

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street Boulder, Colorado 80302	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: LISA E. BATTAN; BRANDON T. WHITE; and VICTOR M. VARGAS</p> <p>Defendants: BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO</p>	
Attorneys for Plaintiffs: Karl F. Kumli, Atty. Reg. #11784 K.C. Cunilio, Atty. Reg. #51378 Rachel Bolt, Atty. Reg. #51266 Dietze and Davis, P.C. 2060 Broadway, Suite 400 Boulder, Colorado 80302 Phone: (303) 447-1375 E-mail:KarlK@dietzedavis.com	Case Number: Div.: Ctrm.:
<p>VERIFIED COMPLAINT UNDER RULE 57 C.R.C.P FOR DECLARATORY JUDGEMENT, FOR INJUNCTIVE RELIEF, FOR IMPOSITION OF A CONSTRUCTIVE TRUST AND FOR OTHER AND FURTHER RELIEF</p>	

INTRODUCTION

This case involves approximately forty acres of land in Boulder County, Colorado, sometimes referred to as the Rainbow Nursery Property (the “Property”, as further described in paragraph 1, *infra*, of this Complaint). The County of Boulder, by and through its Board of County Commissioners (“County”) has filed a Special Use Review application to construct, operate and maintain a commercial, industrial-scale composting facility (the “Compost Factory”) on the Property. The Special Use Review application was filed by the County, and the County is planning to hear that application on its merits. This action seeks declarations by this Court that, for a number of reasons, the County cannot construct, operate and maintain the Compost Factory on the property, together with other relief.

Plaintiffs are all owners of real property adjacent or within 1500 feet of the Property.

On December 19, 1994 the County bought a conservation easement on the Property (the “Conservation Easement”, as further described at paragraph 2, *infra*, of this Complaint). The

County used restricted funds, raised from sales and use tax revenues, pursuant to Boulder County Resolution 93-174, to purchase the Conservation Easement. In that 1994 Conservation Easement, the County described the Property as “prime agricultural land.” In the Conservation Easement, the County further stated that the Property’s “significant agricultural attributes, its present and continued agricultural use and its open space values are of great importance to the Grantor, the Grantee and the people of the County of Boulder and are worthy of preservation.” The County further stated in the Conservation Easement that it “recognizes the public benefit to be served by such preservation” and that the County desired “to purchase the conservation easement in order to assure [the Property’s] preservation in perpetuity for agricultural uses and for the open space function which it serves.”

The Conservation Easement recites that the County paid \$169,625.00 for the easement. Within sixty days of its purchase of the Conservation Easement, the County recorded a Notice of Property Restrictions, in the records of the Boulder County Recorder on February 8, 1995. That Notice of Property Restrictions incorporates the Conservation Easement. The Notice of Property Restrictions states, in a pertinent part, “[t]he Property was purchased with money acquired from a sales and use tax for acquisition of Open Space Land, approved by the voters of Boulder County on November 2, 1993.” The sales and use tax monies used in the purchase restrict the use which can be made of the Conservation Easement property solely for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes.

The Conservation Easement also included a “first right to purchase” the Property. The Conservation Easement has remained of record against the Property at all times relevant to this action, as has the Notice of Property Restrictions.

Between February 8, 1995 and April 14, 2018, the property passed through mesne conveyances, all noting that the Property was subject to the Conservation Easement. Then, on April 14, 2018, Boulder County purportedly exercised its right of first purchase.

In 2018, claiming to invoke the “first right to purchase”, the County purchased a fee interest in the property from private owners. The County used restricted funds, raised from sales and use tax revenues pursuant to Boulder County Resolution 93-174, to purchase the fee interest in the Property. The County purchased the Property with the intent of converting the Property to a Compost Factory.

Immediately after the purchase of the fee interest in the Property, the County began to publicize its position that, utilizing the real property doctrine of merger, its purchase of the fee interest in the Property destroyed the Conservation Easement, so that none of the requirements of the Conservation Easement, nor the conservation values to be promoted by the easement, are of any further force or effect.

Even prior to its purchase of the fee interest in the Property, the County intended to turn the Property into the Compost Factory.

On the afternoon of October 6, 2020, with little advance notice, the County convened a property owner meeting at the Property. This meeting was the first indication that neighboring property owners received of the County's intent to develop the Compost Factory. County staff at that meeting indicated that the plans for a "proposed compost facility" were preliminary. The plans were not preliminary.

On October 12, 2020, only four business days after the property owner meeting, the County filed a fully-formed application for Special Use Review approval of construction, operation and maintenance of the Compost Factory on the Property. The application was filed with the Boulder County government, so that Boulder County is both the applicant and the reviewing governmental entity.

The construction, operation and maintenance of the Compost Factory on the Property, if permitted, will destroy the values which were to be conserved by the Conservation Easement. The construction, operation and maintenance of the Compost Factory on the Property, if permitted, will violate Boulder County Resolution 93-174, which provided the funding for the purchase of the Conservation Easement and will violate the terms of the Notice of Property Restrictions. The construction, operation and maintenance of the Compost Factory on the Property, if permitted, will injure property interests of the Plaintiffs.

Because the County has jurisdiction over the Special Use Review and other associated administrative processes, the County has placed itself in the position of being: 1) the beneficiary of the Conservation Easement; 2) the purchaser of the Property; 3) a proponent of the position that the Conservation Easement no longer exists, 4) the proponent and prospective developer of the Compost Factory on the Property; 5) the prospective constructor, operator and entity maintaining the Compost Factory on the Property; and, 6) the governmental entity which will decide the fate of the Property pursuant to the County's own Special Use Review process.

This Complaint seeks a declaration that 1) there is no merger of the Conservation Easement and the fee interest purchased by the County; 2) the County's action in purchasing the Property with intent to construct, operate and maintain the Compost Factory on the Property is in violation of Boulder County Resolution 93-174 and is *ultra vires*; 3) the conduct of the County in purchasing the fee interest in the property in order to extinguish the Conservation Easement with the goal of constructing, operating and maintaining the Compost Factory is wrongful, and if permitted would unjustly enrich the county, at the expense of those who relied upon the perpetual nature of the Conservation Easement, and the citizens of Boulder County. In an effort to preserve the open space and conservation values which led to the creation of the Conservation Easement on the property, this Complaint also seeks imposition of a permanent injunction and constructive trust on the Property to assure the long-term preservation of the open space and conservation values which the County itself once sought to preserve in perpetuity, and other and further relief as set forth herein.

PARTIES, JURISDICTION AND VENUE

1. This action pertains to rights in real and/or personal property. A description of the Property is set out at Exhibit A, attached to this Complaint and incorporated here by this reference, as if set out in full. The Property is also known by its street address, which is: 5762 North 107th Street, Longmont, Colorado, 80504-8427.
2. This action also pertains to rights in real and/or personal property described in the Conservation Easement recorded against the Property as a Deed of Conservation Easement in Gross. A copy of the Deed of Conservation Easement in Gross is set out at Exhibit B, attached to this Complaint, and incorporated here by this reference, as if set out in full. The Deed of Conservation Easement in Gross was recorded at Reception No. 0148577 of the records of the Boulder County Clerk and Recorder (the "Records").
3. Venue is proper in this Court under C.R.C.P. 98(a) and (c)(1) because the Property, which is the subject of this action is situated in Boulder County, Colorado and because the defendant resides in Boulder County, Colorado. The provisions of the Conservation Easement which is at issue are also to be performed in Boulder County, Colorado.
4. This Court has jurisdiction over this matter pursuant to Colo. Rev. Stat. 13-1-124(1) because the Property is located in, and because the actions described herein occurred in, Colorado.
5. Plaintiff Lisa E. Battan ("Ms. Battan") is a resident of Boulder County, Colorado. Ms Battan has been a resident of Boulder County, Colorado, at all times relevant to this action.
6. Ms. Battan owns real estate, which is located at 10925 Lookout Rd, Longmont, CO, 80504, which is immediately adjacent to the Property (the "Battan Property"). Ms. Battan purchased the Battan Property on February 26, 2016.
7. Ms. Battan maintains her principal residence on the Battan Property.
8. Ms. Battan farms the Battan Property.
9. Ms Battan was a Boulder County taxpayer in 1993 and 1994, and at all other times relevant to this action.
10. Ms. Battan conducts her professional horse raising operation on the Battan Property.
11. Ms. Battan raises and trains sensitive performance show horses on the Battan Property as a commercial agricultural business.
12. The horses raised by Ms. Battan have world-class pedigrees and are aimed to compete at

the top national and international levels of the sport of dressage.

