

Chapter 12: Conservation Easements

An * in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

I. Introduction

- * First established by state statute in 1976, a conservation easement is a voluntary, legally-binding restriction that limits certain uses and prevents future development of a property. It is a recorded deed restriction enforced by a non-profit organization or a governmental entity. Conservation purposes such as habitat, open space, scenic views, agriculture, outdoor recreation, or education, are typically protected.
- * Landowners who donate all or a portion of a conservation easement to a governmental entity or nonprofit organization (“the conservation easement holder”) may qualify for federal and state tax benefits. If certain requirements are met, the state of Colorado provides a transferable income tax credit for donated conservation easements as an incentive for private land conservation. The conservation easement holder must be certified by the Division of Real Estate (“Division”) for a landowner to be eligible for a tax credit. Effective January 1, 2015, landowners may earn a tax credit at the amount of 75% of the first \$100,000 of the donation value, plus 50% of any remaining amounts in excess of the first \$100,000, with a maximum allowable tax credit of \$1,500,000 per donation.

II. The Aggregate Annual Limit

- * An aggregate limit on the total dollar amount of tax credits available for a given year was established under House Bill10-1197. Beginning in 2014 and each year thereafter, the cap is \$45 million under House Bill13-1183. The Division administers the cap by issuing tax credit certificates to landowners that submit an application. Approved applications submitted after the cap is reached are placed on a \$15 million waitlist for the next year as set forth in House Bill13-1183. The Department of Revenue will not allow a tax credit claim unless a tax credit certificate is first issued by the Division.

III. Pre-Approval Process for Donations Made After January 1, 2014

- * Beginning in 2014, Senate Bill 13-221 established a pre-approval process prior to the tax credit claim for conservation easement donations made on or after January 1, 2014. Senate Bill 13-221 authorizes the Director of the Division to determine the credibility of appraisal and the nine-member Conservation Easement Oversight Commission (“Commission”) to determine whether the donation is a qualified conservation contribution. The Department of Revenue no longer has jurisdiction to disallow a tax credit for issues relating to the appraisal or conservation purposes.
- * As a safeguard against abuse of the tax credit, the application and review process does not guarantee the issuance of a tax credit certificate and depends upon a positive final determination by the Director and the Commission. Donations that meet both requirements are issued certificates by the Division.

* Landowners are given multiple opportunities to show the validity of their conservation easement donation. Division staff will, in their examination, engage the landowner, the conservation easement holder, and any individual associated with the materials in the application in order to address any potential deficiencies. Staff's examination will result in recommendations to the Director and the Commission.

If potential deficiencies cannot be clarified in the course of the examination, the Director and/or the Commission may request more information and a second examination of any additional documents will be conducted. If potential deficiencies are still not addressed, the Division will either (1) issue a formal written denial, or, if the potential deficiencies lie exclusively with the appraisal, (2) the Director, in consultation with the Commission may request a second appraisal.

* A denial does not necessarily end the process. Within 30 days, the landowner may submit a written appeal; otherwise, the denial becomes final. During the application review, the Director and the Commission may conduct settlement discussions with the landowner.

* In addition, landowners may request an optional preliminary advisory opinion for a proposed conservation easement donation in advance of the tax credit certificate application.

IV. Conservation Easement Statutes

§ 38-30.5-101, C.R.S. Legislative intent.

The general assembly finds and declares that it is in the public interest to define conservation easements in gross, since such easements have not been defined by the judiciary. Further, the general assembly finds and declares that it is in the public interest to determine who may receive such easements and for what purpose such easements may be received.

§ 38-30.5-102, C.R.S. Conservation easement in gross.

“Conservation easement in gross”, for the purposes of this article, means a right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area, airspace above the land or water, or water rights beneficially used upon that land or water area, owned by the grantor appropriate to the retaining or maintaining of such land, water, airspace, or water rights, including improvements, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value.

§ 38-30.5-103, C.R.S. Nature of conservation easements in gross.

- (1) A conservation easement in gross is an interest in real property freely transferable in whole or in part for the purposes stated in section 38-30.5-102 and transferable by any lawful method for the transfer of interests in real property in this state.
- (2) A conservation easement in gross shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding that it may be negative in character.
- (3) A conservation easement in gross shall be perpetual unless otherwise stated in the instrument creating it.
- (4) The particular characteristics of a conservation easement in gross shall be those granted or specified in the instrument creating the easement.

