. The bottom line however, with respect to CUP applications, is that counties must consider CUP applications on a case by case basis given all the attendant circumstances that exist at the time of the application and as best as possible for the board deciding it, considering what may happen in the future and where the county happens to be headed. That is how the Master Plan is of assistance to the Board of County Commissioners and to this board in considering applications that come before you. I had trouble with the proposed language that mining operations must be remote from populated areas. The state policy, and strong language in the Summit County case from January of this year, says minerals have to be mined where they are found, where nature puts them. You can't say you can mine uranium out east, if there is no uranium out east. By its very nature, a mining operation is going to be sited where the minerals are located. The question that comes before the boards, both this board and the Board of County Commissioners, is whether or not it is appropriate to carry on that operation at the particular time that the application is being considered. You can't speculate on what an application might contain. You must see the application and see what is being proposed and then act on a pending application as proposed in light of the regulations and laws that exist at the time. Even though I found, as you will see in the memo, that the amendment is inappropriate for the Master Plan because it is more regulatory in nature and probably should be submitted as a proposed amendment to our Zoning Resolution so it would have some legal punch behind it. The other conclusion is that some of the proposals I do not believe would be legally supportable. Trying to locate mining in an area where minerals might not be located is very troublesome, given the policy of the state to encourage and foster the development and extraction of mineral resources in this state. In light of that, the amendment probably is not appropriate for the Master Plan, and portions of it may not be legally supportable at all in light of the powers that counties have and in light of the powers that the state is taking away from counties with respect to DMOs. When the state enacts more regulations, the county has authority to enact fewer. As they take power, we lose power. It is a balancing process. We can regulate where the state does not. Where the state regulates, the counties cannot. I believe Mr. Giordano provided the Planning Commission with a copy of the Summit Case, and I cited it in my legal memo, and that is what that case says. The Summit County case was actually quite helpful in analyzing this

amendment because it involved an operation that is defined as a DMO, which is exactly the situation that we have here. Between the Colorado Supreme Court and the State of Colorado, for a DMO counties have very, very limited powers.

Chairman Piltingsrud called for a fifteen minute recess to give the Planning Commission time to read the County Attorney's memo.

Chairman Piltingsrud called the Public Hearing back to order at 7:43 pm.

**Mr. Lee Alter, Chairman, Government Affairs Committee, Tallahassee Area Community, Inc. Presentation**

I will be discussing some of the matters that Ms. Jackson raised, but not in detail because I didn't see it (*the County Attorney's memo*) before I prepared my presentation. Our attorney will discuss some other issues related to that. It is unfortunate that we haven't had more time to review what her position is.

The County has the primary authority to make land use decisions. The Master Plan is intended to establish the basic foundation for these determinations, define the vision for the future, set the priorities for future development, identify the potential problem areas, and develop goals and strategies to provide guidance in the implementation of the Zoning Resolution and Subdivision Regulations.

The Tallahassee Area Community (TAC) has presented an amendment to the Plan which identifies a potential threat to the most basic objective of land use decision making – the health and safety of residents neighboring a possible dangerous activity.

The proper time to fully explore the potential adverse impacts is now, while all the issues can be considered carefully and fully. The proper place is before the Planning Commission so that general principles can be evaluated rather than getting bogged down in specifics and under time pressures. And the proper format is through the Master Plan.

After the Plan has accounted for the general principles and established the ground rules, then the Commission should properly recommend the appropriate amendments to the Zoning Resolution and Subdivision Regulations to the Board of County Commissioners.

Others in TAC will discuss some of the more critical technical issues that we have raised, and our attorney will discuss the legal justification and authority for you to act on our proposal. I will comment on the Chairman's concern about DMOs and will respond in general to the Planning Director's review; however, first I would like to discuss the Precautionary Principle and its application to our proposal.

Presumably, you have read what I submitted to the Planning Department. In January 1998, a statement was developed by an international group of thirty-two (32) scholars, scientists, political figures, and treaty negotiators to codify a basic principle to aid decision-making. They came out with this statement:

“When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear

the burden of proof. The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.”

In 2001, the New York Times Magazine listed this Principle as one of the most influential ideas of the year. Governments around the world, as well as many non-governmental organizations have applied the principle in a wide ranging variety of applications.

In its simplest terms, it means that when a potential threat is identified, take steps early to mitigate or avoid the harm. In other words, “err on the side of caution” and “prevent rather than repair”.

This is precisely what we are asking the Planning Commission to do with respect to the Master Plan.

Regarding Chairman Piltingsrud’s comments in his May 7<sup>th</sup> email, he is correct that HB 1161 dealt primarily with In-Situ Leach Uranium Recovery. The only part of this amendment to the Mined Land Reclamation Act that is relevant to our discussion today is that it declares ALL Uranium Recovery as DMOs, including all conventional mining procedures. Since DMOs were first designated in 1993, there had been a debate as to whether Hard-rock Open Pit and Underground Uranium mining met the original definition. HB 1161 settles that issue definitively and permits no exemptions.

The State has defined DMOs as different from and more dangerous than other types of mining. Currently, the Master Plan does not distinguish one type of mining from another; this must be fixed.

The *Division of Reclamation, Mining, and Safety* (DRMS) rules for DMOs requires an Environmental Protection Plan to be submitted as part of the permit application. Unfortunately, there are very few specific requirements listed and very little concern for the potential adverse impacts to human health and the environment beyond the permitted mine site location during the active mining operations. DRMS rules are almost entirely concerned with mine site safety and the extent of reclamation of the “affected lands” following the cessation of active mining. “Affected lands” are defined in the state regulatory process as being that land which is included within the permit area.

We are neither asking the County to ban all Uranium mining nor to substitute its rules over the mining process over those of DRMS.

We are merely asking that the County use its land use authority to protect the “Quality of Life” of nearby residents by establishing protective buffers between an acknowledged hazardous activity and people.

The County could have done this years ago by establishing specific mineral resource zones and prohibiting residential development in those zones. The exploitable Uranium resources in Tallahassee were well known to the County in 1980 when exploration and small scale mining ceased and the resources were all located on large cattle ranches and public lands. Instead, once the miners left the area, many of the ranchers sold off the land to large parcel residential developers while the Master Plan itself encouraged residential development as the

primary alternative to agricultural land use. We came from all over the US to take advantage of the many benefits offered by Fremont County and the Mountain District – as detailed in the Master Plan. We have a vested interest in preserving the beauty and pristine environment of our properties as well as insisting that the County take the necessary steps to protect the health of our families from outside activities.

With respect to the various comments made by the Planning Director in his review, please keep in mind that our specific proposed language is not “engraved in stone”. We look forward to working with you on getting language that meets the need while not offending the separation between “guidance” and “regulation”.

Our new strategy A4.1 merely takes the acceptable addition to A4 to include health and safety considerations as a goal in transportation analysis and requires a thorough review of an identifiable threat. High volume heavy truck traffic is a known health concern and the Plan can justifiably require that such activities be studied in detail prior to allowing the project. Specific criteria could be left to the Zoning Resolution but the applicant for the permit must be required to bear the burden of proving that the adverse impacts are minimized.

Our new strategy B9.1 merely distinguishes between particularly dangerous mining operations and others that are more benign. The State holds DMOs to a higher standard and so should the County with respect to its land use control authority. This strategy in no way conflicts with any rules or prerogatives of DRMS, Department of Public Health and Environment (DPHE), or any other authority. If specific rules should be added to the approval criteria for Conditional or Special Use Permits, we would be happy to work with the Commission for recommendations to the Board.

New strategy D2.3 recognizes that DMOs inevitably require dewatering of the immediate mine site area and beyond. A detailed discussion of this will be made by Mr. Hawlee. The Master Plan talks extensively about the importance of water and the requirement to preserve and protect the County’s water resources, particularly agricultural water. Identifying a potential threat to this important goal and requiring a thorough review of it is a proper guidance for the Plan.

New strategy E2.1 is a direct quote from the Jefferson County Master Plan. It is particularly relevant to the Tallahassee area of the Mountain District since it is highly unlikely (read impossible) that direct municipal water service would be available to the area in the event of contamination of the groundwater domestic water source.

New strategy E2.2 is a way to make clear that groundwater pumped up from the mine site is, in fact, unsuitable for any purpose other than in direct mining operations. It is contaminated and toxic to humans, to animals, and to the land. It is the classic example of “wastewater”. DRMS does not address the subject other than to require the permit applicant to submit a “plan”. DPHE (and the *United States Environmental Protection Agency* (USEPA)) include it – and solid mine waste – in their definition of TENORM (Technically Enhanced Naturally Occurring Radioactive Material) and state that the local authority is the proper jurisdiction for the management of it under its land use control power. The Master Plan should identify the issue and leave the management of it to the Zoning Resolution.

New strategy H1.3 is nothing more than an update to the name of the State mining agency, and recognition that other agencies have a role to play in the approval of mining permits. If revision of the wording is required to account for the contingent nature of certain submissions, so be it.

New strategy H1.4 is not too specific. It is an acknowledgement that DMOs are different and more hazardous than other mining operations. Specific criteria that recognize this can and should be added to the CUP approval process.