13. Ms. Battan is, herself, an avid competitor in the sport of dressage with top-ten national finishes.
14. Horses raised by Ms. Battan on the Battan Property have been featured in national publications pertaining to equine matters and competitions.
15. Horses raised on the Battan Property and sold by Ms. Battan have been purchased by top professionals in the sport and have successfully competed at top national shows.
16. The horses raised by Ms. Battan on the Battan Property do not tolerate noise, odors or contaminated water.
17. Ms. Battan relied upon the existence of the Conservation Easement on the Property, which is adjacent to the Battan Property, as an important element of value in her purchase of the Battan Property for her commercial agricultural business and professional horse raising operations on the Battan Property.
18. The rural character, horse operations, and other property interests of Ms. Battan would all be negatively impacted by the construction of the Compost Factory within 1500 feet of the Battan Property.
19. The Battan Property has a high water table and portions of the Battan Property are subject to periodic inundation.
20. On information and belief, the high water table on the Battan Property is hydrologically connected to shallow groundwater on the Property.
21. On information and belief, the construction of the Compost Factory by Boulder County on the Battan Property would negatively impact groundwater and surface water on the Battan Property.
22. The termination by merger of the Conservation Easement, and construction of the Compost Factory by Boulder County on the Property would injure the foregoing property interests of Ms. Battan.
23. The construction of the Compost Factory by Boulder County on the Property would substantially diminish the value of the foregoing property interests of Ms. Battan.
24. A Broker Price Opinion of the Battan Property (the "Battan BPO") was performed in December, 2020. A true and correct copy of the Broker Price Opinion is attached to this Complaint as Exhibit C, and is incorporated here by this reference, as if set out in full.

25. The Battan BPO provides, in pertinent part:

[I]t is my opinion that any larger building or “facility” installed contiguous to this property could impact a sales price reduction of a minimum of \$100,000. If other factors i.e., smell or noxious odors, blowing trash, increased traffic of heavy trucks causing previously unheard noises, and the disruption of the current pastoral view are changed, it could reduce the value of the property much more than \$100,000. The degree and extent of the changes noted above could reduce the sales value far less than the current value possibly as much as 30-50%, or to the point of no salability at all.

26. Plaintiff Brandon T. White (“Mr. White”) is a resident of Boulder County, Colorado.

27. Mr. White purchased real property, described as 11221 Lookout Rd, Longmont, CO 80504 (the “White Property”) immediately adjacent to the proposed site of the Compost Factory in 2017.

28. Before purchasing the White Property in 2017, Mr. White searched diligently for over two years before he found a property that would be his family’s home and farm.

29. Mr. White targeted his search for a new home in Boulder County. This was primarily because of his belief that Boulder County was pro-agriculture and anti-development. As Mr. White was searching for specific property, he was diligent in verifying that the neighboring properties would be protected from future housing development and industrial development.

30. Mr. White constructed the house on his property largely by the work of his own hands.

31. When Mr. White found the White Property, where the White family lives now, Mr. White relied upon the fact that because Boulder County owned many of the surrounding properties, and because there were conservation easements in place, the properties neighboring the White Property would remain agricultural properties permanently.

32. One of Mr. White’s sons has severe asthma. Protection of his son’s health was an important reason why Mr. White wanted to move out of the City of Denver to a rural location in Boulder County. Mr. White believed that living in a rural setting, with fresh air would be beneficial to his son.

33. Mr. White purchased the White Property with the intent to raise his family in a rural agricultural setting.

34. The minor children of Mr. White raise chickens on the White Property and sell the eggs to their neighbors and in the community.

35. Mr. White continues to farm the hay fields on the White Property. Mr. White sells the

hay to neighbors for feed for their livestock.

36. Mr. White keeps a large garden on the White Property where he grows many vegetables to feed his family.
37. Mr. White maintains his principal residence on the White Property, together with members of his immediate family.
38. Mr. White relied upon the existence of the Conservation Easement on the Property, which is adjacent to the White Property, as an element of the pro-agriculture and anti-development environment in which he planned to raise his family.
39. A spring surfaces and creates a stream which runs through the White property. It originates from the high water table and ground water from the property directly to the West of the White property.
40. The stream on the White property (which is sometimes referred to as the Beasley Slough) has historically been used to provide water for livestock on the White property as well as to properties downstream.
41. The heavily wooded area of the stream and stream bed on the White property is home to many wild animals, including ducks, owls, coyotes, prairie dogs, etc.
42. The rural character, wildlife, and other property interests of Mr. White would all be negatively impacted by the construction of the Compost Factory within 1500 feet of the White Property.
43. The construction of the Compost Factory by Boulder County on the Property would injure the foregoing property interests of Mr. White.
44. The construction of the Compost Factory by Boulder County on the Property would substantially diminish the value of the foregoing property interests of Mr. White.
45. A Broker Price Opinion of the White Property (the “White BPO”) was performed in December, 2020. A true and correct copy of the Broker Price Opinion is attached to this Complaint as Exhibit D, and is incorporated here by this reference, as if set out in full.
46. The White BPO provides, in pertinent part:

[I]t is my opinion that any larger building or “facility” installed contiguous to this property could impact a sales price reduction of a minimum of \$100,000. If other factors i.e., smell or noxious odors, blowing trash, increased traffic of heavy trucks causing previously unheard noises, and the disruption of the current pastoral view are changed, it could reduce the value of the property much more than \$100,000. The degree and extent

of the changes noted above could reduce the sales value far less than the current value, possibly as much as 30-50%, or to the point of no salability at all. The value of this home in particular, with the direct views over the proposed industrial site, could be decimated by the installation.

47. Plaintiff Victor M. Vargas (“Mr. Vargas”) is a resident of Boulder County, Colorado. Mr Vargas has been a resident of Boulder County, Colorado, since 1979 and at all times relevant to this action.
48. Mr. Vargas owns real property which is located at 10881 Lookout Road, Longmont, CO, 80504 (the “Vargas Property”), which is immediately adjacent to the Property. Mr. Vargas purchased the Vargas Property in 1998.
49. Mr. Vargas maintains a residence for his daughter on the Vargas Property.
50. Mr. Vargas farms the Vargas Property, and raises chickens and goats on the Vargas Property.
51. The farm operations on the Vargas Property produce eggs and other farm products which are consumed by the Vargas family.
52. Mr. Vargas donates surplus farm produce, eggs and other farm products to the Emergency Family Assistance Association in Boulder, Colorado, and to the Sister Carmen Community Center in Lafayette, Colorado.
53. Mr. Vargas was a Boulder County taxpayer in 1993 and 1994, and has been a Boulder County taxpayer at all other times relevant to this action.
54. Mr. Vargas learned of the Conservation Easement on the Property in approximately 1998 and relied on the existence of the Conservation Easement when making improvements to, and investments in, the Vargas Property from and after that date.
55. Mr. Vargas operates equestrian facilities on the Vargas Property, including but not limited to dressage and polo facilities.
56. The Vargas Property has a high water table and portions of the Vargas Property are subject to periodic inundation.
57. On information and belief, the high water table on the Vargas Property is hydrologically connected to shallow groundwater on the Property.
58. On information and belief, the construction of the Compost Factory by Boulder County on the Vargas Property would negatively impact groundwater on the Vargas Property.