- (5) A conservation easement in gross that encumbers water or a water right as permitted by section 38-30.5-104 (1) may be created only by the voluntary act of the owner of the water or water right and may be made revocable by the instrument creating it.

§ 38-30.5-104, C.R.S. Creation of conservation easements in gross.

- (1) A conservation easement in gross may only be created by the record owners of the surface of the land and, if applicable, owners of the water or water rights beneficially used thereon by a deed or other instrument of conveyance specifically stating the intention of the grantor to create such an easement under this article.
- (2) A conservation easement in gross may only be created through a grant to or a reservation by a governmental entity or a grant to or a reservation by a charitable organization exempt under section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, as amended, which organization was created at least two years prior to receipt of the conservation easement.
- (3) Repealed.
- (4) Conservation easements relating to historical, architectural, or cultural significance may only be applied to buildings, sites, or structures which have been listed in the national register of historic places or the state register of historic properties, which have been designated as a landmark by a local government or landmarks commission under the provisions of the ordinances of the locality involved, or which are listed as contributing building sites or structures within a national, state, or locally designated historic district.
- (5) If a water right is represented by shares in a mutual ditch or reservoir company, a conservation easement in gross that encumbers the water right may be created or revoked only after sixty days’ notice and in accordance with the applicable requirements of the mutual ditch or reservoir company, including, but not limited to, its articles of incorporation and bylaws as amended from time to time.

§ 38-30.5-105, C.R.S. Residual estate.

All interests not transferred and conveyed by the instrument creating the easement shall remain in the grantor of the easement, including the right to engage in all uses of the lands or water or water rights affected by the easement that are not inconsistent with the easement or prohibited by the easement or by law.

§ 38-30.5-106, C.R.S. Recordation upon public records.

Instruments creating, assigning, or otherwise transferring conservation easements in gross must be recorded upon the public records affecting the ownership of real property in order to be valid and shall be subject in all respects to the laws relating to such recordation.

§ 38-30.5-107, C.R.S. Release – termination.

Conservation easements in gross may, in whole or in part, be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land or water rights or in any other manner in which easements may be lawfully terminated, released, extinguished, or abandoned.

§ 38-30.5-108, C.R.S. Enforcement – remedies.

- (1) No conservation easement in gross shall be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed as running with the land.
- (2) Actual or threatened injury to or impairment of a conservation easement in gross or the interest intended for protection by such easement may be prohibited or restrained by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by an owner of the easement.

- (3) In addition to the remedy of injunctive relief, the holder of a conservation easement in gross shall be entitled to recover money damages for injury thereto or to the interest to be protected thereby. In assessing such damages, there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages, the loss of scenic, aesthetic, and environmental values.

§ 38-30.5-109, C.R.S. Taxation.

Conservation easements in gross shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to the assessment and taxation of interests in real property. Real property subject to one or more conservation easements in gross shall be assessed, however, with due regard to the restricted uses to which the property may be devoted. The valuation for assessment of a conservation easement which is subject to assessment and taxation, plus the valuation for assessment of lands subject to such easement, shall equal the valuation for assessment which would have been determined as to such lands if there were no conservation easement.

§ 38-30.5-110, C.R.S. Other interests not impaired.

No interest in real property cognizable under the statutes, common law, or custom in effect in this state prior to July 1, 1976, nor any lease or sublease thereof at any time, nor any transfer of a water right or any change of a point of diversion decreed prior to the recordation of any conservation easement in gross restricting a transfer or change shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this article. No provision of this article shall be construed to mean that conservation easements in gross were not lawful estates in land prior to July 1, 1976. Nothing in this article shall be construed so as to impair the rights of a public utility, as that term is defined by section 40-1-103, C.R.S., with respect to rights-of-way, easements, or other property rights upon which facilities, plants, or systems of a public utility are located or are to be located. Any conservation easement in gross concerning water or water rights shall be subject to the “Water Right Determination and Administration Act of 1969”, as amended, article 92 of title 37, C.R.S., and any decree adjudicating the water or water rights.

§ 38-30.5-111, C.R.S. Validation.

- (1) Any conservation easement in gross created on or after July 1, 1976, but before July 1, 1985, that would have been valid under this article except for section 38-30.5-104 (3) is valid and shall be a binding, legal, and enforceable obligation.
- (2) Any conservation easement in gross affecting water rights created prior to August 6, 2003, shall be a binding, legal, and enforceable obligation if it complies with the requirements of this article.

