

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-CV-00603-PAB-SKC

LANDOWNERS UNITED ADVOCACY FOUNDATION, INC.,

Plaintiff,

v.

MICHAEL S. HARTMAN, individually and in his official capacity as executive director of the Colorado Department of Revenue;

MARCIA WATERS, individually and in her official capacity as director of the Colorado Department of Real Estate;

MARK WESTON, individually and in his official capacity as the Program Manager for the Conservation Easement Program; and

PETER ERICSON, individually and in his official capacity as the Chair of the Colorado Conservation Easement Oversight Commission,

Defendants.

NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO DISMISS

Defendants Marcia Waters, Mark Weston, and Peter Ericson, through their undersigned counsel, pursuant to D.C.COLO.LCivR 7.1(f), submit this Notice of Supplemental Authority in support of the pending Motion to Dismiss Third Amended Complaint (Doc. #72) (“Motion to Dismiss”). In doing so, they state as follows:

1. On May 29, 2018, Governor Hickenlooper signed into law House Bill 18-1291, attached hereto as **Ex. A.**¹

2. **House Bill 18-1291** creates a new state agency, the Division of Conservation, to administer Colorado’s conservation easement program, and repeals the Division of Real Estate’s

¹ House Bill 18-1291 contains a safety clause making it effective upon the signature of the Governor. Defendants noted House Bill 18-1291 in their Reply in Support of their Motion to Dismiss, however, at the time, it had not been signed by the Governor. See Doc. #88, p. 2, fn.1.

statutory authority to administer the program. *See Ex. A*, Section 1 and Section 10.

3. House Bill 18-1291 also creates a new eight-member conservation easement oversight commission within the Division of Conservation,² and repeals the statute that established the nine-member conservation easement commission within the Division of Real Estate. *Id.*

4. Plaintiff's Third Amended Complaint names the following individuals as defendants: Marcia Waters, the director of the Division of Real Estate; Mark Weston, the former program manager of the conservation easement program within the Division of Real Estate; and Peter Ericson, the former chair of the conservation easement oversight commission within the Division of Real Estate.

5. In the Motion to Dismiss, Waters, Weston, and Ericson seek dismissal of Plaintiff's Third Amended Complaint on several grounds, including that they lack the necessary connection to the statutory scheme at issue. *See Doc. #72*, pp. 3-4; pp. 8-10. The new law conclusively severs the connection between the statutory scheme at issue and the Division of Real Estate. As a result, Plaintiff's claims for prospective injunctive and declaratory relief are moot against Waters, Weston, and Ericson in their official capacities within the Division of Real Estate.

Respectfully submitted this 28th day of September 2018.

² Under House Bill 18-1291, the new commission has seven voting members. *Id.* at Section 1. The member representing Great Outdoors Colorado serves as an advisory, non-voting member. *Id.*

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CERTIFICATE OF SERVICE

This is to certify that I have electronically served the within **NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO DISMISS** on all parties herein via the CM/ECF system this 28th day of September, 2018.

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