59. The construction of the Compost Factory by Boulder County on the Property would injure all the foregoing property interests of Mr. Vargas.
60. The construction of the Compost Factory by Boulder County on the Property would substantially diminish the value of the foregoing property interests of Mr. Vargas.
61. The relative locations of the Property, the Battan Property, the Vargas Property and the White Property are shown on Exhibit E, attached to this Complaint, and incorporated here by this reference, as if set out in full.
62. The Defendant is the board of county commissioners of the county of Boulder, Colorado.
63. The board exercises the powers of Boulder County as a body politic and corporate.
64. Colo. Rev. Stat. 30-11-105 provides, in pertinent part, "In all suits and proceedings by or against a county, the name in which the county shall sue or be sued shall be, "The board of county commissioners of the county of" Boulder, Colorado.
65. The board of county commissioners of the county of Boulder, Colorado shall be referred to in this Complaint and hereafter in this litigation as "Boulder County" or "County" unless it appears from the context, or by specific reference that another style should be used.
66. Boulder County owns an interest in the Property which is the subject matter of this action.
67. Boulder County purchased the Conservation Easement on the Property by Deed of Conservation Easement in Gross on December 19, 1994.

CREATION OF THE CONSERVATION EASEMENT IN 1994

68. By a Warranty Deed dated March 1, 1984 and recorded March 14, 1984 at Reception No. 608817 of the Records of the Boulder County Clerk and Recorder (hereinafter "Records") Martin A. Buffo and Pauline T. Buffo conveyed to Barney C. Barnett, Jr. and Cheryn H. Barnett, as joint tenants, real property in accordance with the deed attached hereto and incorporated here by this reference as Exhibit F, as if set out in full.
69. The property acquired by Barney C. Barnett, Jr. and Cheryn H. Barnett, is the Property.
70. By a Deed of Conservation Easement in Gross dated December 12, 1994 Barney C. Barnett, Jr. and Cheryn H. Barnett, as Grantors, conveyed the Conservation Easement to the County of Boulder, a body corporate and politic as Grantee. A true and correct copy

of the Deed of this Conservation Easement in Gross is attached hereto and incorporated here by this reference as Exhibit B, as if set out in full.

71. The Deed of Conservation Easement in Gross was “acknowledged and accepted” on December 6, 1994 by the County of Boulder, a body corporate and politic by Ronald K. Stewart, Chair, Homer Page, Vice-Chair and Sandy Hume, Commissioner. On information and belief, these three individuals named acknowledgement and acceptance paragraph comprised the board of county commissioners of the County of Boulder, Colorado throughout December 1994.
72. On information and belief, the County was the principal drafter of the Deed of Conservation Easement in Gross.
73. The Deed of Conservation Easement in Gross was recorded in the Records on December 19, 1994 at Reception No. 01485777.
74. The property variously described as Exhibit 1 or Exhibit A to the Deed of Conservation Easement in Gross is the “Property.”
75. The Conservation Easement provides, in pertinent part: “the Property is comprised of approximately 40 acres of prime agricultural land, as determined by the Soil Conservation Service Soils Capability Classes, and certain water rights necessary to the continuation of agricultural production”.
76. The Conservation Easement provides, in pertinent part: “the Property’s significant agricultural attributes, its present and continued agricultural use and its open space values are of great importance to the Grantor, the Grantee and the people of the county of Boulder and are worthy or preservation”.
77. The Conservation Easement provides, in pertinent part: “it is the policy of Boulder County to encourage preservation and utilization of prime agricultural lands for agricultural uses as such policy is declared in the Boulder County Comprehensive Plan”.
78. The Conservation Easement provides, in pertinent part: “the Boulder County Zoning Resolution, adopted by the Boulder County Board of Commissioners pursuant to the county comprehensive plan, designates the Property as “Agricultural;” and provides that permissible uses of the Property are limited to agricultural production and certain other compatible or agricultural-related uses”.
79. The Conservation Easement provides, in pertinent part: “the Grantee recognizes the public benefit to be served by such preservation as described in the Boulder, County Comprehensive Plan Environmental Resources and/or open Space Sections”.
80. The Conservation Easement provides, in pertinent part: “the Grantee desires to purchase

an interest in the Property from the Grantor in order to assure its preservation in perpetuity for agricultural uses and for the open space function which it serves.”

81. The Conservation Easement provides: “It is the purpose of this Easement to preserve and protect in perpetuity the significant agricultural attributes of the Property, its continued agricultural use and its open space values.”

82. The Conservation Easement provides at paragraph 4.: “Prohibited Uses and Practices. The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Property:

(a) The change, disturbance, alteration, or impairment of the open space values and the agricultural resources of the Property except as otherwise provided herein.

(b) . . . Such prohibited uses shall include, but are not limited to: . . .

17. Sewage treatment facility, exclusive of an individual sewage disposal system

18. Solid waste transfer facility or disposal site”

83. The Conservation Easement also provides for other limitations on the use of the Property, as set forth therein.

84. The Conservation Easement contains, at Paragraph 2.(f), a “first right to purchase the Property,” as set forth in the Conservation Easement. The provisions of the “first right of purchase” are as set out in Exhibit B.

DEFENDANT COUNTY’S DEFENSE OF THE CONSERVATION EASEMENT
BETWEEN 1994 AND 2018

85. Within sixty days of its purchase of the Conservation Easement, the County recorded a Notice of Property Restrictions, in the records of the Boulder County Recorder on February 8, 1995. The Notice of Property Restrictions is recorded at Reception No. 01497087, is attached hereto as Exhibit G, and incorporated here by this reference as if set out in full.

86. The Notice of Property Restrictions recites that the Conservation Easement which is the subject of the Notice was “recorded in the Boulder County Clerk and Recorder’s Office at Reception number 01485777.” This is the same recording information as that for the Conservation Easement.

87. The Notice of Property Restrictions pertains to the Conservation Easement.

88. The Notice of Property Restrictions states, in a pertinent part, “The Property was purchased with money acquired from a sales and use tax for acquisition of Open Space Land, approved by the voters of Boulder County on November 2, 1993.”

89. The Notice of Property Restrictions states that:

Pursuant to Resolution No. 93-174 of the Board of County Commissioners of Boulder County, which resolution authorized the submission of the open space sales and use tax to the electors of Boulder County. The County is required to use the Property solely for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes, as described in Resolution 93-174. [emphasis supplied]

90. Boulder County Resolution 93-174 was recorded in the Records on October 5, 1993 at Reception No. 013455063.

91. Boulder County Resolution 93-174 is attached hereto as Exhibit H and incorporated here by this reference as if set out in full.

92. The sales and use tax monies used in the purchase of the Conservation Easement restrict the use which can be made of the Conservation Easement property to passive recreational purposes, for agricultural purposes, or for environmental preservation purposes.

93. The Conservation Easement has remained of record against the Property at all times relevant to this action. Between December 19, 1994 and April 14, 2018, the property passed through mesne conveyances, all noting that the Property was subject to the Conservation Easement.

94. The Notice of Property Restrictions has remained of record against the Property at all times relevant to this action after the date of its recording.

95. On March 15, 2007 Jan Burns of the Boulder County Parks and Open Space Department sent a fax message (the “Burns Note”) to Barney Barnett. A copy of the Burns Note, together with the two attachments thereto, are attached hereto as Exhibit I and incorporated here by this reference as if set out in full.

96. The Burns Note recites that it includes, as attachments, a “1995 letter that was sent to you by the Commissioners” and “the letter of intent we signed for the County’s purchase of the conservation easement in 1994.”

97. The 1995 letter referenced in the Burns Note provides that the County “does not wish to exercise its first right to purchase the Property according to the terms of the Wolfers’ offer . . . We believe that the location of a residence on the southern parcel of the Property is not consistent with the intent of the conservation easement, nor with our

negotiations.”