New strategy H1.5 is an attempt to put some substance to the Master Plan's current statements, goals, and strategies requiring "extensive" and "adequate" buffering between incompatible land uses. Although the details of our proposed definitions of words that are not specifically defined in state or federal regulations could be subject to debate, DRMS, in its DMO rules appears to be concerned about the impact of mining on water sources and structures not less than two miles away from the mine site (although, I should point out, there is no mention in that section made of human health), and Gilpin County (and others) prohibit in their Master Plan any residential development within one mile of a mine. Further, it is known that mine site dewatering, blast noise, geologic instability, windblown contamination, and other mine operation-related effects can extend well beyond the "affected lands". The establishment of a firm guidance for protective buffering and separation of incompatible activities with due consideration of the potential hazards is a proper function of the Master Plan. It is also the responsibility of the Plan to define the County's proper role in mine site location determination, as acknowledged by the State in law, regulation, and court opinions.

New strategy K4.1 has the same logic as E2.2 above. The amount of mine waste generated in any major mining operation is massive and contaminated. It is to be left permanently at the mine site. DRMS recognizes its existence but requires little in management of the long-term health effects. DPHE (and USEPA) recognizes its existence and defines it as TENORM, acknowledges its health impacts, but does not regulate it. DPHE states in its recent Guidance that local jurisdictions should manage it as "solid waste".

New strategy C10.1 again merely distinguishes between DMOs and more benign mining operations. Specific criteria for CUP approval belong in the Zoning Resolution; however, the possibility of the need for an Environmental Impact Statement (EIS) – whether initiated by the County, or any state or federal agency – should be alerted in the Master Plan.

New strategy C11.1 is recognition of reality. A major hard-rock mining operation is a classic example of heavy industrial activity. The impacts of such operations last long after active mining ceases and the requirement for management of the site remains. This is a major land use control issue that the County must address. There is precedence for the County to make mining related definitions that are different from those used by DRMS. Just as defining "exploration" as mining permits the County to exercise a degree of land use control over the activity, so this definition, defining major mining operations as long term industrial activities, would facilitate the establishment of separate and distinct Mining Zones, thereby permitting proper management of mine wastewater and solid waste as well as avoiding the conflicts with residential and agricultural land use.

We recognize and appreciate the Planning Director's acceptance as written the following section amendment proposals: A4, H1, and C10, and welcome the opportunity to work with the Commission to finalize the remaining sections.

I would now like to introduce Mr. Steve Mulliken, our attorney, who will discuss the legal issues relating to our proposed amendment. Following him will be Mr. Ed Franz, a former planning commission director for his township in Ohio for eight years, of TAC to brief you on how other Counties have dealt with this issue in their Master Plans. Then Ms. Kay Hawklee and Mr. Jim Hawklee of TAC will provide some specific details on some of our major concerns.

**Mr. Steve Mulliken of Mulliken Weiner Karsh Berg & Jolivet, P.C., Attorneys at Law**

I am an attorney and I practice land-use law and I'm here representing the Tallahassee Area Community. I have been asked to address a couple of things as far as what our read of the law is. You will find in the law that oftentimes there is disagreement about the law, and so I have distributed a legal opinion to you. I ask you not to read that now. I ask you to give me a few minutes to try to explain it. If you eventually read it, you will understand it more if you listen to me first. I had not read the County Attorney's opinion. I did that very quickly during the break. Let me start by saying that I don't disagree with everything the County Attorney said. There are many areas of the law where I agree completely with what she said. There are a few very distinct areas that I significantly disagree with. Those are important because they speak to what you, as planning commissioners, 1) have the authority to do and 2) have the responsibility to do. I am going to try to address a couple of questions tonight. The first is - What authority does the Planning Commission have to adopt the amendments to the Master Plan that have been offered to you by Tallahassee? That question really is a twofold question. The first is - Do you have any authority to deal with that; and the second is has that authority been preempted by something the state has done? The second issue is - If you are inclined to adopt these amendments, or versions of them, which we hope you will be inclined to do, are you subjecting the County to some sort of liability because they have taken property rights impermissibly? With the letter, I have also attached a handout which has some excerpts from the Colorado statutes that I am going to be talking about. I want to talk from the statutes, because it is the verbiage of the statutes that controls what authority you have, and what you should do, not necessarily what any attorney says.

**First Question – What authority does the Planning Commission and Fremont County have? –**

I agree with what you heard from the County Attorney, you are a statutory county. The authority you have comes from the state. When they delegate authority to you, you have it. If they don't, you don't necessarily have it. That's the simple statement. The next question is - Were you delegated any authority, and does it have any relevance to this request before you tonight? I'd say it is very clear that you have the authority. The first statute is C.R.S. § 30-28-102 which grants the County Commissioners authority to "provide for the physical development of the unincorporated territory within the county and for zoning of all or any part of such area..." So clearly you have the planning authority for development and the right to zone property. That is a right given to you, it rests right here today, it is not in the state of Colorado. Secondly, we have what's called the Colorado Local Government Land Use Control Enabling Act. That act grants individual counties, like Fremont County, the authority to plan for and regulate land use and development activities in hazardous areas, to

protect land from activities that will cause immediate or foreseeable harm to wildlife or wildlife habitat, due to the impact thereof on the community or surrounding areas, or which may result in significant changes in population densities, or to provide for the use of land and protection of the environment in a manner consistent with constitutional rights. You have the authority to regulate it when those issues come forward. These are oftentimes referred to as the police powers that we give our government and we want our government to have. We want those police powers to be in the hands of the county. The county knows the community, knows the ground, and those decisions are delegated by the state down to the county to be made here. I think very importantly, that enabling act makes it very clear that this planning function should be fulfilled at the local level. That statute goes on to say “The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions.” The state is saying that we know can’t do it at the state level. It is best done in Fremont County. So, accordingly, I think it is very clear from those two enabling statutes that the responsibility was placed directly on your shoulders, on the local planning commission for a Master Plan, and certainly on the County Commissioners generally. That general assembly not only authorized you, but also directed or put a duty on you to develop a Master Plan that provides for land use decisions within the county, and that includes determining where mining sites should be. It provides that (C.R.S. § 30-28-106(1)) “it is the duty of the county planning commission to make and adopt a Master Plan for the physical development of the unincorporated territory of the county.” Further down in that statute it says “that should address the plan for extraction of commercial mineral deposits.” Commercial mineral deposits is a fairly narrow definition, but you are supposed to have a Master Plan and it should be addressing mining. So far what I have done is just look at the state general grant of authority to the county. I want to take just a minute now to look at the specific statutes that created the Mined Land Reclamation Board (MLRB) and granted authority to that board, the Mined Land Reclamation Act (MLRA); because that statute as well ratifies and affirms the authority it gave to you to deal with land use issues. For instance, § 34-1-304 from the MLRA says “the planning commission for each city and county within each populous county of the state shall, with the aid of the maps from the study conducted pursuant to another section, conduct a study of the commercial mineral deposits located within its jurisdiction and develop a Master Plan for the extraction of such deposits, which plan shall consist of text and maps.” It says that you put together the plan down here at the local level; we are not doing it at the state level. Further, when it talks about developing that plan, it says the planning commission shall consider, among other factors, quality of life of residents in the areas around which the commercial minerals are contained, the development or preservation of land to enhance development of physically attractive surroundings compatible with surrounding areas, and the ability to reclaim the area in accordance with Article 32. While it is very evident from our state statutes, and I agree with the County Attorney, that our state puts a fairly high priority on minerals and mining, it puts an equal priority on health, safety, and preservation of the environment. That is not left out of those regulations, it is put in there, and it gives you the responsibility. C.R.S. § 24-65.1-202(1) states that designated mineral resource areas shall be protected and administered to permit the extraction and exploration of minerals therefrom, unless extraction and

exploration would cause significant danger to public health and safety. Further, it is the local government that has jurisdiction over this, and has to weigh the technical factors and the evidence to make those decisions. Oftentimes, many decisions that come before you and the County Commissioners are these balancing tests. What I am telling you is the state, even in the MLRA, says that balancing test gets done here, we don't do it at the state level. I think it is very clear that the county is given very broad authority to determine where mining activities should occur and what conditions that you would impose on them so they will be compatible with surrounding areas, and also to preserve and protect the safety and health of your people and the environment. Stated differently, I think these statutes say very clearly that responsibility for protecting health, life and safety through proper regulation of the location of mining activity is your responsibility, not the states.

Second part of that question – whether or not your authority was preempted by the MLRA

I will tell you very clearly that it was not. This is the one area where I completely disagree with the County Attorney's opinion. The Mined Land Regulations do not require or even suggest that you are restrained in land use decisions regarding where mining activities should occur. It doesn't suggest that at all anywhere. Numerous times throughout the act it reiterates the county's authority and cites to it. For instance, C.R.S. § 34-32-115(4)(d) requires the mine operator to demonstrate compliance with all laws or regulations of the United States, including but not limited to, all federal, state and local (county if you will) permits, licenses and approvals, as applicable. C.R.S. § 34-32-109(6) states the mine operator shall be responsible for assuring that the mining operation and the post mining land use comply with city, town, county or city and county land use regulations and any Master Plan for extraction adopted pursuant to the laws. It goes on to say any mining operator subject to this article shall also be subject to zoning and land use authority and regulation by political subdivisions of the state. They are saying in that statute that while we have regulated some things, our mine operators are still subject to your authority and your regulations, including your Master Plan. They did not preempt the area. It is very clear if you read the statutes that what was intended was that the state act and the powers granted down to the local government work together to effectively regulate mining, with the land use decisions being right down here. That has been backed up by case law, and it is a law. I think it is imperative on Fremont County that they play the role and shoulder the responsibility that the regulations impose.

