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November 23, 2020

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VIA Email to: bpearlman@bouldercounty.org
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Re: Preservation of Documents; Open Space Protection Alliance, et al. v. Board of County Commissioners of the County of Boulder; Notice of Claim and Intent to File a Lawsuit

Dear Counsel:

This law firm represents Open Space Protection Alliance, A Colorado Nonprofit Corporation, Lisa E. Battan, and other individuals (“Clients”) in their claims against the Board of County Commissioners (hereafter “County”) for declaratory judgment, to quiet title, to impose a constructive trust and for other relief involving property at 5762 N. 107th Street, Longmont, CO, 80504-8427 (the “Property”). We intend to file a lawsuit on behalf of our Clients at the appropriate time. Litigation should be reasonably anticipated in this matter.

The County has an affirmative and continuing duty to preserve all potentially relevant information, including, but not limited to, any hard copy documents and electronically stored information (“ESI”), related to Clients, the Property and the County’s acquisition, use, and plans for that property, including all expenditures for and discussions regarding the Property. The County’s obligation to preserve arises when it knows or should know that the evidence may be relevant to future litigation. *Asher Assocs., LLC v. Baker Hughes Oil Field Ops., Inc.*, 2009 WL 1328483 (D. Colo. May 12, 2009) (“The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the

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evidence may be relevant to future litigation.” (quoting *Zubulake v. UBS Warburg, LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003)).

The Federal and Colorado Rules of Civil Procedure and caselaw interpreting the duty to preserve evidence and ESI require reasonable efforts and diligence on the part of an attorney representing a party to implement a litigation hold upon notice of a claim and the intent to file a lawsuit. Consider this letter a reiteration of this duty.

Specifically, the County has a duty to preserve the following documents, which are related to Clients’ claims:

1. All records south in Exhibit 1 attached hereto, which are exhibits to Colorado Open Records Requests (“CORA requests”) sent to your office from this office dated October 21, 2020;
2. All records sought in Exhibit 2 attached hereto, which are exhibits to Colorado Open Records Requests set to your office from this office dated November 12, 2020;
3. All records south in Exhibit 3 attached hereto, which are exhibits to Colorado Open Records Requests sent to your office from this office dated November 17, 2020;
4. All records of any kind or nature related to the Crestone Peak Resources Comprehensive Drilling Plans (“CDP”) in Boulder and Weld Counties;
5. All notes of any person in attendance at meetings at which the Property was discussed;
6. All studies regarding, plans relating to, or communications in any format, regarding the Property;
7. All Boulder County purported executive session recordings, all Boulder County meeting notes and recordings, including but not limited to all advisory boards, committees, or public meetings of any nature which are held under right, sponsorship or the aegis of Boulder County, including tax and finance, sustainability initiatives, advisory meetings, or administrative business meetings;
8. The contents of all files made or maintained by the County regarding the Property; and
9. Privilege logs for any material withheld from the CORA requests itemized at 1., 2., and 3., above.

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This is not an exhaustive list of the documents you or your client must preserve. As the custodian of the records, and as a party with a present possessory interest in the Property, you know more about information which may be relevant to our Client's claims. Your preservation obligation extends to all relevant documents, whether identified in this letter or not.

If not done already, the County must suspend immediately any document retention and/or destruction procedures that authorize, destroy, or make it more difficult to retrieve any documents that could lead to the discovery of admissible evidence involving the above-referenced claims. The County must assure that these documents and other materials are readily accessible. If the County fails to take these steps, we will seek appropriate remedies for any spoliation of evidence, including but not limited to costs and sanctions such as adverse inferences and/or admissions.

Please contact me if you have any questions about these matters.

DIETZE AND DAVIS, P.C.

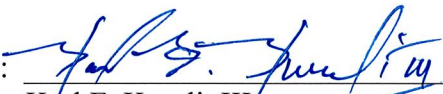
By: 
Karl F. Kumli, III

EXHIBIT 1

List of Records Subject to the Request

1. County Attorney's Office Privilege Log related to any and all County business involving 5762 N. 107th Street, Longmont, CO.
2. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, including but not limited to, any transportation study, traffic study, intersection analysis, safety analysis, traffic count data or otherwise related information from Fox Tuttle Transportation Group, or any other person or entity, regarding in any manner 5762 N. 107th Street, Longmont, Colorado, and/or "287", and/or "Lookout", and/or, "52", between the dates of January 1, 2018 and October 21, 2020.
3. All Public records, Communications, and Writings of any kind or nature whatsoever, in any form or manner whatsoever, to, from, and including Andrew Barth (abarth@bouldercounty.org), Communications Specialist, Boulder County Transportation Department, regarding or in any manner touching upon or concerning 5762 N. 107th Street, Longmont, Colorado, specifically including, but not limited to, matters between the dates of January 1, 2018 and October 21, 2020.
4. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, to, from, and including Darla Arians (darians@bouldercounty.org), Division Manager, Office of County Administrator, Resource Conservation, regarding or in any manner touching upon or concerning 5762 N. 107th Street, Longmont, Colorado, specifically including, but not limited to, matters between the dates of January 1, 2018 and October 21, 2020.
5. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, including and/or referencing geo-technical consultants, contractors, testing, test methodology and/or data and/or findings to, from and/or including the County of Boulder and relating to 5762 N. 107th Street, Longmont, CO from January 1, 2017 to present.
6. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, including and/or referencing hydrology and/or water rights, ditch rights, wells and well rights, water matters of any kind or nature, drainage, irrigation, or any beneficial use of water whatsoever, memoranda of any kind or nature, water consultants, contractors, testing methodology and/or data and/or findings to, from and/or including the County of