98. The 1995 letter referenced in the Burns Note also provides that “Boulder County does not consent to the construction of a residence on the southern parcel of the Property.”
99. On information and belief, it appears that the Barnetts never sold any portion of the Property to anyone named Wolfer.
100. The “letter of intent” referenced in the Burns Note shows the course of negotiations between the Barnetts and the County.
101. In 2013 Barney C. Barnett, Jr. and Cheryn H. Barnett conveyed the Property by General Warranty Deed (In Lieu of Foreclosure) to VFC Properties 10, LLC A Delaware Corporation. This deed was recorded at Reception No. 03354610. A copy of this deed, together with attachments, is attached hereto as Exhibit J and is incorporated here by this reference as if set out in full. Both the Deed of Conservation Easement in Gross and the Notice of Property Restrictions are listed as “Permitted Exceptions” to this deed (at items 19 and 20).
102. In 2015 VFC Properties 10, LLC A Delaware Corporation conveyed the Property by Special Warranty Deed to Loren D. Frederick, an individual. This deed was recorded at Reception No. 03489319. A copy of this deed, together with attachments, is attached hereto as Exhibit K and is incorporated here by this reference as if set out in full. Both the Deed of Conservation Easement in Gross and the Notice of Property Restrictions are listed as “Permitted Encumbrances” to this deed (at items 18 and 19).

**DEFENDANT COUNTY’S PLANS FOR A COMPOSTING FACTORY ON THE
PROPERTY AND ACTIONS IN PURSUING THE DEVELOPMENT OF THE
PROPERTY AS A COMPOSTING FACTORY PRIOR TO PURCHASE OF THE
PROPERTY**

103. In May of 2016 the County produced a document entitled Boulder Valley Comprehensive Plan – Policy Integration Outline – WORK IN PROGRESS (05/10/16) (the “May 2016 Document”). A copy of the May 2016 Document is attached to this Complaint as Exhibit L and is incorporated here by this reference as if set out in full.
104. The May 2016 Document states, in pertinent part, at unnumbered page 6:

Other emerging topics to consider including in the chapter are:

- On waste topic: There is need for market development of otherwise landfill-bound material
- For processing activities to be allowed (i.e. compost sites, C&D processing facility,

aggregate recycling/processing, etc.); for temporary and/or permanent debris management site(s); and the transfer station concept in general needs to be accounted for (conservation easements and other zoning issues are restricting this type of work, i.e. LaFarge Plant, Rainbow Nursery) (Boulder County). [Emphasis supplied]

105. The Work in Progress Document shows that in May of 2016, nearly two years before the purchase of the Property, the County was actively focusing on the Property (Rainbow Nursery) as a site for a Compost Factory.
106. The Work in Progress Document shows that the County viewed the Conservation Easement as an unwanted restriction upon development of the Property as a Compost Factory. The phrase C&D processing facility refers to processing of construction and demolition materials.
107. On March 22, 2018, an email (the “Stonebraker Email”) was sent by Mel Stonebraker, the Land Officer for the County, to the Boulder County Commissioners, to Darla Arians and Jana Petersen. A copy of the Stonebraker email is attached to this Complaint as Exhibit M and is incorporated here by this reference as if set out in full.
108. In the Stonebraker Email Mr. Stonebraker states: “I do not see how this particular incident should adversely affect the county’s ability to the purchase the property or to use it as proposed.”
109. The “incident” referred to in the Stonebraker Email was an illegal marijuana growing operation at the Property.
110. On information and belief, the phrase “to use it as proposed” as set forth in the Stonebraker Email, is a reference to the development of the Compost Factory on the Property.
111. Boulder County, its staff and personnel, including Mr. Stonebraker, and parties who were copied on the Stonebraker Email had, as of March 22, 2018, determined to use the Property for the Compost Factory.
112. The intent and determination to use the Property for a Compost Factory violates the terms, intent and spirit of Boulder County Resolution 93-174, the terms of the Conservation Easement, and the Notice of Property Restrictions.
113. The citizens of Boulder County and the Plaintiffs would be irreparably and permanently injured if the Property were to be used for the Compost Factory.

DEFENDANT COUNTY'S PURCHASE OF THE PROPERTY IN 2018

114. On April 5, 2018 at a Regular Meeting of the Boulder County Commissioners Mel Stonebraker, a Boulder County Land Officer, and member of the Boulder County Parks and Open Space Staff made a presentation to the Board of County Commissioners of Boulder County (the "Presentation"), requesting funds and approval for the purchase of the Property.
115. Agenda Item 10, as it appears on the County's publicly available video of the Regular Meeting, and in the minutes of that meeting states only: "Parks and Open Space Department: Rainbow Nursery Conservation Easement Property – First Right of Purchase." The video is archived as:
- <https://bouldercountyco.igmp2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1544&Format=Minutes> ; Retrieved December 22, 2020 at 3:55PM
- That video is incorporated here by this reference as Exhibit N if set out here in full.
116. At the outset of the Presentation a County official can be heard on the video recording of that meeting stating: "We have a request to amend the business meeting agenda from Parks and Open Space Staff." Mr. Stonebraker then approached the lectern to discuss Agenda Item 10.
117. There is no identification in any agenda of what the amendment to the business meeting agenda was.
118. In the agenda produced by Boulder County for the Presentation, there was no notice of any intent to purchase the Property for any zero waste purposes, nor for conversion to, and use of the Property as a Compost Factory.
119. In the Presentation, Mr. Stonebraker stated that Loren Frederick has an offer to purchase the Property for \$985,000.00. Mr. Stonebraker stated that the County has a right of first purchase to acquire the Property for \$985,000.00. Mr. Stonebraker stated that the Parks and Open Space Staff recommended that the County exercise the right of first purchase.
120. Mr. Stonebraker stated that the 1994 Conservation Easement is one of the first done by the Parks and Open Space Department, and that it was done after the passage of the sales and use tax in November of 1993 (Boulder County Resolution 93-174).
121. Mr. Stonebraker characterized the Conservation Easement as a "simple document" and stated that "compared to what we would do today, it's quite crude."

122. Although Mr. Stonebraker stated that the Property “would be used as Open Space unless the County later decides that the Property would be appropriate for a zero waste site,” the County purchased the Property with the intent to extinguish the Conservation Easement and the Property as a Compost Factory.
123. After the Presentation, as part of the Regular Meeting, one of the Commissioners stated that “there is potential for, uh, these different kinds of zero waste, um, operations there”
124. Another Commissioner then stated, “it’s a great opportunity for the water and potential uses like zero waste.”
125. A motion to acquire the Property passed by a vote of the County Commissioners of 3 to 0.
126. On information and belief, the terms “zero waste site”, “zero waste operations” and “uses like zero waste” refer to plans to construct, operate and maintain the Compost Factory.
127. There was a total failure of adequate notice to the public, to the Plaintiffs and to any other interested party that the purchase of the Property for use as a Compost Factory was being contemplated.
128. There was a total failure of adequate notice to the public, to the Plaintiffs and to any other interested party that the true purpose of the purchase was to terminate the Conservation Easement.
129. There was a total failure of adequate notice to the public, to the Plaintiffs and to any other interested party that the true purpose of the purchase was to convert the Property from conservation lands into a Compost Factory site.
130. At the time of the April 5, 2018 meeting, the County had determined to purchase the Property to terminate the Conservation Easement.
131. At the time of the April 5, 2018 meeting, the County had determined to use the Property as a Compost Factory, or was actively pursuing such use.
132. At the time of the April 5, 2018 meeting, the County’s determination to use the Property as a Compost Factory, or its active pursuit of such use, violated the Conservation Easement and the Notice of Property Restrictions.
133. At the time of the April 5, 2018 meeting, the County’s determination to use the Property as a Compost Factory, or its active pursuit of such use, violated the provisions

of Boulder County Resolution 93-174.