The Question on Preemption

The case law is absolutely clear that preemption only comes into play in this area if there is a direct conflict between what the state has regulated and what the local government (the county in this case) has passed. You heard the rendition of the case that recently came out of Summit County, the Colorado Mining Association case. Very importantly in that case, what Summit County did was said this particular mining technique using these leach fields and materials, we won't allow anywhere in any zoning district in Summit County, forbidden, banned, never to happen here in Summit County. Summit County probably could argue that they had the authority to pass that because they are the land use decision making authority, but this was clearly an area where the MLRB had authorized those (*mining techniques*) and regulated them. They had stepped in and said we are going to allow that to happen and we are running the regulations. So the court found, in that case, that there was a direct conflict between the local regulation of land use and the state MLRB's rules and regulations on that

mining. It was only because of that direct conflict that the statute was shut down. What I certainly agree with is that if you run in direct conflict with the state statute, you lose and the state wins. I think this case is much more instructive on what authority you have than you don't have. What the case stands for is it said that it is only where there is that direct conflict, a mere overlap of responsibility does not cause that to occur. The court stated very clearly in that opinion, and this is our Colorado Supreme Court, that counties have broad land use authority, and the MLRB's rules and regulations recognize that DMOs are subject to proper exercise of land use authority under applicable provisions of law. So the Supreme Court said they still have to comply with your laws and we continue to recognize the authority given to the state. It is only on this technical issue where the MLRB had stepped in. You shouldn't come up with different reclamation standards than the MLRB or say that a particular type of mining is absolutely prohibited everywhere in Fremont County, but it does not say you don't have land use authority. It in fact says you do. Recently, in May of 2008, the legislature adopted House Bill 08-1161. That was adopted after an environmental tragedy, and it gave more authority to the MLRB to regulate the uranium mining process. I have heard some people suggest that perhaps that cut back on the authority of the counties or cities to regulate that. That did not at all. That statute would have been an opportune time, if the MLRB was trying to say we are taking all responsibility in this particular area from the counties, they could have done that very easily. But in that regulation, they did not change the earlier regulations I read to you, such as MLRB still saying to mine operators you have to comply with all local land use laws, rules and regulations. That is still in there. It was left in there intentionally, and they did not take that authority from you. When you submit a permit application, you still have to certify that you are in compliance with the local regulations. There has been no preemption of your land use authority. God help us if that were ever to happen. Can you imagine having every decision about where you are going to site mines or other land use decisions being made in the capital in Denver rather than down here locally where you know the land, you know the people, you know the issues?

Are You Subjecting the County to Some Sort of Liability Because They Have Taken Property Rights Impermissibly?

I can imagine the responsibility you feel making a decision like this. One of the worries you have, and it gets reinforced frequently, is if I make this decision, am I setting up Fremont County to be sued for some impermissible taking of private property rights. The law is very clear that you will not be setting that up. The law of taking basically recognizes that it is absolutely permissible for a governmental entity to pass regulations to protect health, welfare, and the environment. When they do so, those are permissible activities and they do not constitute a taking. That is the proper exercise of the police powers that you are given. There is an exception to that, which really is two subsets.

The first exception is, even if you have a proper purpose, which you would with what we are proposing, if that regulation goes so far as to deprive the private property owner of all real value of their property, that is a taking. That is a policy choice. If we are taking property completely from someone for the public good, we ought to compensate them for it. That's right and everybody would agree with that. For that to be a taking, you really have to take almost 100% of the value of the property. Cases have confirmed it without a taking when it is 75% to 80%. If you go all the way and take all their use away, then that is a taking.

There is a second exception, kind of a subset, where both the U.S. Supreme Court and the Colorado Supreme Court have recognized in certain very limited circumstances we are going to go through a fact-specific inquiry to determine whether or not there really was a taking, and we would have to pay compensation to the private property owner. When that occurs, again it is only in very rare cases, and only when you are substantially taking all the rights.

Also it is only appropriate when you have deprived the property owner of some reasonable expectation of investment-backed decisions or expectations. Can the property owner say I reasonably believed I could do this; I had a reasonable basis for making this investment at the time? If that also applies, then there might be a taking. The case law in this is also very clear. Generally when you have an area like mining, and certainly like uranium mining, where it is greatly regulated at the time of the investment, there can be no reasonable expectation of any regulation of that, which would provide a basis for someone claiming that I have now been deprived of my property rights. In other words, just because you own minerals is not the question. The question is - Did you have a reasonable expectation that you were going to be without regulation and therefore could just pull these out not subject to land use regulations? What the case law goes further to say is not only do you not have a reasonable expectation that you are going to be free of those regulations if they existed when you acquired the property, but you also were on notice of the potential for future regulation, because the laws change. Look how they have changed in your lives. So the court says that would not be a reasonable basis either.

The last point on that is what the law also says is even if you didn't really have the regulation or if you didn't do it right, if what that property owner is asking to do really is dangerous and is going to contaminate other property or threaten other property, they had no right under common law to do it.

We talk about property as a bundle of sticks, various rights you have, the right to use the surface, the minerals, to lease the property, collect income or revenue, those are the bundles of sticks. What the Supreme Court has said is one of those sticks or property rights is not the right to do something with your property that constitutes a nuisance and will contaminate other property. So when you take those rights, it is not compensable. The law says very clearly that states and counties have the absolute authority to restrict uses that would have been a public nuisance anyway, and that is not a taking.

While I cannot promise you, and it would be naïve to say, that your decisions could not be questioned or challenged, that is not a reason not to do the right thing, and it would not be compensable, because you would be passing regulations for a valid purpose and as long as they are written right and tailored that is not a concern.

Let me summarize by saying a couple of things. First of all, where I differ with the County Attorney's opinion, is that she would stand here and tell you that if there was uranium underneath this podium, you would have no discretion but to allow them to mine it and knock down this building. If you believe that, then I will stop speaking, because it is absurd. You have land use authority, you have the right to regulate it, and you should. The statutes from the state of Colorado like it or not, say the land use authority is with the county. Decisions regarding land use, which include where we can and where we cannot site mines, and permissible regulations, are right here. Not only does it say the authority is here, it

actually puts a duty on you to have a Master Plan, and address these issues in a Master Plan. It is not a fun job, but one that you have.

The last thing I'd say is that the recent Supreme Court case affirmed that, it did not take that authority from you. It recognizes the importance of the state police power being right where it is, with the officials that look the citizens in the eyes, both the property owners and the impacted neighbors, and do that tough balancing test. We want the decision here, which is where it should be. You should make it with confidence, fully fulfilling your responsibilities to the citizens here. I've covered a lot. I apologize. It is a difficult topic and difficult to make it simple.

### **Ed Franz, Government Affairs Committee, TAC, Autumn Creek POA**

What I want to address are the comments made by the Planning and Zoning Department that some statements (*in the proposed amendment*) are too specific for the Master Plan. One example is the new strategy H1.4 where designated mining operations should have a two mile buffer from populated areas. As you state, buffer standards may be more effectively administered as a County regulation. County officials and Mountain District people, I believe, should be able to work out language in the Master Plan that provides a clear vision for guiding regulation development. A neighbor of mine told me of his experience on Tallahassee Road, having to do with loss of his vision due to glare of the sun when he was rounding a corner. He hit a road grader, and the highway patrolman could not understand how he could not see the road grader. A hefty fine was paid. Likewise a Master Plan could be so vague that it lacks vision, that you can't see where you are going. The result is inconsistent decision making that leads to conflict and perhaps law suits. Other Colorado County Master Plans not only contain general statements, but they also contain specific guidance that in some cases have provided guidance for the development of more in-depth regulations where the regulation could be more effectively administered than just in a Master Plan. Mr. Alter made reference to a couple of counties, one being Gilpin County and the other being Jefferson County.

### **Gilpin County**

Gilpin County is a lot smaller than Fremont County. It is 150 square miles with a population of just over five-thousand people. I believe Fremont County is about 1500 square miles with about 50,000 people, as a comparison. The Gilpin County Master Plan was adopted in 1987 and revised in 1992 and 2008. It includes a resource area goal. It contains a Figure 5 that shows well defined locations for precious and base metal mining. (*Mr. Franz included a copy of the map in the handout which was provided to the Planning Commission members.*) They identify areas that are excluded from mining, areas with high potential for mining, and areas with low potential for mining. Basically, if you were a residential developer and you were looking at residential development in one of the areas designated as likely for mining, you probably wouldn't get approval to proceed because of their land use guidance. I would like to also point out a couple of other details where they are pretty specific in their guidance. On page 24 of their Master Plan, they specifically point out that milling and mining methods that utilize toxic chemicals should be prohibited. Another specific identification is quarrying and open cut surface mining should be limited to resource areas where all impacts can be sufficiently mitigated. Another specific criterion that they have is mining and reclamation should be completed concurrently with a limited amount of mined land exposure at any given

time. Another specific identification that they have in their Master Plan is that they prohibit precious and base metal extraction in areas outside of the areas identified on Figure 5. Also, all lands within one mile of a subdivision shall not be subject to mining.

### Jefferson County

Jefferson County has a lot more people, about 550,000 people, and encompasses about 773 square miles. It is about half the size of Fremont County, but about ten times the people. They have pretty extensive documentation for planning and regulation. The Master Plan for the county consists of several community area plans. Together, all those plans comprise the County Master Plan. They have several policy plans in place that work with the Master Plan. They also have zoning regulations, and they have twenty-some land development regulations. Taking one of these community mountain plans and looking at it, for example the Central Mountain Community Plan, they have an Environmental Constraint Map that shows specific locations for mines, quarries, clay pits and known radioactive materials. On page 35 of their Master Plan, they address uranium deposits. Their guidance in their Master Plan is that deposits should not be built upon. Another specific description is the Rocky Flats Nuclear Facility – Areas within the Central Mountain District that is within ten miles would be significantly impacted in the event of a release, and the county should provide some criteria for protecting the health and safety of the residents within that area. The use of specific guidelines is used by other Colorado counties to provide a clear vision. A plan with only general statements leads to inconsistent decisions. This hampers growth. Let us avoid the road grader. Area residents and County Planning should be able to work out the language to achieve a clear vision.