Boulder and relating to 5762 N. 107th Street, and any water Longmont, CO from January 1, 2017 to present.

7. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, regarding the acquisition by Boulder County, the Boulder County Commissioners or any other entity related in any manner to Boulder County, of each and every interest in real property, water rights of any kind or nature, easements in gross of any kind or nature whatsoever, or any other interest in real property and appurtenances, concerning that property known as 5762 N. 107th Street, Longmont, Colorado, including all memoranda, including legal memoranda not otherwise privileged, all Public records, Communications, and Writings from the periods January 1, 1993 to April 19, 2018, and again from April 19, 2018 through and until October 21, 2020.
8. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, regarding the development in any manner by Boulder County, the Boulder County Commissioners or any other entity related in any manner to Boulder County, of the property known as 5762 N. 107th Street, Longmont, Colorado, including all memoranda, including legal memoranda not otherwise privileged, all Public records, Communications, and Writings from and during the time periods January 1, 1993 until and including December 31, 1994; and again from December 31, 1994 until and including April 19, 2018; and again, from April 19, 2018 until and including October 21, 2020.

EXHIBIT 2

List of Records Subject to the Request

1. County Attorney's Office Privilege Log related to any and all County business involving 5762 N. 107th Street, Longmont, CO from October 21, 2020 to the date of this letter.
2. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, with, to, from or between any party and A-1 Organics, Inc. ("A-1") and including Lambland, Inc. ("Lambland") including any parent, subsidiary, corporate partner, or any affiliated business entity of either A-1 or Lambland, whatsoever between the dates of January 1, 2017 and October 29, 2020. By way of example, but not by way of any limitation whatsoever, this request includes all emails, phone records, memoranda, notes of meeting, notes of phone conversations or any other communication with Bob Yost, Travis Bahnsen, Kent Pendley, or any other employee, contractor or vendor associated with A-1 Organics, Inc., Lambland, Inc., or any other related entity.
3. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, to, with, concerning or including and/or referencing any and all composting vendors, composting suppliers, composting consultants, composting contractors, composting businesses, composting facilities, or businesses supplying composting services (collectively "composting businesses"), including any potential composting vendors, potential composting suppliers, potential composting consultants, potential composting contractors, potential composting businesses, or potential composting facilities (collectively "potential composting businesses"), from January 1, 2017 to present.
4. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, including and/or referencing any requests for qualifications ("RFQs"), requests for proposals ("RFPs"), statements of qualification, proposals or any other documents responsive to RFPs or RFQs, draft agreements, agreements, contracts, memoranda of understanding, letter agreements, correspondence or any other business transactions or communications, whether consummated or not, concerning any composting businesses or composting facilities, or potential composting businesses or potential composting facilities, from January 1, 2017 to present.
5. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, by, with, to, from, concerning or between Western Disposal, Inc., including any parent, subsidiary, corporate

partner, or any affiliated business entity of Western Disposal, Inc. (“Western”), concerning that property known as 5762 N. 107th Street, Longmont, Colorado or any other proposed composting site or operation in Colorado.

6. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, regarding the placement of traffic monitoring equipment at the intersection of Lookout Road and Highway 287 during the months of October and November, 2020.
7. All Public records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, by, with, to, from, or concerning the expenditure of any and all funds, accounts or moneys budgeted, authorized, appropriated or expended (“Expenditures”), the date of such Expenditures, amounts of such Expenditures and as of the date of this letter for the investigation, planning, and/or development of a composting facility at 5762 N. 107th Street, Longmont, Colorado or any other proposed composting site in Colorado.
8. All public notices, work papers, Staff presentations, communications, complete identification of source, account, origin and disposition of all funds and every other Record related in any manner to item No. 10 of the Board of County Commissioners/County Board of Equalization Meeting of Thursday, April 5, 2018.
9. All public notices, work papers, Staff presentations, communications, complete identification of source, account, origin and disposition of all funds and every other Record related in any manner to items No. 4.a. and 4.b. of the Board of County Commissioners/County Board of Equalization Meeting of Thursday, November 7, 2013.

EXHIBIT 3

List of Records Subject to the Request

1. All Public Records, Communications, and Writings, of any kind or nature whatsoever, in any form or manner whatsoever, to, from, with, copied to, concerning or including and/or referencing Kate Bailey of Ecocycle (kate@ecocycle.org) from April 1, 2018 to present.