134. At the time of the April 5, 2018 meeting, the County's determination to use the Property as a Compost Factory violated spirit and intent of the Conservation Easement.
135. At the time of the April 5, 2018 meeting, the County's determination to use the Property as a Compost Factory violated spirit and intent of Boulder County Resolution 93-174.
136. On April 14, 2018 by General Warranty Deed Loren D. Frederick sold and conveyed the Property to the County of Boulder, a body corporate and politic. This deed was recorded at Reception No. 03651217. A copy of this deed, together with attachments thereto, is attached hereto as Exhibit O and is incorporated here by this reference as if set out in full.
137. Both the Deed of Conservation Easement in Gross and the Notice of Property Restrictions are listed as "Permitted Encumbrances" to the General Warranty Deed from Loren D. Frederick to the County of Boulder (Exhibit B at items 15 and 16).
138. The County took ownership of the Property subject to the provisions of both the Deed of Conservation Easement in Gross and the Notice of Property Restrictions.
139. On April 26, 2018 the Parks and Open Space Advisory Committee of Boulder County met. The minutes of that meeting ("POSAC Minutes") are attached to this Complaint as Exhibit P and are incorporated here by this reference as if set out in full.
140. In the POSAC Minutes, under a section entitled Director's Update, at Item 2., there is a discussion of the Rainbow Nursery, which refers to the Property.
141. The Director's Update section of the POSAC Minutes provides in pertinent part:

The county is considering how best to use the property and will be considering the site for zero waste infrastructure under the county's sustainability program. If that should happen, the Open Space Fund would be reimbursed for the real estate assets we would transfer but POS would retain all or the vast majority of the water rights from the purchase. If the county/sustainability program determines that the site is not suitable for any uses, we could re-sell the property subject to a new conservation easement that would be more beneficial to the county than the older 1994 version of the conservation easement while retaining all of the water.
[Emphasis supplied]
142. The POSAC Minutes Director's Update does not contain any indication that the Boulder County Parks and Open Space Advisory Committee was informed of the County's plan to terminate the Conservation Easement on the Property.

143. The POSAC Minutes Director's Update does not contain any indication that the Boulder County Parks and Open Space Advisory Committee was informed of the County's claim of merger of the Conservation Easement with the fee interest in the Property.
144. On May 1, 2018 the County sent a "Closing Memo" to at least 14 named individuals. The Closing Memo was drafted by two County officials or employees. Those officials were Land Officer: Mel Stonebraker and Paralegal Mary Jo Langstraat.
145. The Closing Memo is attached hereto as Exhibit Q and is incorporated here by this reference as if set out in full.
146. In the Closing Memo several significant assertions are made:
- a. "Administrative Services is considering the possibility of using the site as part of the county's zero waste initiative."
 - b. "(The County previously held a conservation easement over the property. That easement interest has merged with fee title, and no longer exists.)"
 - c. "The Rainbow Nursery Property is designated as Farmland of National Importance under the Boulder County Comprehensive Plan."
147. In a section of the Closing Memo on page 3, described as POS Parcel Details: the Closing Memo, in a section labeled "Count Acres in Total POS Acres?" the response is "Yes; please convert the CE interest in this parcel to a fee interest. The GIS code should be COS with no restrictions." On information and belief, the term CE refers to a Conservation Easement.
148. The Closing Memo on page 6, under the heading Miscellaneous/Fencing Needs or Other Needs, states, in pertinent part:
- Until such time as the county decides to convert the property from open space to a non-open space use (as described in the initial summary paragraph), which may not happen, Parks & Open Space needs to manage the property. Whether management is done by the Ag Resources Division (because the property could be considered an ag property) or whether it will be managed by the Recreation and facilities Division (because it has been a tree farm and has structures on it) is a decision that will need to be made by those divisions and the POS Director, who will also make decisions about what to do with the buildings, the trees, and other resources on the property. Parks and Open Space is not currently considering sale of any of the trees from the property, because those trees may be useful for county purposes (such as screening for a potential [sic] zero waste facilities).
149. Boulder County, through its officers, officials and employees purchased the

Property with the intent for its use as a Compost Factory from a time significantly in advance of the purchase.

150. Boulder County, through its officers, officials and employees purchase the Property with intent to extinguish the Conservation Easement because it was an impediment to the development of the Property as a Compost Factory.
151. The purported merger of the Conservation Easement and the fee interest in the Property violated the terms of Boulder County Resolution 93-174.

**MEETING OF COUNTY OFFICIALS, AT THE PROPERTY, WITH CONCERNED
PROPERTY OWNERS ON OCTOBER 6, 2020**

152. By postcard (the “Postcard”) dated the afternoon of September 25, 2020 the Public Works Department of Boulder County notified twelve property owners of a meeting (the “Meeting”) which would be held on the Property on October 6, 2020 from 4:30 to 6:00PM. That Postcard is attached hereto as Exhibit R and is incorporated here by this reference as if set out in full.
153. The Postcard stated, in pertinent part, “Boulder County Public Works invites you to attend a meeting to learn more about the proposed compost facility near your property at the old Rainbow Nursery site. Project Team members will be on-hand to provide information and answer questions.”
154. The Postcard was sent via regular mail, with \$0.35 postage prepaid.
155. Upon information and belief, the twelve property owners who were sent a Postcard all live within 1500 feet of the proposed Compost Factory.
156. September 25, 2020 was a Friday. There is no regular mail delivery on Sunday for the 80504 Zip Code.
157. With next-day delivery, the Postcard would have been delivered on September 26, 2020. Given the late posting of the Postcard, it is doubtful that next-day delivery was accomplished. The earliest the Postcard would have been received was Monday, September 28, which was seven days before the Meeting.
158. The Meeting was held as scheduled, on October 6, 2020 beginning at 4:30PM.
159. The Meeting was not open to the public, but only to people who had received the Postcard. Postcards were checked at the entrance to the Property. The Meeting was held outdoors. It was windy and it was difficult to hear everything that was said.

160. The Meeting was video and audio recorded. The video and audio recording camera was at all times in plain view of all participants at the meeting. No one present objected to the video and audio recording of the Meeting.

161. A transcript of the audio portion of the recording (“the Transcript”) was made on December 16 and 17, 2020 by Transcription Outsourcing, LLC of Denver, Colorado.

162. True and correct copies of portions of the Transcript are attached hereto as Exhibits S-1 and S-2 and are incorporated here by this reference as if set out in full. The portions of the Transcript are identified as:

Exhibit S-1 [also identified as Recording Name: Boulder County Open Space . . . your tax dollars at work]

Exhibit S-2 [also identified as Recording Name: Interview for Boulder County Develops Manure Factory on Open Space]

163. At the Meeting, the following Boulder County personnel, *inter alia*, spoke:

- a. Andrew Barth (hereinafter “Mr. Barth”). On information and belief, at the times relevant to this Complaint, Mr. Barth is a Communications Specialist/Public Information Officer with Boulder County Public Works Department –Building Services, Fleet Services, Resource Conservation, Road Maintenance, and Transportation Engineering.
- b. Therese Glowacki (hereinafter “Ms. Glowacki”). On information and belief, at the times relevant to this Complaint, Ms. Glowacki is a Resource Management Manager for Defendant.

164. At the time of the Meeting, Mr. Barth was a person authorized by the County to make statements on behalf of the County concerning the subject matter of this action.

165. At the time of the Meeting, Ms. Glowacki was a person authorized by the County to make statements on behalf of the County concerning the subject matter of this action.

166. At the Meeting, the following Boulder County contractors, employees or agents, *inter alia*, spoke:

- a. Chris Mirto (hereinafter “Mr. Mirto”). On information and belief, Mr. Mirto, at the times relevant to this Complaint, is Senior Project Architect, AIA, LEED AP for PEH Architects.
- b. Bob Yost (hereinafter “Mr. Yost”). On information and belief, Mr. Yost, at the times relevant to this Complaint, is Vice President, Chief Technical Officer for A-

1 Organics.

167. At the time of the Meeting, Mr. Mirto and PEH Architects were consultants to the County.

168. At the time of the Meeting, Mr. Mirto was a person authorized by the County to make statements on behalf of the County concerning the subject matter of this action.

169. At the time of the Meeting, Mr. Mirto was an agent, for the County who was authorized by the County to make statements concerning the subject matter of this action.

170. At the time of the Meeting, Mr. Yost and A-1 Organics were consultants to the County.

171. At the time of the Meeting, Mr. Yost was a person authorized by the County to make statements on behalf of the County concerning the subject matter of this action.

172. At the time of the Meeting, Mr. Yost was an agent for the County who was authorized by the County to make statements on behalf of the County concerning the subject matter of this action

173. Mr. Barth began the Meeting by stating, in pertinent part:

I'm around all the time, and I'm here for questions, here to help you guys understand and get your questions answered, get your concerns addressed up front while we're just starting the, uh, conceptual design process of this -- this project. Um, again, I just want to reiterate, nothing's finalized. Exhibit S-1. at p. 1, *l.* 10-16.