### Kay Hawkle, TAC, Bar-J Ranch POA

I've been intimately involved with the DRMA and House Bill 1161. My husband Jim and I went to the hearings, we testified, so we were a part of that process. The Land and Water Stewardship Act added Uranium mining as a DMO. What it did not do is to add any additional rules for DMO open pit mines or hard-rock mines. It really addresses In Situ Leach (ISL) mining because there were not proper regulations in the state of Colorado for ISL mining. What it did for ISL mining was, it requires that notice be given to people within three miles. It also required the companies to demonstrate five successful ISL operations without any leakage, vertical or lateral migration or excursion of any leaching solution into any groundwater outside of the permitted mining area. This is a landmark law. We have been to Washington, D.C., and they congratulated us on our ISL in the state of Colorado.

I was at the stakeholders meeting last Wednesday, and I asked Director Cattany and his legal aide if there were any regulations other than making uranium open pit mining a DMO in the sixty-seven pages of regulations that were put on open pit mines. They looked at each other and they said no. So it is really strictly an ISL regulation. As mining companies are known to do, one of the mining companies' representatives questioned DRMS's authority to impose these ISL rules. Director Cattany said that no one regulatory body should be the main authority on an operation such as this, because the tendency for things to fall through the cracks is too large. You need multiple agencies to be responsible.

Fremont County's part of this protective mechanism is to make land use decisions. It is the County Planners' duty to say where and if. If you are inclined to leave the decision to

DRMS, then what we would like you to do is understand some of the application requirements that are made on a DMO. The applicant shall provide information sufficient to demonstrate that the stability of any structures located within two hundred (200) feet of the operation or affected land will not be adversely affected. Two hundred feet from my house? I am just not comfortable with that. That is not very reassuring. This requirement speaks to “stability” only, because of blasting purposes. Another requirement of the application is that they indicate the existing and reasonably potential future groundwater uses on and within two (2) miles down-gradient of the affected lands. Again, two miles comes into play. Also they are required to locate all tributary water courses, wells, springs, stock water ponds, reservoirs and ditches, on the affected land and on adjacent lands where such structures or waters are within two (2) miles of the existing or proposed affected lands. You will note that the board may extend that distance beyond two miles on a site-specific basis. They are required to identify all known aquifers and related subsurface water bearing fracture systems within two (2) miles of the affected lands. Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quantity or quality of water in surface and groundwater systems both during and after the mining operation and during reclamation shall be minimized. Note they say “minimized”. They don’t say there will be no contamination, as the ISL law says, where there will not be any leakage or any excursions. It goes on to state that where ambient groundwater quality exceeds values for protection of existing and reasonably potential future uses of groundwater, such as groundwater table values or other numeric criteria, permit conditions shall be established to protect those uses against further lowering of groundwater quality. What it is saying is that if the quality is already bad and that comes into our monitoring wells, and we realize the quality is bad, then we will take steps to not have it be lowered. We all understand how groundwater works. Probably the poison or the contamination is already in the water and it is going down gradient. Whatever measures these conditions are, we don’t feel that is good enough.

They also require an applicant to cite any municipality within two (2) miles of the proposed mining. Why would DRMS ask that question? We can conjecture that if the water is contaminated, those people would be hooked up to city water. I’m not sure, but what we do know is that out there (*in the Tallahassee Area*) we don’t have that luxury. If our water is contaminated, it is forever.

Another concern that we have, that came along last year, was that we believe the Master Plan intent changed. There was some talk when we were in this room with you last year that the Master Plan had some conflicting statements in it and that there was some confusion in the Master Plan. The one thing that we felt was very clear was objective C3 that states “The primary non-agricultural land use will be residential.” We felt that was the vision that the Master Plan set out in 2001 and it was working. That is why we are here, why we are in front of you. However, in Resolution #47 that the County published, we feel they changed the intent of that one sentence to say “The Mountain District of the Master Plan indicates that one objective is to have residential development as the primary non-agricultural use, but this objective is clearly not exclusive of any other uses existing in the Mountain District.” We feel that is very conflictive, it is not a clear statement. The clear statement was published in the Master Plan in 2001, and there was a hierarchy set out by that sentence. That sentence says the agricultural will be the highest use of the Mountain District, and right below that it

says the primary non-agricultural land use will be residential. We feel that has taken place. We would ask you to stand by that statement.

So here we are. No mineral district has been set aside to protect people from building their homes on top of it or near it. There is no doubt that we are all in a “pickle”. We know there are retired people who own property out there who have put their plans in limbo. They are ready to build. These are shovel-ready projects, ready to go now, that would create jobs for this county right now. As planners, we are asking you to take a decisive action and place a guideline of a minimum of two (2) miles between citizens and a Designated Mining Operation. We ask you to please not leave this decision to a bureaucrat in Denver. Thank you.

**Jim Hawkle, VP, TAC, Bar-J Ranch POA**

I would like to address an issue that came up in the paper in regards to this meeting. In the rush to publication and to get the facts of the meeting out, some things got obfuscated a little bit, and I would like to offer Ms. Debbie Bell an apology on this. There was a misunderstanding and miscommunication between the County and the Daily Record. Through no fault of her own, she published what she thought was factual information, and some of the information wasn't there. We are not asking for a moratorium or a ban on mining in general. In fact, all we are asking for is some more guidance and stricter guidelines around DMOs in the Mountain District. There is nothing that we are proposing that would put a complete ban on the entire Mountain District as stated in the article. That is the factual correction that we wanted to address.

What I would like to speak to are the uranium mining methods and impacts in Fremont County based on a document that Cyprus Mines obtained as part of their permitting process for mining one of the ore deposits in the area. In our area, there are sixteen (16) developments that surround the proposed uranium mining. The Tallahassee Area Community is located four miles north of the Arkansas River and 9.5 miles northwest of the Royal Gorge. In the Conditional Use Permit Application the mining company identified forty-four (44) land and home owners within 500 feet of the exploration area. There are four major streams that flow through the area - the Tallahassee Creek has three branches that go through the north, middle and south, and Cottonwood Creek goes through the north. So there is a tremendous water impact. The description of the open pit strip mine that Cyprus gave in their water decree said the ultimate depth of the excavation is expected to be from 700 to 800 feet deep. The general size of the excavation is projected to be approximately a mile and one-half long by three-quarters of a mile wide. The actual open volume of the mine will vary from time to time with the progress of the mining in the area. Looking to the future, it is conceivable that to incorporate both the Taylor Ranch project along with the Hanson project in a combined operation, the excavation could reach a length of over six miles, with widths exceeding two miles at the widest location, with depths exceeding one-thousand feet. We know that all these deposits won't be joined with the excavation. More than likely, they will do excavations over the minerals where they are located. As stated in the mining plan and their projections, they say the first three to five years would be deep hard-rock mining, which is typically what is carried out at ore deposits, and then after that open pit operations.

We feel that the open pit is the eminent eventuality of the operation that is based on the Cyprus Decree and the geology in the area, which I would like to address. The geology in Western Fremont County consists of alternating layers of volcanic material and sedimentary deposits. These materials form highly fractured geology, as can be seen along the Arkansas River Valley. This, along with the numerous fault zones in the region, makes it unsuitable for ISL mining. For ISL mining, confining layers must be present above and below the ore body in order to achieve pressurization of the extraction fluids. These are not present in the Mountain District of Fremont County. The Cyprus Decree talked about the geology in this statement: “The geology of the area consists generally of a Pre-Cambrian bedrock overlain by water-bearing materials of sedimentary and volcanic deposits...These layers are overlain by a thin cover of alluvial material in the various stream valleys...While the applicant has obtained considerable geologic data and information there is inherent in geologic matters a certain degree of uncertainty.”

Referring to a map, Mr. Hawkle said this slide shows you the creeks, the streams, and tributary gullies that are in the area. It also shows the water wells that have been drilled as of 2005. This is data that we got from the BLM, combined with the overlay of the communities in the area to show you how the mine would impact the watershed of the Arkansas and the dewatering in the area that would occur. It is known that the Cyprus Mines operation had problems with inflows of large quantities of water encountered during the course of their explorations. Also widely known is that our area contains vast amounts of underground streams and numerous artesian springs, especially during the spring and summer seasons. The large volume of water contained within the strata also would make deep hard-rock mining very difficult. Not impossible, just difficult. They have to de-water around the shafts. The tunnels would be subjected to water infiltration that would make constant dewatering necessary. The abandoned uranium mine just south of the juncture of Fremont County Road (FCR) 21 and FCR 21A filled with water during its operation, flooding it completely. This abundance of water is addressed in the Cyprus Mines Case: “In order to construct the mine, ground water will have to be evacuated throughout its immediate area. This is contemplated to be done, first by the construction of permanent diversion facilities on Middle Tallahassee Creek, Fear Creek, and Hall Gulch, which will intercept any naturally-occurring surface...Secondly, wells, for the purpose of dewatering the aquifers, will be constructed around the perimeter of the mine into each of the several formations as necessary to accomplish the dewatering. The result is that any natural precipitation or runoff or streamflows which otherwise would have entered into and flowed through the mine area will now be intercepted and the flow of the Tallahassee Creek system will be accordingly reduced. Furthermore, ground water levels will be lowered in these aquifers in areas somewhat remote from the mine as a result of removal of ground water in the area...”

