

Headline: Compost facility application may be withdrawn to review cost and impacts

By Patricia Logan

Nancy Davis thought a conservation easement meant the land was protected from development. So when she and her husband bought their property on Lookout Road in 2015 they were confident that the conservation easement on the adjacent Rainbow Nursery tree farm would preserve its rural character, giving them confidence to move forward with their dream of a business doing horse boarding, training and growing hay.

In fact, their property is subject to a conservation easement on the lower 16 acres of their own land, a parcel that connects to the Rainbow property on Highway 287, south of Highway 52. A coyote bounds through the tawny winter grasses near the fence between the two properties as Davis talks. "If a conservation easement doesn't mean anything, then I can just build a house right there if I want."

The perpetual conservation easement on Rainbow Nursery was "extinguished," according to Boulder County, when it bought the property in 2018 as Open Space, citing the legal doctrine of merger of the conservation easement it holds and the property it bought. Now the county wants to build a [commercial compost facility](#) on the land.

"If Boulder County can develop open space on Rainbow, they can develop open space anywhere," Davis said in a news release announcing her family's lawsuit against the county for extinguishing the easement.

The Rainbow Nursery conservation easement states in its preamble, "Whereas, 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 body of the document prohibits a long list of uses including "Solid waste transfer facility or disposal site."

Nearly 40,000 acres of private land in Boulder County is under a conservation easement held by the county, according to Boulder Parks and Open Space. If the county were to buy other properties with conservation easements, depending on the agreement, they might also be subject to development.

"It sets a very bad example for the county to take the position that when the holder of a conservation easement acquires the underlying land, the easement is extinguished," said conservation easement expert Nancy McLaughlin, a University of Utah law professor. "Merger shouldn't apply because a conservation easement does not cease to serve any purpose if the holder acquires the underlying land. It still provides the significant benefits to the public for which it was created."

Whether it is legal to extinguish the perpetual conservation easement on the Rainbow property will be a matter for the courts and could have broad implications for Colorado law and government policy.

When the county bought the property as Open Space in 2018, it stated in the acquisition memo that it might be used "as part of the county's zero waste initiative," but did not spell out a large-scale compost operation. "It's not composting the way we think of it with banana peels. Composting with capital C is a massively huge business," Davis said.

Another group of neighbors is also suing and the Erie Board of Trustees [wrote a scathing letter](#) to the Boulder County Commissioners after the city held a public meeting in which more than 50

residents expressed serious concerns about the proposal. As the crow flies, Erie is just a few miles southeast of the compost site. The letter asks for justification for an “industrial operation” and asks how the county will deal with odors, water contamination and traffic on Highway 287, “which is already among the most deadly highways in the region.” Since then, Erie went further, asking the commissioners to withdraw plans for the facility.

Just this week, a recommendation to withdraw the special use application also came from within the county. Staff wants time to gather and analyze new information on engineering and financing and allow for more public dialogue, according to a Boulder County news release. [The public meeting will be on March 4 at 1 p.m.](#)

The cost of the project is higher than expected, said Darla Arians, division manager at Boulder County Public Works (BCPW). Planning and design cost \$740,000 so far. Initial construction is estimated at 7.5 million with a total price of \$33.9 million if the facility is fully built out. Money would come from the sustainability tax approved by county taxpayers in 2016.

BCPW already put the public process on hold in December. “They started seeing some things they wanted to refine to make sure they are mitigating all these concerns that people are bringing up to make sure we’re not negatively impacting anyone,” said BCPW spokesperson, Andrew Barth.

One of the concerns is traffic. A [traffic study estimated](#) 37 large waste trucks would be using the facility each day. The study calculates trucks as the equivalent of two or three passenger vehicles, making an exact number of vehicles unclear but, in addition to the trucks, there would be 140 - 292 cars and landscaping trucks coming and going from 7 a.m. until 6 p.m. Monday through Saturday.

Traffic could double if the facility is fully built out. Constructing new turn lanes and adjusting the timing of the traffic signals should be considered, according to the study.

Vehicles could bring in materials such as grass, leaves, tree limbs, manure and food scraps. A Class III facility can also accept biosolids, which is human waste after it’s been treated. Biosolids will not be accepted at first, but could be later.

“By designing a facility that can collect and use biosolids, we’ll be able to go through the permitting process now,” Barth said. “We just want to be able to go that route if that would be a good use of that facility.”

The county has had its eye on its own compost facility for more than a decade. “Through community wide polls, zero waste services, such as composting and recycling services, were among the programs with the most support, as it is well-known that reducing organic food waste from landfills reduces methane, a potent greenhouse gas,” emailed Susie Strife, department head of Boulder County’s Office of Sustainability Climate Action and Resilience. “New research also shows other powerful benefits of adding high quality compost to our soils, as it enhances carbon sequestration, increases water retention, crop resilience and helps regenerate the health of our local soils.”

Most of Boulder County’s compostable waste is taken 50 miles east to Keenesburg. “A big part of this facility would be to reduce miles traveled, the large truck traffic. That’s an air pollution and roadway congestion issue that this facility would help to mitigate,” Barth said.

But, while trucks wouldn’t have to leave Boulder County, the regional facility would accept trucks from [as far away as Ft. Collins and Littleton](#), according to a county map.

The county says it would save 500 metric tons of carbon per year by keeping compostable material from being trucked to Keenesburg, but when asked how much carbon the facility would save considering that trucks would now be coming here, the county couldn't say. Nor could it cite the impact of constructing 16 concrete bunkers and other buildings. The production of cement used to create concrete is a notable source of carbon emissions.

The county has not provided a comprehensive accounting of the net carbon savings even though that is a stated reason for building the facility. It has done some calculations that include saving 5,400 tons of carbon if local compost collection increases by about a third. That assumes that more waste companies will want to collect compost if they don't have to haul as far and that more people will start composting.

"We would need to develop a robust education campaign to capture the additional compost from businesses and restaurants, and push for curbside composting and policies that support mandatory composting," Strife said. █

Another 8,000 tons could be saved by using compost to sequester carbon on irrigated farmland instead of using chemical fertilizers. But that would depend on whether farmers agree to buy and spread the compost. Even if all of those possibilities reach their full potential, and excluding the uncalculated carbon costs, the savings would be about 14,000 tons per year. The county's goal is to save 2,761,680 tons a year by 2030.

"I will point out that the costs of climate change are in the hundreds of millions as we face future climate damages, so it's critical that we take every solution we can into account," said Ariens of BCPW.

Next week, the Courier will report developments in this unfolding story and look at agricultural use of compost.