174. Mr. Mirto described the Compost Factory at the Meeting by stating, in part:

But, um, I'll take you through this real quick. Definitely doesn't represent everything. It's the very high level view of where we are right now on this. But, um, on the cover here, you've got our three main consultants A1, PEH, SCS, but it gives you sort of a view of the, um, let's call it the heart of the composting operation. Um, the left is the -- and we'll get to touch all these a little bit more in some of these, uh, slides later on, but on the left is the tipping building, sort of the heart of the operation where, uh, materials are brought and mixed and brought out to, um, to a separate area of the site. We've got the bunkers, concrete bunkers that you see on the right side of the image where the, uh, compost cooking takes place. Um, and um, yeah, it's -- it's the heart. It's a couple hundred feet that way is what we're looking at. We'll get to orient you a little bit and we'll look at a site plan of this. Um, but turn the page, you can see the latest iteration of our site plan. Um, it's a big site. There's a lot of stuff going on here, so we're not going to go in depth, at least right now, unless there are questions about things. Exhibit S-1. at p. 5, *l.* 9 to p. 6 *l.* 9.

175. Regarding the financial aspect of the Compost Factory, Mr. Yost stated:

It's tough, but when you have combined with the tipping fees that – there'll be a charge for the dropping material and the sale of the product, it does pencil on the size of the facility, so it's not a tax-supplemented project. Exhibit S-1. at p. 13, *l.* 21 to p. 14 *l.* 2.

176. Regarding the operation of the Compost Factory, Mr. Yost stated that the processes include:

- Treating the raw material to finished product is an eight-week process;
- The process includes PFRP – process for the further reduction of pathogens;
- That materials are moved at the site by front end loaders; and,
- That materials are screened in the open air.

Exhibit S-1. at p. 14, *l.* 12 to p. 16 *l.* 2.

177. On the topic of the planning for the Compost Factory, Ms. Glowacki stated in the following exchange with an unidentified questioner:

Ms. Glowacki: And then in terms of why we chose this property, to finish answering your question, you know, the county did an extensive land search. We worked with Parks and Open Space, we worked with with Land Use. There are certain regulations, you have requirements that we needed in a -- in a piece of property. And after several years of searching, this literally was the property that it came down to. It's not considered an industrial use. It's actually considered an agricultural use of land, so this was the perfect piece of property for that use.

Male 5: So did you actually use the [inaudible 0:26:57] conservation of this property in order to use it for this purpose back in April of 2018?

Ms. Glowacki: Yes. So, um, I'm Therese Glowaki, and I work for Parks and Open Space. And yes, when this came up for, um, for sale, we owned a conservation easement on it, and we decided to execute the purchase, the first right of refusal, and buy the fee in the event that this would be the right place for all of our county processes. So yes.

Male 5: So that was [inaudible 0:27:31] almost two and a half years ago, right?

Ms. Glowacki: It was about two years ago.

Male 5: Where was that in the process, [inaudible 0:27:39], or kicked off before –

Ms. Glowacki: It was, exactly, yeah. It was about -- well, no, no we have been looking for a compost facility for probably five years.

Exhibit S-1. at p. 25, *l.* 2 to p. 26 *l.* 7.

178. On the topic of the County’s planning for the Compost Factory, Ms. Glowacki stated in the following exchange with an unidentified questioner:

This is currently – it will not be owned by Parks and Open pace. We purchased it to begin with. We purchased the conservation easement, and then when the fee interest came up to preserve all options, we purchased the fee so that’s what combined the whole thing. If this gets approved and we do composting here, this will become a county facility. It will not be – we will have to dispose of it for Parks and Open Space. And we will have to go through all the legal ways of disposing this for Parks and Open Space. So there will definitely be a separation. Parks and Open Space is not going to spending any money on this facility.

Exhibit S-2. at p. 12, *l.* 12 to *l.* 24.

**THE NATURE OF THE COMPOST FACTORY WHICH THE COUNTY IS NOW
SEEKING TO DEVELOP**

179. On information and belief, PEH Architects are a consultant to Boulder County for development of the Compost Factory.
180. A Memorandum from PEH Architects (the “PEH Memo”) dated October 12, 2020, included as part of the [name of document] for the Special Use Review of the Property, it is stated that the Property is to become “the new regional Boulder County Compost Processing Facility. See Exhibit T attached to this Complaint and incorporated here by this reference as if set out in full.
181. The PEH Memo states that, “This proposed development will construct a compost facility that is planned to accept a maximum of 50,000 tons of compost feedstock per year.”
182. Fifty thousand tons of compost feedstock is more than three hundred times the weight of the Statue of Liberty, exclusive of its concrete base. Accordingly, the weight of the compost feedstock proposed to be processed at the Compost Factory every day of its operation, is greater than the weight of the Statue of Liberty.
183. Feedstock at the Compost Factory will consist of vegetative waste, animal manure, source-separated organics, food residuals, food processing vegetative waste and biosolids. Exhibit T at page 5. Biosolids are sewage sludge derived from human feces.

184. Biosolids differ from load to load, but may contain heavy metals, pathogens, parasitic worms and hundreds of unregulated pollutants.
185. The PEH Memo states that, “The design team has studied how a future expansion of the proposed compost facility would fit onto the entire site.” Exhibit T at page 1.
186. The PEH Memo indicates that the initial development of the Compost Factory is only preliminary. Further development, with even greater impacts would follow, if the Compost Factory were permitted.
187. The PEH Memo indicates that the Compost Factory will include an office building, a scale house, a tipping building, a maintenance building and, initially, sixteen bunkers which are the location where compost would be “cooked”.
188. The PEH Memo indicates that the Compost Factory is planned to operate Monday through Saturday, from 7am to 6pm. Exhibit T at page 4. That schedule would have the Compost Factory in operation over 300 days per year.
189. The PEH Memo indicates that the Compost Factory will include operation of shredding equipment, grinders and heavy equipment such as front-end loaders. Exhibit T at the section entitled Basic Operational Narrative.
190. The use of the Property as a Compost Factory is not an agricultural or open space use permitted under the Conservation Easement, Notice of Property Restrictions or Boulder County Resolution 93-174.
191. The use of the Property as a Compost Factory is a prohibited use under the express terms of paragraph 4: “Prohibited Uses and Practices” of the Conservation Easement.

**DEFENDANT COUNTY’S NOTICE AND ACCELERATED PROSECUTION OF A
SPECIAL USE REVIEW FOR THE COMPOST FACTORY**

192. On October 12, 2020, the County filed an Application for Special Use Review and Site Specific Development Plan (the “Application”) for approval of the Compost Factory at the Property. The Application was assigned Boulder County Docket No. SU-20-0006. A true and correct copy can be found at:

https://services.boco.solutions/ CPP_FileNetClient/ContentDisplay?DocId={85DA2411-634E-41F9-92F4-81A0ACDF5FD4}; Retrieved December 23, 2020 at 1:00 PM

193. October 12, 2020 was only six days after the Meeting. October 12 was only four

working days after the Meeting.

194. Andrew Barth's statement on behalf of the County that the plans for a proposed "compost facility" were at a preliminary stage was knowingly false.
195. Andrew Barth's statement on behalf of the County that the plans for a proposed "compost facility" were at a preliminary stage was intentionally misleading.
196. By letter to the County Attorney dated November 12, 2020, (the "Request Letter") counsel for Plaintiffs requested, *inter alia*:
 - A. That the County postpone the December 11, 2020 response date for consulted agency review of the Application;
 - B. That the County provide supplemental notice to all addresses within 2.0 miles of the proposed Compost Factory; and,
 - C. That the County provide for a public meeting with County Commissioners.
197. A copy of the Request Letter is attached to this Complaint as Exhibit U and is incorporated here by this reference as if set out in full.
198. By email (the "Denial Email") dated November 19, 2020 the Office of the County Attorney denied the requests made in the Request Letter. A copy of the Denial Email is attached to this Complaint as Exhibit V and is incorporated here by this reference as if set out in full. In the Denial Email, the County denied each of the requests set out in the Request Letter.
199. Sometime on or before December 22, 2020 the County posted on its webpage, under the heading: County Compost Facility Frequently Asked Questions, under the heading:

"The property was purchased using Open Space funds. Doesn't it have to remain open space?"