So the extensive de-watering would be necessary for all mining operations wherever they may occur in the Mountain District, and especially in our area. Intercepted streams might never be returned to their original state. Until an extensive water analysis is carried out identifying the impacts of the proposed mining, we will not know the full extent of the depletions involved. We only know for certain that there will be extensive depletions associated with the de-watering in order to reach ore-bodies that are 600' to 1200' below the surface. This will cause water shortages throughout the area, and damage to other decreed

water rights. Water rights are also vested ownership rights that people have that are with their property, so that is one thing to consider as you go forward.

Initial projections, for a full scale mining operation, place the total annual depletions at around 600 Million gallons or 1,840 acre-feet of water annually. That is at the height of the operations for this whole area. These numbers were arrived at by a water attorney we consulted. It is important to know that these are not the only locations where minerals are present. There are numerous claim stakes in the area. We need a determination of where. The 1,840 acre-feet represents approximately 1% of the total groundwater contributions to the Arkansas River Alluvium aquifer according to Department of Natural Resources publications. In their water paper on their website, called Water 101, they cite the groundwater contributions to the Arkansas River Alluvium as 200,000 acre-feet annually. For these reasons, Cyprus Mines reached the conclusion that a Strip Mine open pit operation was the best economical way to proceed. We don't know for sure what is in the future, but we can look at the past and say if it was proposed then, it is surely a likely scenario in the future. It has to do with the economically recoverable resources in the area and how far they need to go in order to recover them.

How common are open strip pit mines for uranium? We have some pictures of some open pit strip mines around the country: Bear Creek Pit in Wyoming, Midnite Mine in Washington has five pits, Sweetwater Pit in Wyoming, Gas Hills in Wyoming has four separate pit locations, Wollaston Lake in Saskatchewan. In conclusion, while some ore bodies might be reached with conventional shaft mining, a scenario involving an open pit / strip mining operation will likely be used for extracting most of the uranium ores in Fremont County.

Mr. Alter commented that the pits in the photographs are nowhere near where people live. They are all remote locations.

## **PUBLIC COMMENT**

### **Anita Minton, 12150 Highway 9**

I support TAC and CCAT, and I am against uranium mining and milling in Fremont County.

### **Joe Marchiani, PO Box 813, Cañon City, Colorado**

I, like yourself, and the majority of the people in the audience are volunteers, and we appreciate your service, and we hope that you appreciate ours. I would like to thank the media for being here this evening, and I would ask and state that it is incumbent upon you to share with your constituent public what you hear tonight, and speak it as clearly as possible so that the message can be clearly heard in our community. On a positive note, I would like to step away from all the legal stuff we have been talking about and all the things that are scaring us a little bit, and remind us of the reason that we came to this wonderful part of the country that we live in. Many of us come from all over the world, all over the country, and we ended up here for one reason – because we have great and beautiful resources and we want to enjoy them, much like a young lady did more than one-hundred years ago. She came west from a small town in Kansas, and she ended up on top of a mountain called Pikes Peak, and she was inspired to write a beautiful song that we are all very familiar with, called

“America the Beautiful.” If you go to the top of Pikes Peak today and you look slightly to the west, at about 60 degrees to the southwest, you can see an area that we now refer to as Tallahassee Area. It is a beautiful green swath of land embedded in purple mountain majesties. If you look east and all around you see beautiful resources. I don’t think that Kathy Lee Bates today would write a song about America the contaminated or America the destroyed water resources. I think what we need to do is recognize what we have here and the value in our resources that we have, that being the Arkansas River. We need to protect it. We need to protect what brings people here. I would ask each of us, as we move forward; to remember the words in that song as we think about the actions we must take here to protect ourselves. Thank you very much.

**Nancy Seger, 1147 Allen Road, Cañon City, Colorado 81212**

I appreciate the time you have given me to come before you, and for your service. I would appreciate if you would take a look at the slips of those people who came here who are not speaking, to see if they are for or against, because I think it is important that their opinion be thought of as well. Voices and choices are the backbone of our democracy. We believe people are more empowered by example than by advice. Tonight you will be presented with the opportunity to look at examples from science, and factual evidence from other sources. You will then be asked to show by example the right thing to do when it comes to the health, welfare, and common well-being of the whole of Fremont County.

You are the planners for Fremont County. You are empowered to say just where dangerous and toxic activities can take place and where they cannot. Uranium Mining, as you know, has been classified (finally) as a DMO.

We know of some wells in our area that can’t be used, or are being used even though they have been contaminated in the past from mining that was allowed in the district. De-watering and contamination from toxic levels of heavy metals will make water which will never be able to be used for generations to come. Some of this water will most likely show up down stream.

Open-pit or “strip mining” of uranium should not be allowed in Fremont County in close proximity to existing homes. Also, there are many people who have put their plans for re-locating on hold because of the uncertainty regarding uranium mining.

My husband and I remember a statement made by a woman about a year ago about our area. She commented “would you rather see these ranches broke up into 35 acre parcels?” We would answer that with a resounding Yes! Much better that, than the desecration left behind from big mining of uranium, and ground which very well could not be used for decades.

It is not the State of Colorado’s job to make Fremont County’s planning decisions or its use in any area. In the past, we have heard that certain agencies within the state level are responsible for our county’s future. We know now that is not so.

What was in the past, or has been, doesn’t need to be now. Please act on the behalf of the majority of citizens who wish for fair and honest changes to the Master Plan. Our health, welfare and safety as well as the environmental concerns need to be addressed ahead of short

time investors who can leave Fremont County a devastated toxic wasted landscape. Thank you.

**Carol Dunn, 380 Barnett**

I won't take very much time, I would just like to say that I do support the amendment and hope that you will take into account that the water that flows through Fremont County, we are responsible for that. We are responsible for the headwaters and the tributaries that feed it. Land use and water quality and quantity go hand in hand. Any uranium mining, and milling too, require large amounts of water during all stages of processing. Uranium mining and exploration in an area of fractured geology risks cross-contamination between ore body and ground water. Water which is removed from the aquifers of the Arkansas basin cannot be replaced for any amount of money. Creating tailings piles may allow runoff to contaminate streams. In short, I would ask you to take into account that water is needed for the future of our county, for recreation, for growth, for life. Please take time to have that vision right now. Thank you.

**Roxanne Bradshaw, 48 Cougar Loop**

I came back to Colorado. I was born and raised in Pueblo. My family has been in Custer County and Fremont County for over one-hundred years, one way or another. I came back to retire here because this is home. I think some of the discussion that we are having is one that I find most inane. We have factual information, we have research, it is founded on scientific data that what happens with uranium ore, what happens when we mine and mill it, and what happens after we do the generation of electricity, and in the end what do we do with the residue that is left. We try to find holes in the ground to stuff it into. We try to put it in places where it is not going to impact us. I continue to be appalled at what we are doing around this issue. I do speak with some knowledge regarding this. I served as the on-site counselor for Main Yankee, the most recent nuclear electric generating plant to close. We closed the plant in the late 1990s. We closed it because we knew we were having leakage in the rods, and we were contaminating the beautiful region of the northern Atlantic Ocean. I had the privilege of being in a lot of private discussions regarding what was happening with the plant. We had a very wise CEO who said we are not going to repair this, we are going to raze this plant, we are going to clean up the site, and we are going to get out of nuclear generation. My greatest concern is that all of this mining and milling we are doing here is probably not going to be used necessarily for generating electricity in the United States. It will probably be sent as yellow cake to such places as Iran, Iraq, places that we now shudder at the thought of them having more and more access to yellow cake. I ask you to not use the past definition that Colorado would promote and support mining because the follow up to that is Colorado should not be promoting and supporting mining at the expense of its citizenry. I cannot emphasize that more strongly. Thank you very much.

**Ben Vallerine, Exploration Manager for Black Range Minerals**

I am responsible for day to day activities at our project in Tallahassee Creek. I would like to express my concern at the proposed amendments to the Master Plan. Basically, most of the things I had down in my notes to mention tonight have been explained by Ms. Jackson, to do with duplicity (*of regulations*). A lot of the stuff that has been requested in respect to DMOs is covered by the state. The fact that they are DMOs means that the uranium mining will

require an Environmental Protection Plan (EPP) that will be completed by any applicant for a mining permit on that site. The state will look on that with diligence, and assess that as it comes in. If there is a radioactive materials license, the *Colorado Department of Public Health and Environment* (CDPHE) will also require an EPP. So there will be two state government agencies individually assessing the EPP. All the amendments will do is to create a third government agency to assess the same plan. I object to the classification and some of the language that talks about mining is dangerous to health and safety. The Master Plan is talking about generic operations, and without details on that operation, how can you classify it as dangerous? Similar wording in the proposed strategy H1.4 – “due to the known long term detrimental environmental, human health and safety, and socio-economic impacts” – how do we know that these things occur when we don’t even know what we are talking about? A Master Plan is a general document and some of this wording is too specific, claiming that things are dangerous or detrimental to health when we are not even sure what we are talking about at this stage. Each application should be assessed on its own merits and not pre-classified with statements such as that.

I disagree that the Master Plan encourages growth to the outer areas of the county. I read somewhere in the Master Plan recently (*Chapter 4, Section B Urban and Rural Development, page 46*) that it was quite the opposite, that they requested that development stay closer to urban areas to keep the costs of maintaining such areas down, utilities and things like that. I believe that was in the Master Plan to prevent too much urban sprawl, and keep development closer to the urban areas to keep costs in check.

A couple of comments have been made regarding mine waste and TENORM was used quite a bit. Uranium ore is not classified as TENORM. TENORM requires technical enhancement. There is no technical enhancement of uranium ore, it is simply pulled out of the earth as a raw product. Therefore, it doesn’t require monitoring under any of those TENORM classifications because it is not technically enhanced, it is natural.

I also object to the classification of mining as heavy industrial. In the Master Plan, mining is given its own category, because mining is different. Mining is its own thing; it is quite different from heavy industrial. The same with milling, it is given its own classification for good reason. Mining and milling are very different (*from heavy industrial uses*). To classify it as mining and heavy industrial will most likely result in contradictions, because there is one set of rules for mining and a slightly different set of rules for heavy industrial operations. So I object to the classification of mining as heavy industrial or industrial.

Ms. Hawkle said that there are no new rules governing a uranium mining operation. That is kind of true, but it is also not really true. The fact that a uranium operation is automatically a DMO brings in a whole lot of new rules. For example, if we were able to permit our mine without being a DMO, we would not have to do an EPP, and there are a lot of things that we would not have to do. Just by creating the law that it will be a DMO brings in a whole new list of laws and requirements, including the EPP. Therefore, you could argue that it is increasing the regulations and it is providing a lot more laws.

As to the statement that the yellow cake would be shipped to Iran or Iraq, that is another thing that is heavily monitored by the Department of Energy or the Nuclear Regulatory Commission. To export uranium from America, there are a lot of hoops to jump through,

and I think that it would be very difficult, if not impossible, to export uranium to those countries.

The comments I read in Mr. Giordano's review of the amendment and what I heard from Ms. Jackson is pretty much where Black Range Minerals stands on the issue.

**Jim Barton, 166 S. Meadow Ct, Cañon City**

Thanks for allowing me to come up and speak a little bit. I had a long speech I was going to use, and now I just have a few words I would like to say. First of all, I realize the Master Plan is a guideline for the County Commissioners, and I realize that you are called upon to give suggestions and direction, as you see it, to the County Commissioners. I think it is a good thing when citizens can come up and express themselves and give direction and hopefully it is accepted well. When I first came to Colorado in 1964, I came here on my first vacation with my wife, as a junior in college. We loved Fremont County and the Front Range so much that we said someday we are going to retire there, and we did. I don't want to get emotional, but I do sometimes talking about it. The Master Plan gave direction, saying residences will be encouraged and heavy industry will be discouraged, and I believed it. So when I read it and then I saw what happened in this last year and a half, I decided that I would be on a citizen's committee and would try to give some input myself. I felt that changes could be made to the Master Plan and that they should be made. After all, they are just suggestions that we are giving. We really think they are important and they serve a good purpose for all the other people, who don't stand to make money, but we have direction we think should be given to people like you. I'd like you to be thinking along the lines of buffer zones, setbacks, and corridors. I think that's what it's all about with uranium mining. You cannot have uranium mining right in the middle of where people live and exercise their dreams. The County has the authority to manage land use, and for human health reasons, I am for the amendments that we have proposed. I am proud of having been on that committee, and I hope you will read those examples and make some changes. Thank you.

**Bill Helfrich, a Member of the Citizen's Advisory Group**

I just wanted to make a response to the gentleman who came up representing the Australian company (*Mr. Vallerine*). What I call that is spin. Everyone is entitled to their opinion of what they think is fair and safe, of what our communities want around us. It is good in a democracy to have that opinion that is so different from what many of us believe. I've heard both sides of the law issues that were presented here. As far as I can see, you can present these changes to go to the Commissioners. You can work that out behind closed doors, but you can make those decisions if you want to. I am for the proposed amendments. After hearing the law issues, I know that there is hope. What it comes down to is asking ourselves the question, what do we want to do with our County, representing our state, for the long term?

Talking about business ventures and mining, a lot of that doesn't carry over for the majority of the public. It represents a few that then can disperse money. If we put the money and politics out of the equation, theoretically, look at the Master Plan for what it is really intended to be, which is written to present a plan for a better quality of life for the majority, not the select few. In order to make a Master Plan that works for the majority of people, we need to have solutions on how we can have health and safety being a key issue that all of us

agree on. I know that everyone of you on this panel believe that health and safety are very important and should be the first note of consideration. In the Master Plan we need to look at what we need to change for the better if we are going to look at health and safety as a main concern. Most people would not disagree that mining of uranium is going to have some unhealthy affects to our aquifers and our ecosystem. Do we want to become a toxic wasteland? No. Coal mining in Tennessee, the breach is there, one example. West Virginia, Wyoming, the list goes on. Do we really want to be one of those future happenstances? I don't think we do.

If we are not going to do mining of those toxic chemicals like uranium that develops from that type of mining, maybe we ought to consider making a bold step and in the Master Plan, in the future, come up with some new ideas that are not the same-old-same-old. What we are talking about here is the same-old-same-old of mining being a major industry in the state of Colorado. The state backs that same-old-same-old mentality.

A good example would be Greensburg, Kansas. No one had even heard of Greensburg, Kansas, but it has become a national topic because they went to solar and wind and a green ecosystem to rebuild the town after the tornado. What a great story that is. Why can't we do that? We have great lands for wind, solar, we have a wind generating plant going on in Pueblo right now. Why don't we use that locally? Set up mass transit systems so we can stop the Highway 50 problem. Bring up some new solutions. Ventures filled with corruption from overseas venture capital is what a lot of this stems from, that the state has to deal with. That trickles down to where you have to follow along. The corruption doesn't stop. Everyone here cares, I believe that.

#### **Paul Carestia, 1600 Chestnut Street**

I sent you all this letter this morning, but I would like the opportunity to read it because I'm sure you're all very busy and you probably didn't get the chance. Tonight we begin the process of involving the public in discussion of some important amendments to the Fremont County Master Plan, amendments meant to protect and support the residents of Fremont County, and to provide clear guidance for industrial enterprises as well, particularly uranium mining.

There needs to be in our County's Master Plan a clear vision and set of guidelines which buffer, separate, and protect people and their homes from industry and their activities, especially when that industrial activity poses both an environmental as well as health threat to the people living nearby. We realize both residential communities and industry may have to coexist next to each other. What we need is a clear set of guidelines and requirements put forth by the County Planning Commission, put forth at the lowest level of government, where the impact is best understood, best appreciated, and most appropriately owned. I think we all heard that tonight, at least arguments in that direction. The County should not be deferring to "higher" bodies for these guidelines. This is our County, our responsibility, and we look to your collective responsibility to safeguard the people living here.

Other counties in the state of Colorado have taken affirmative steps to write such guidelines into their Master Plans, we heard about some of those tonight, and to define rules for enforcing those guidelines. A precedent exists in Gilpin County and Jefferson County for having taken just such steps. There is absolutely no reason in my mind why Fremont County

cannot or should not do the same. It only takes vision, willingness, and courage of leadership.

Now is the time for you, with our help, and we would be glad to help, to demonstrate your vision, willingness, courage of leadership, and support for the people who live in areas impacted by industries which pose a potential threat, by defining a vision and set of rules which allow both parties to peacefully co-exist within a clear and fairly derived set of guidelines.

I hope that you will please respond positively in favor of these proposed amendments. Thank you.

**Tom Pool, Landowner, South T-Bar Ranch, Uranium Industry Analyst**

I would hope we are not talking about an either-or situation here in Fremont County. I would much rather be talking about a situation where we can balance the desires and needs of the various parties to achieve the overall best balance for the whole group. I don't want to ban uranium mining; I don't want to ban residential housing within two miles of a uranium deposit. I think there are ways we can work together on this and end up with the best results for everybody. One of the things we have to recognize in this situation is that uranium is an important commodity in the world, in the United States, in Colorado, and in Fremont County. Nuclear power generates 20% of U.S. electricity. This is important. This is a big chunk of our electricity. It's green, it's clean, and it's cheap. The U.S. currently imports about 90% of its uranium. This is not a particularly good situation. We would like to be self-sufficient. The uranium deposits in the Tallahassee Creek district have an identified resource of over sixty (60) million pounds of uranium. This is one of the largest resources of uranium in the United States. It is important. We don't want to preclude the potential safe development of this large resource. The current value of that resource is something on the order of three billion dollars worth of material sitting in the ground in the Tallahassee Creek district. I think the large majority of this resource can be recovered safely and economically within our lifetimes. It may not be next year, it may not be five or ten years from now, I don't know. I think we don't want to shut the door on that opportunity. The state of Colorado is the primary regulator of uranium mining in Colorado. The state is currently compiling a massive revision to the state's uranium production regulations. These regulations and the revisions thereto address most, if not all, of the concerns voiced by TAC in its proposed amendment to the Fremont County Master Plan. In my view, Fremont County should defer uranium mining considerations in the Master Plan until the State revisions are complete so as to not generate potential conflicts. Fremont County may also wish to consider special provisions in the Master Plan which would protect the valuable Tallahassee Creek uranium resource from further encroachment and preserve it as an energy resource for future generations. Thank you very much.