The County then wrote the following:

Boulder County purchased the Conservation Easement on the Rainbow Tree Nursery in 1994 using open space funds. Then in 2018, the county purchased the remainder of the property and its water rights, again using open space funds. When the same landowner owns both a property and a conservation easement restricting the property, the property interests merge together and the conservation easement ceases to exist. There has not been a conservation easement on the property since the county's 2018 purchase.

When the county purchased the land and water in 2018, the county stated in the public record and closing documents that the county was considering using the

property to further the county's zero waste goals. The county commissioners acknowledged at that time that they agreed to buy the property that there would be a public process required in the future to convert the property to a non-open space use.

If the site is approved for use as a composting facility, the Parks and Open Space Department will go through the required disposition of open space procedures. The open space sales tax ballot language requires publishing notices in the paper, a presentation to Parks and Open Space Advisory (POSAC) Committee, then a Board of County Commissioners (BOCC) public hearing, and a wait of 60 days after BOCC approval. If the BOCC agrees to dispose of the property, the county will reimburse the open space sales tax funds for the entire amount of land and conservation easement value. Those funds (about \$740,000) will be used to purchase new open space. The county will keep the water rights for agricultural use.

<https://www.bouldercounty.org/environment/composting/county-composting-facility/county-compost-facility-faqs/#1605552958508-eeb4387-2515>; Retrieved December 22, 2020 at 3:00 PM

200. Plaintiffs strongly dispute the County's characterization of the title to the Property, the existence of the Conservation Easement and other matters, as set forth in the preceding paragraph.
201. The County will be the Applicant, under Special Use Review Docket No. SU-2020-0006.
202. The County is the Grantee of the Conservation Easement.
203. The County purchased the fee interest with Open Space funds, which are restricted under Boulder County Resolution 93-174.
204. Under the County's procedure set forth at paragraph 199, above, the County will also be the only entity which will adjudicate the propriety of the County's actions as set forth herein.

FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT PROHIBITING THE MERGER OF THE CONSERVATION EASEMENT AND THE FEE INTEREST IN THE PROPERTY

205. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 204 above.
206. A current, actual and justiciable controversy exists as to the relative rights, duties, and obligations of the County and Plaintiffs with regard to whether the doctrine of merger

operates to destroy the 1994 Conservation Easement.

207. The County is estopped from claiming merger of the Conservation Easement and fee title to the Property because the list of permitted encumbrances which is set forth on the deed into the County from Loren Frederick includes the Conservation Easement and the Notice of Property Restrictions.
208. The County is precluded from claiming merger of the Conservation Easement and fee title to the Property because the Notice of Property Restrictions constitutes a separate incumbrance against the Property, separate from the Conservation Easement and in addition thereto, which incumbrance was never merged into fee title.
209. The County cannot claim merger of the Conservation Easement and fee title to the Property because the citizens of Boulder County have an interest in the Conservation Easement according to its terms, and the citizens have no interest in the deed into the County from Loren Frederick.
210. The County cannot claim merger of the Conservation Easement and fee title to the Property because County holds the Conservation Easement as a trustee for the people of the County of Boulder, and the County purchased the fee interest in the property in a different representative capacity, as a proprietary landowner, fully intending to develop, operate and maintain a commercial business, the Compost Factory, on the Property, in violation of the terms of Conservation Easement and of Boulder County Resolution 93-174.
211. The County cannot claim merger of the Conservation Easement and fee title to the Property because Open Space funds were used to purchase the property when, in reality, the purpose of the purchase was never for open space purposes, but was at all times for public works purposes, in violation of the terms of Conservation Easement and of Boulder County Resolution 93-174.
212. The County cannot claim merger of the Conservation Easement and fee title to the Property because such a merger is void as against public policy and is in violation of the terms of Conservation Easement and of Boulder County Resolution 93-174.
213. Plaintiffs are entitled to a declaration that the application of the doctrine of merger to the property is precluded, as the intended use of the Property is inconsistent with the provisions of the Conservation Easement and Boulder County Resolution 93-174.
214. Plaintiffs are further entitled to a declaration that the application here of the doctrine of merger to the Property is void as against public policy.
215. Plaintiffs are also entitled to such other and further relief as is consistent with the above-requested declarations, including injunctive relief in accord with the provisions of

Colo. Rev. Stat. 13-51-101, et seq.

216. The requested declaratory relief will resolve a present controversy giving rise to this action.

217. The Court is authorized to enter the requested declarations and award such other relief that is consistent with the declaration sought herein, pursuant to C.R.C.P. 57 and C.R.S. § 13-51-101 *et seq.*

WHEREFORE, Plaintiffs pray for the relief set forth below.

**SECOND CLAIM FOR RELIEF: DECLARATORY JUDGMENT RE ULTRA VIRES
ACTION IN PURCHASING THE FEE INTEREST TO OBTAIN A SITE FOR THE
COMPOST FACTORY**

218. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 217 above.

219. Boulder County Resolution No. 93-174 requires the County to use the Conservation Easement interest in the Property which was acquired using dedicated sales and use tax funds solely for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes.

220. The County does now plan, and since some undetermined time prior to its acquisition of the Property on April 14, 2018 has planned, to use the Property as a Compost Factory.

221. The use of the Conservation Easement property for a Compost Factory violates the express terms of Boulder County Resolution 93-174.

222. The use of the Property for the Compost Factory violates the express terms of Boulder County Resolution 93-174.

223. The use of the Property for the Compost Factory violates the express terms of the Conservation Easement, which was not merged with any fee interest Defendant holds in the Property.

224. The planned use of the Property for the Compost Factory is ultra vires, illegal and beyond the legal authority and power of the County.

WHEREFORE, Plaintiffs pray for the relief set forth below.

**THIRD CLAIM FOR RELIEF: FOR INJUNCTIVE RELIEF PROHIBITING
COUNTY FROM ATTEMPTING TO EXTINGUISH THE CONSERVATION
EASEMENT BY MERGER**

225. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 224 above. While the County, acting as Applicant in special use Review Proceeding SU-20-0006 had, as of December 18, 2020, temporarily paused its rapid review and prosecution of that application, there is an extremely strong likelihood that the County will resume prosecution of its application in SU-20-0006, on little or short notice to Plaintiffs, and those similarly situated.
226. If Defendant proceeds with adjudication of Docket No. SU-20-0006 while this action is pending, the status quo will not be maintained, to the injury of Plaintiffs.
227. If Defendant proceeds with adjudication of Docket No SU-20-0006 while this action is pending, Defendants will suffer irreparable injury in having to participate in that quasi-adjudicatory hearing without a determination of the issues presented in this action.
228. Without a preliminary injunction in this matter real, immediate and irreparable injury would be visited on Plaintiffs who would not be able to have their claims, which are set forth herein, adjudicated before the matters in Docket No. SU-20-0006 are determined to Plaintiffs detriment.
229. The equities in this matter favor issuance of a preliminary injunction against Defendant because Defendant has already delayed Docket SU-20-0006 once, Defendant is not injured by a further delay in Docket SU-20-0006 and resolution of the matters in this action will avoid the waste of both scarce judicial and scarce administrative resources.
230. Plaintiffs are without adequate relief because the County is the Applicant, and the reviewing authority in Docket No. SU-20-0006, as well as the proposed operator of the facility.
231. Plaintiff has no other plain, speedy and adequate relief in law.

WHEREFORE, Plaintiffs pray for the relief set forth below.

**FOURTH CLAIM FOR RELIEF: UNJUST ENRICHMENT AND IMPOSITION OF
A CONSTRUCTIVE TRUST UPON THE PROPERTY TO PRESERVE THE
CONSERVATION EASEMENT**

232. Plaintiffs incorporate herein by reference the allegations contained in paragraphs

1 through 231 above.