**Catherine Meyrick, 1871 Canyon Terrace**

Thank you for this opportunity. I was not going to speak except to say that I support the amendment, but Mr. Pool's comments have made me want to speak. Nuclear energy is clean at the plant. The before and after of nuclear energy is not clean. We all know that. Mining and milling is a disaster. Clean up is a disaster. The state of Utah just spent its entire stimulus money on moving one mound after another mound of radioactive dirt from one part

of the state to the other. It was in Moab, which has become a tourist attraction, so they can't have it there. What to do with it? They moved it seventy miles down the road to a site next to I-70. Their entire stimulus package could have gone to health, could have gone to education, and could have gone to business. I want to make the point that uranium is a finite resource. When it's gone, they're gone. Neighborhoods will be there forever if it's a safe environment. We will contribute to the community and we will make this a better place to live. We came here for the right reasons. If this was not economically viable, Mr. Pool would not be here today. Thank you.

**Kay Denniston, 72 Savage Loop, Cañon City**

I just want to say that I support the amendments.

**Mark Denniston, 72 Savage Loop, Cañon City**

I'm just here to say I support the amendments and it is my wish that the county would take care of its citizens that they represent, and not foreign interests that come here to exploit and ruin the area. Thank you for your consideration.

**Karen Green, 1357 Autumn Creek Drive**

I'd like to say that I support the amendments and I bought property here. I live in California and planned to retire here, and now that won't happen. I bring money to the area, and my great-grandparents are from here, and it's a dream that's gone. I think a lot of people are thinking that same way. I bring my resources and money to build and it's not going to happen now, not with something that close.

Mr. Lateer asked why Ms. Green rejects the area.

Ms. Green said if they are going to mine here, yes. I came here for the peace, the tranquility and the beauty.

Mr. Lateer said that is why I have been here for years.

Ms. Green said I am half a mile away from it, and I won't have that. Why would I want to come someplace that is so beautiful and see it be destroyed?

Mr. Lateer asked where Ms. Green comes from.

Ms. Green answered California, where there is smog and traffic. Downtown you can't go anywhere. Here it's not that way.

Mr. Lateer said no it's not. We say "Hi" to our neighbors; they walk up the driveway and have a cup of coffee with you. That's important to us. That has nothing to do with it.

Ms. Green answered that it does to the people who bought property out here thinking that they could retire to the country. It won't be the country when the uranium mining is half a mile away.

Mr. Lateer said it is the country.

Ms. Green said it won't be when uranium mining is a half mile away, because trucks are going to be there all the time, dust will be there all the time, the noise. All the things that we came here to enjoy will be gone.

Mr. Lateer asked why?

Ms. Green asked would you like to live a half mile from a uranium mine?

Chairman Piltingsrud asked the Planning Commission members to hold their questions until the end of the public input.

Ms. Green said I would like you to look into the future, and look to the past. We have that hindsight. Don't do what other counties have done and destroy the area.

**Joseph Scranton, 2235 Autumn Creek Drive, Cañon City**

I would like to comment that I support the amendment. Also, I would like to distribute a letter that I received. Last year I sent a letter to Governor Ritter and asked him to intercede on our behalf. I did not get a response from the Governor, but I got a response from a gentleman named Mr. Ronald W. Cattany, who is the Executive Division Director for the Division of Reclamation, Mining and Safety. In regard to the issue of your jurisdiction, I would like you to look at the second paragraph of the letter, which says "Local land use decisions are managed under the direct authority of the local municipality or county." The people in this audience that are here tonight requesting your consideration of these amendments realize that this is probably only a first step. I am a student of government. I am a practitioner of government. I was always taught that the highest responsibility of any government entity is the health, safety, and welfare of the citizens it represents. We are asking you to be the first step as an advocate for us. Thank you.

**Lynn A. Holtz, 61 Savage Loop, Cañon City**

I would respectfully ask our County Planners to protect its citizens and future generations to come, from toxic waste, in our water, in our river, in our soil, in our air, and in our bodies. This is the worst kind of attack on our way of life and our freedom to live. We love our beautiful county and our communities. The devastation to our environment could never be repaired. We have the right to live here, and have invested our life savings into this community. We pay our taxes and support the community by buying local, and put our children and grandchildren in these schools.

I am a fifth generation citizen in the county, with two more living here as well. I am sure my great-great grandfather did not have this in mind when he settled here to raise his family. He helped to build this town, and my great-great uncle helped to build the Royal Gorge, and another great-great uncle was a miner. I have no objections to that.

We have already been damaged enough from the toxic waste proven to exist, and still existing. It's time to clean it up and say, once and for all, no more. Now is the time to act, save our citizens, our community, our lives.

In reference to what Cotter and the mining industry has already done to this community – "Fool me once, shame on you. Fool me twice, shame on me." Don't shame us any more, or shame on you.

**Sharyn Cunningham, 1614 Grand Avenue**

First I want to thank all of you for your service to the community. I know it is a difficult job, and what we are asking you to do is learn a lot of technical things and understand mining laws. I know because I have spent seven years trying to understand the uranium industry. My family is a living example of why we need a two mile buffer zone. Mistakes have been made in the past because planning wasn't developed. We really need to not make those same mistakes in the future. Our family purchased property within a mile or so of Cotter with two contaminated wells that we weren't told about and we drank the water for eight years. We have illnesses now. I can't prove they came from that. It has now been fourteen years, but I'm telling you I think they did. When contamination gets into water, there's no cleaning it up. You can't take it back. Once the contamination is out, you can't fix it, and so the Precautionary Principle that Mr. Alter mentioned really is important. Prevent it before it happens. Take steps now. I don't know what you can do to fix the pickle that we are in that Ms. Hawlee mentioned. Maybe you can't fix my problem. Maybe you can't fix the problem right in Tallahassee. You certainly can put forward a vision in the Master Plan that will protect anyone else new that comes in, and will protect people where uranium may be discovered somewhere else in the county. You could at least protect that area from development, moving close to where those minerals are. I know Ms. Jackson said that public opinion can't affect or change law, and I agree with her about that. But when it comes to a Master Plan, public opinion hopefully reflects the vision of everybody in our county. So Colorado Citizens Against Toxic Waste (CCAT), the organization which I chair, along with a lot of other citizens, decided to start a petition. We started it four weeks ago and we brought this present. (*Ms. Cunningham provided a binder containing a copy of the petition.*) We hope you will put it somewhere here at the county. It is an on-going petition, and as we get more petitions, we will come back and add them to the book. Basically, the petition says this: "We the undersigned citizens of Fremont County are opposed to refurbishment and reopening of the Cotter uranium mill. We believe, due to the nature of the material, uranium milling and uranium mining are not compatible and harmonious land uses near any residential area, and therefore should not be allowed to take place within two miles of any residences. Both of these hazardous industrial activities will deplete our water, it will be financially devastating to our property values, devastating to our health, our environment, and the future economy of the county. We are opposed because Fremont County will be left with radioactive and hazardous waste forever, far outweighing any short term benefits. We ask that our local, state, and federal government officials support and represent our opposition to uranium recovery in Fremont County." In four weeks we have gathered 1281 signatures. In three or four months we will have five or six thousand. I hope that lets you know that the vision of the people in the county want protection for the residential areas. Thank you very much.

**SeEtta Moss, 725 Frankie Lane, Cañon City**

I am a long term resident of the county. I have lived here about 35 years; probably will die here too, so I have an investment in what occurs in our county. I do have serious concerns about uranium mining, but I would rather have the state do the regulatory process on that. I think the state is better equipped. I think, as Ms. Jackson has indicated, the state has regulations for it. I think our County Commissioners and staff don't have the time or the

expertise to get into any of that. The state engineer takes care of water. All those people need to take care of those things.

I also have serious concerns about rural sprawl. Rural sprawl is what I see at Tallahassee. Rural sprawl is exurban development. It comes with many serious negative impacts also. Beauty is in the eye of the beholder. The folks who live up there, when they see the Tallahassee Area, they think it is beautiful. I don't think that was what was meant when they wrote "America the Beautiful." I think they want that to be land that is not all fragmented roads and houses and the other problems that go with sprawl. Our county is, I think, trying to move to encouraging cluster development and I think that to impose these regulations that were proposed here would be in contradiction to that. That is why I seriously oppose this amendment. This would facilitate more exurban sprawl, as folks who want to live out in the boondocks and want protections that most of us look for in an urban or clustered area would be available to them, and would encourage more of it. I know the folks that live there don't see that, but it would be deleterious to the future of this county and to this state. There is a lot of information out there about the impacts of exurban or rural sprawl, including on the water. They talk about how the water from the mining is going to be depleted. Mining law requires the mines to augment that. As Mr. Piltingsrud knows, as he and I both work on the Arkansas Basin Round Table, the folks who have water rights will make sure that mining operation does not take anything that they do not put back in. Contrarily, all those who are in those 35 acre or less ranchettes do not augment any of their water. That is being taken from the aquifer. There is also strong evidence that all of these individual sewer systems eventually leak and contaminate the aquifers. So there are lots of disbenefits to exurban sprawl. I don't want to see that facilitated by any types of regulations or county planning regulations. We need to encourage clustered development, provide the protections that a clustered development is realistically able to provide, not out in the entire county. That is my concern. Thank you very much.

**Paul Maye, 72 Pleasure Trail**

I represent the East Fremont Alliance (EFA), which some of you are familiar with. We have support and membership throughout the county. We are definitely a part of the growing groundswell of folks in Fremont County who seek to establish one basic principle: do not support mining or milling where people live. That does not say don't support mining in Fremont County. I agree with the gentleman who said we are looking for coexistence with responsible mining companies and well-developed and approved residential developments. I don't think I need to remind you gentlemen that there are other resources in this county besides minerals. I was appalled at the County Attorney's cavalier legal finding.

Chairman Piltinsrud interrupted and said I am not going to allow you to entertain those kinds of discussions. If you have issues you want to talk to us about the Master Plan, that is fine, but leave the County Attorney out of it. Just tell us what your issues are.

Mr. Maye said I was reacting to her position. I don't need to remind you that people are a resource in this county. The environment is a resource in this county. It is not just the minerals under the ground. You must also beware of people that will set up false conflicts. It is not an either-or, as the gentleman said earlier. We will have, and we must have, mining in the future in this county, and we must have responsible residential developments. We can

have both, but I believe Attorney Mulliken pointed out clearly, that you not only have the capability, but you have the responsibility to do local regulations for a local authority to take care of the people of this county.

My main point to start with is we see you gentlemen as our first line of defense with the primary obligation to protect the people and the environment of Fremont County. Black Range, the large international corporations coming in, export the profits, and possibly export the minerals. He (*Mr. Pool*) was worried about us having to import them (*the minerals*). I am worried about it getting all exported, and particularly the profit, and for what? We get some benefit from them on a very temporary basis economically. They can take care of themselves. They have a large organization and many lawyers and lobbyists who are in Denver. We feel that it is a bad idea to say, sit back, don't worry about it, the state will take care of you. The track record is not good. I think the people from CCAT can give you depth and detail of time and time again when they have asked both DRMS and the health and environmental state people to support them with information and simple acts, and to take steps to protect the people in this county and to protect the environment, and many times they are either ignored, slow-rolled or denied. Can we count on the state to take care of us? I don't think so. Even in our recent case, which many of you are familiar with, where the EFA had asked for a rescission of a zone change approval on the Walker Ranch, that is another case in point. The state gave a permit for drilling and exploration on that ranch, and that emboldened the people to ignore the need to comply with the requirement for county approval, and to comply with the need for a CUP even though they knew it was required. The state is not going to take care of the whole situation. What we are collectively seeking is a holy alliance with you folks on clearly establishing some basic county positions and clear parameters for mining operations near populated areas.

As Mr. Mulliken pointed out, he established clearly by law and good case references, and the regulations, and the state guidance that it is up to you gentlemen at the local area to take care of local authorizations of land use. That is what we are talking about. The people are a resource, the environment is a resource, and how you use the land affects that greatly. It would be well to establish some basic positions right up front so people aren't trying to circumnavigate, and people aren't trying to use little-known loop-holes within the system, like the whole idea of allowing mining under Agricultural Forestry, and have that hidden, and have that used as an excuse. We have already had a recent case of that, as you are well aware. It was overturned unanimously, the only time a zone change has been overturned in the history of Colorado, as told to me by the Chairman of the Commissioners.

Chairman Piltingsrud said I'm wondering what that has to do with the CUP application and the amendment that was presented by TAC.

Mr. Maye said it has to do with the obligation that there is more to planning and your job to establish some basic principles up front, such as the people and the governments of Fremont County place a high valuation on our environment and the health, safety, and welfare of our people. Establish that right up front. Establish that we expect, if not demand, that mining companies operate responsibly and in full compliance with state and local guidelines. That is strategic planning and it fits in with some of these amendments that have been placed before you. Once those are established, if you do nothing else, certainly take a look at the distances that are required in the Master Plan and the distances that are required tonight, like the two

mile distance. Does it make any sense to anybody that if you are going to have a zone change where it will allow mining, that there is only a requirement to notify people that live within 500 feet? That is one example of a distance situation. That needs to be looked at. And certainly the two mile request is not unreasonable. If nothing else, please look at taking a responsible position for realistic separation between mining and milling operations and residential areas where people live. Don't get rushed into anything. I think that may be the best message. Think about this carefully. We have a great county. A lot of us came here because of the beauty of it and the environment. The people are here as a great resource, and they bring a lot to it. We are not here just to support the mining wherever the resources or minerals are. Don't get rushed into making a quick decision and get the best advice you can. Look for expertise and look for independent thinking on this and look at the examples of what other counties are doing, and the examples of what court cases have shown is possible. Take the bit and accept the responsibility for protecting our people and our environment, as you are clearly responsible for land use. Adopt this amendment, or the portions of it that you think make a lot of sense. The one that makes the most sense to me, and I hope to you, is let's establish once and for all that there needs to be a separation between mining activities and populated residential areas where people live. Thank you gentlemen.

Chairman Piltingsrud said that concludes all of the requests to speak that I have. He called for the staff recommendation.

Mr. Giordano said I think it has been pretty much covered. I will be real brief because I think most of the items have been talked about. I may note that we did this review before there were any legal considerations, but we followed in the same path as Ms. Jackson. The thinking on this is that the amendments that are being proposed are, for the most part, not appropriate for the Master Plan itself, but we think they may be appropriate in the regulatory process under the CUP. The only caution I would have on that is that when you are writing up regulations, you have to keep in mind that these are county-wide regulations not just portions of the County. They can't be specific to one particular area. Some of the things that have been brought up could be appropriate to the entire county. Also, we talked about the duplicate enforcement by the County and the State. That came out in discussion between the two attorneys. I will leave that topic to the attorneys, if Ms. Jackson has anything further, or anyone else has anything further. Other than that, I don't have anything to say that hasn't already been said. I would be open to questions. The Planning Commission members do have my comments.

Chairman Piltingsrud asked the Commissioners if they have a wish to continue. We have tons of stuff that we have not seen, legal opinions that we have not read. I am disinclined to try to make the decision tonight. Can we continue this until next month? I think we are going to have a lot of discussion here.

Mr. Lateer said he would like to make a couple of comments. Food for thought, you will discuss it later. One of the things that concerns me – no one buys property without doing due diligence. I have hunted and fished that whole area for almost fifty years. Now fifty years later, we have people saying don't do this. If you go out there and sit on an outcropping, and stood up and took a Geiger counter and stuck it to your butt, you are going to find that those outcroppings are radioactive. Due diligence, when you buy that property, would identify the fact that's always been, for millions of years, a radioactive area. Everybody knows that.

That's what due diligence means. If anyone of you owned that land out there, whether it's a gold mine, uranium, diamond mine, whatever it is, and you had an opportunity to make money, you should be able to capitalize on that.

### **MOTION**

Mr. Bill Jackson moved to adjourn the Public Hearing until July 7, 2009.

### **SECOND**

Mr. Mike Schnobrich seconded the motion.

Ms. Jackson asked if the Planning Commission is going to entertain further public comment.

Chairman Piltingsrud answered I am inclined to accept further public comment, and I owe Mr. Alter the last bite of the apple. I'm hoping it will be a brief bite. For those of you who spoke tonight, I am not going to let you speak again at the next hearing (*except Mr. Alter*). There may be other people who were not here tonight. We will give them the opportunity to speak. We will have any staff update. We will have further comments from the Planning Commission either to Mr. Alter or to the staff, and then Mr. Alter will have the last bite of the apple.

Upon a roll call vote, the motion passed unanimously.

Mr. Alter said there may be a problem with the Tuesday immediately following the July 4<sup>th</sup> holiday.

Chairman Piltingsrud said I think we are okay.

### **3. OTHER ITEMS FOR DISCUSSION**

There were no other items for discussion.

### **4. ADJOURNMENT**

With no other items for discussion, Chairman Piltingsrud adjourned the meeting at 10:17 p.m.

### **The following people submitted a slip in support of the proposed amendment to the Master Plan but did not provide public comment:**

Tony Montgomery, 800 Raynolds, Cañon City  
Dolores Filley, 423 Hackberry Lane  
Eldon Filley, 423 Hackberry Lane  
Roger Ratcliff, 912 Rudd Avenue, Cañon City  
Donna Young, 912 Rudd Avenue, Cañon City  
Jackie Montgomery, 800 Raynolds, Cañon City  
John Maris, 149 Wolf Cub Trail  
Trish Maris, 149 Wolf Cub Trail  
Karen Barton, 166 S. Meadow Court, Cañon City  
Don & Carol Katonak, 1169 County Road 26, Cañon City  
Kay Parker, 16081 Highway 50, Coaldale  
Robert Parker, 16081 Highway 50, Coaldale  
Bob McGee, Lot 8 Waugh Mountain Ranch  
Richard Seger, 1147 Allen Road, Cañon City

Karen Bachman, 42 Cougar Loop  
Susanne Schones, 23 Fox Run Court  
Mary Etter, 31 Pike View Drive, Cañon City  
Virgil Burke, 23387 County Road 2  
Janet Marchiani, 65 Savage Loop  
Gail Palmgren, 181 Cedar Ridge Drive, Cañon City  
Denise S. Wilson, 3 Bluff Road, Williamsburg  
Nina Allen, 49216 Highway 50 West, Cañon City  
Celeste Haas, 820 Robbie Lane, Cañon City  
Sharon Helfrich, Cañon City

**The following people submitted a slip in opposition to the proposed amendment to the Master Plan and / or in support of mining in Fremont County but did not provide public comment:**

Mike Langston, 12998 County Road 255, Westcliffe  
Joe Lamannu, 71 Ptarmigan Trail, Cañon City  
John Hamrick, 108 Deusey Road  
Jason Morin, 3500 East State Highway 120, Florence  
Verne Stuessy, Highway 115, S26 T19S R68W  
Scott Leonhart, Northfield Partners, CR 79 & 11A  
Angela M. Bellantoni, 1107 Main Street, Cañon City  
Terry N. Tow, Highway 115, S26 T19S R68W  
Michael Sheahan, 3655 Outwest Drive, Colorado Springs

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CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

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DATE