233. Defendant is unjustly enriched by asserting merger of the Conservation Easement and any fee interest in the Property, as the Property is more valuable to Defendant, which seeks to create a commercial, industrial-scale Compost Factory on the Property, as Defendant cannot construct the Compost Factory unless Defendant's claim of extinguishment of the Conservation Easement is sustained.
234. Defendant is unjustly enriched by asserting merger of the Conservation Easement and any fee interest in the Property, as the Property is made more valuable to Defendant if there is merger, in that it provides Defendant with a more developable property than Defendant would have if the terms of the Conservation Easement are in place.
235. Defendant is unjustly enriched by asserting merger of the Conservation Easement and any fee interest in the Property, as the Property is made more valuable to Defendant if there is merger, in that it provides Defendant with a property with many uses and the potential to sell the Property, which Defendant would not have if the terms of the Conservation Easement are in place.
236. To remedy Defendant's unjust enrichment, Plaintiffs are entitled to imposition of a constructive trust and an order impressing the Property with a constructive trust, requiring a re-recording of the Conservation Easement against the Property, and enforcing the terms of the Conservation Easement for the benefit of the People of the County of Boulder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. For entry of a decree:
- (i) Determining the relative interests, if any, of Plaintiffs, the People of the County of Boulder and the Defendant, in the Conservation Easement on the Property;
 - (ii) Determining that the Conservation Easement has not been merged into any fee interest in the Property owned by Defendant;
 - (iii) Adjudging that the Conservation Easement on the Property is an active, viable interest in Property which survives the purchase of an interest in the Property by the County and cannot be extinguished by merger of title as asserted by the County;
 - (iv) Determining the use of the Property as a Compost Factory is not an agricultural or open space use permitted under the Conservation Easement, Notice of Property Restrictions or

Boulder County Resolution 93-174, and that the of the property as a Compost Factor is prohibited by the express terms of the Conservation Easement, the Notice of property restrictions and Boulder County Resolution 93-174.

(v) That a permanent injunction be entered on final hearing perpetually enjoining the Defendant from extinguishing the Conservation Easement by merger with the Defendant's other interest in the Property;

(vi) For a preliminary injunction preventing the Defendant from pursuing the Special Use Review process in Docket SU-2020-0006 regarding the Property, pending a final determination of the claims asserted herein.

(vii) For a permanent injunction, in accordance with C.R.C.P. 65, forever barring and enjoining Defendant from asserting any claim or title based upon the fact of the Conservation Easement being merged with the fee title to the Property, other than as may be determined in this proceeding;

(viii) For declaratory and further relief as warranted by such declaration, that the Conservation Easement survives the acquisition of the Property by the County, including injunctive relief prohibiting the Defendant from asserting merger of the Conservation Easement with the Defendant's other interests in the Property;

- B. For declaratory and further relief as warranted by such declaration that the actions of the County in attempting to merge the Conservation Easement and the Property, and thereby extinguishing the Conservation Easement are ultra vires, are without effect, are invalid and are a nullity;
- C. For declaratory and further relief as warranted by such declaration that the actions of the County in attempting to convert the Property into a Compost Factory are ultra vires, are without effect, are invalid and are a nullity;
- D. For entry of an order impressing the Property with a constructive trust, enforcing the terms of the Conservation Easement for the benefit of the People of the County of Boulder;
- E. For compensatory damages, if any, in an amount to be determined;
- F. For statutory penalties, if any, in an amount to be determined;
- G. Pre-judgment and post-judgment interest at the highest lawful rate;
- H. Attorney fees and costs to the extent provided for by law; and
- I. For such other, and further, relief the Court deems just and proper.

Respectfully submitted this 23rd day of December, 2020.

DIETZE AND DAVIS, P.C.

*Pursuant to Rule 121, the signed original is on file in
the Office of Dietze and Davis, P.C.*

By: /s/ Karl F. Kumli, III
Karl F. Kumli, III, Atty. Reg. #11784
K.C. Cunilio, Atty. Reg. #51378
Rachel Bolt, Atty. Reg. #51266
2060 Broadway, Ste. 400
Boulder, Colorado 80302
Tele: 303-447-1375
Fax: 303-440-9036

ATTORNEYS FOR PLAINTIFFS

Addresses of Plaintiffs:

LISA E. BATTAN:
1909 26th Street, Suite 1F
Boulder, CO 80302

VICTOR M. VARGAS:
270 Interlocken Blvd.
Broomfield, CO 80021

BRANDON T. WHITE:
13728 E. I-25 Frontage Road
Longmont, CO 80504

VERIFICATIONS

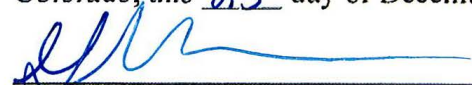
We, the undersigned being first duly sworn state that the foregoing Complaint is true and correct to the best of our knowledge and belief.



Lisa E. Battan

12/23/2020
Date

Subscribed and affirmed, or sworn to before me in the county of Boulder, State of Colorado, this 23rd day of December, 2020 by Lisa E. Battan.



(Notary's official signature)

3-9-2021

(Commission Expiration)

GRACIELA FRANCO MALDONADO
Notary Public
State of Colorado
Notary ID # 20174010365
My Commission Expires 03-09-2021



Brandon T. White

12/23/20
Date

Subscribed and affirmed, or sworn to before me in the county of Weld, State of Colorado, this 23 day of December, 2020 by Brandon T. White.

M. Beard
(Notary's official signature)

05-19-2024
(Commission Expiration)

MARIANNE BEARD
Notary Public
State of Colorado
Notary ID # 20204017418
My Commission Expires 05-19-2024

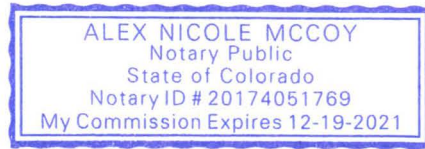
Victor M. Vargas
Victor M. Vargas,

12-23-2020
Date

Subscribed and affirmed, or sworn to before me in the county of Boulder, State of Colorado, this 23rd day of December, 2020 by Victor M. Vargas.

Alex Nicole McCoy
(Notary's official signature)

12-19-2021
(Commission Expiration)



CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2020, I caused a true and correct copy of the foregoing **VERIFIED COMPLAINT UNDER RULE 57 C.R.C.P FOR DECLARATORY JUDGEMENT, FOR INJUNCTIVE RELIEF, FOR IMPOSITION OF A CONSTRUCTIVE TRUST AND FOR OTHER AND FURTHER RELIEF** to be served via *CCES*, Email and/or First Class U.S. Mail, upon the following:

County Attorney

Colorado Attorney General



Graciela Franco, Paralegal

EXHIBIT LIST TO COMPLAINT

<u>Exhibit ID</u>	<u>Exhibit Name</u>	<u>Exhibit Pages</u>
A	Legal Description of the Property	3
B	1994 Deed of Conservation Easement in Gross	3-4, 9-11
C	Battan BPO	5
D	White BPO	7
E	Map of relative locations of the Property, the Battan Property, the Vargas Property and the White Property	8-9
F	1984 Warranty Deed Buffos to Barnetts	9
G	1995 Notice of Property Restrictions	11
H	1993 Boulder County Resolution No. 93-174	11-12
I	2007 Burns Note	12
J	2013 General Warranty Deed to VFC Properties 10, LLC	12-13
K	2015 Special Warranty Deed to Loren D. Frederick	13
L	May 2016 Boulder Valley Comprehensive Plan – Policy Integration Outline	13
M	March 22, 2018 Stonebraker Email	13-14
N	April 5, 2018 BOCC Regular Meeting Video	14-15
O	April 14, 2018 General Warranty Deed to Boulder County	16
P	April 26, 2018 POSAC Meeting Minutes	16-17
Q	May 1, 2018 County “Closing Memo”	17-18
R	September 25, 2020 Public Works Department Postcard	18-19
S	October 6, 2020 Landowner Meeting Transcript	19-22

T	October 12, 2020 “PEH Memo”	22-23
U	November 12, 2020 County Attorney “Request Letter”	24
V	November 19, 2020 County Attorney “Denial Email”	24-25