§ 38-30.5-112, C.R.S. Conservation easement – task force – creation – report – legislative declaration – repeal. (Repealed)

§ 12-61-724, C.R.S. Certification of conservation easement holders – fund created – rules – repeal – definition.

- (1) The division shall, in consultation with the commission created in section 12-61-725, establish and administer a certification program for qualified organizations under section 170 (h) of the federal “Internal Revenue Code of 1986”, as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. The purposes of the program are to:
 - (a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

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- (b) Identify fraudulent or unqualified applicants, as determined under the rules of the division, to prevent them from becoming certified by the program.
- (2) The division shall establish and accept applications for certification. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:
 - (a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;
 - (b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;
 - (c) An audit of the applicant's financial records;
 - (d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended, donors, board members, and insiders. For purposes of this paragraph (d), "insiders" means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.
 - (e) Any other information deemed relevant by the division or the commission; and
 - (f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.
- (3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee, as prescribed by the division, to cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522, C.R.S. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation easement holder certification fund, which fund is hereby created in the state treasury. Moneys in the fund are subject to annual appropriation to the division for the purposes of implementing and administering this section and do not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before each January 1, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).
- (4) The certification program applies to:
 - (a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;
 - (b) Nonprofit entities holding easements on property for historic preservation; and
 - (c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.
- (5) The certification program may contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.
- (6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division is authorized to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules promulgated by the division, or any division order, the division may deny the

applicant a certification or deny the renewal of a certification, and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S. The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

- (7) The division shall implement the certification program in a manner that either commences accepting applications for certification:
 - (a) At the same time for all types of entities that hold conservation easements; or
 - (b) During the first year of the program for entities described in paragraph (a) of subsection (4) of this section and during the second year of the program for entities described in paragraphs (b) and (c) of subsection (4) of this section, and other entities.
- (8) A conservation easement tax credit certificate application may be submitted pursuant to section 12-61-727 only if the entity has been certified in accordance with this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).
- (9) The division shall maintain and update an online list, accessible to the public, of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with this section.
- (10) The division may investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including the suspension or revocation of a certification or the imposition of fines. The division may promulgate rules in accordance with article 4 of title 24, C.R.S., for the certification program and discipline authorized by this section.
- (11) The division may subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, for purposes of conducting investigations pursuant to subsection (10) of this section.
- (12) Nothing in this section:
 - (a) Affects any tax credit that was claimed pursuant to section 39-22-522, C.R.S., before certification was required by this section; or
 - (b) Requires the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522, C.R.S.
- (13) This section is repealed, effective July 1, 2018. Prior to the repeal, the department of regulatory agencies shall review the certification requirement as provided for in section 24-34-104, C.R.S.

§ 12-61-725, C.R.S. Conservation Easement Oversight Commission – Created – Repeal.

- (1) There is hereby created in the division a conservation easement oversight commission. The commission shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 2** transfer, as defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S. The commission consists of nine members as follows:
 - (a) One member representing the great outdoors Colorado program, appointed by and serving at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;
 - (b) One member representing the department of natural resources, appointed by and serving at the pleasure of the executive director of the department of natural resources;

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- (c) One member representing the department of agriculture, appointed by and serving at the pleasure of the executive director of the department of agriculture;
- (d) Six members appointed by the governor as follows, with at least one member with the following qualifications or representing the following interests:
 - (I) A land trust certified in accordance with section 12-61-724;
 - (II) A land trust or local government open space or land conservation agency certified in accordance with section 12-61-724;
 - (III) A local government open space or land conservation agency certified in accordance with the provisions of section 12-61-724;
 - (IV) An individual who is competent and qualified to analyze the conservation purpose of conservation easements;
 - (V) A certified general appraiser with experience in conservation easements who meets any classroom education and experience requirements established by the board in accordance with section 12-61-704 (1) (k); and
 - (VI) A landowner that has donated a conservation easement in Colorado.
- (2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to paragraphs (a) to (c) of subsection (1) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointee represents. Not more than three of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint three members for terms of two years. All other appointments by the governor are for terms of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.
- (3)
 - (a) At the request of the division or the department of revenue, the commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522, C.R.S.
 - (b) The commission shall review conservation easement tax credit certificate applications and requests for optional preliminary advisory opinions in accordance with section 12-61-727.
- (4) The commission shall meet not less than once each quarter. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the members of the commission constitutes a quorum for the transaction of all business, and actions of the commission require a vote of a majority of the members present in favor of the action taken. The commission may delegate to the director the authority to act on behalf of the commission on occasions and in circumstances that the commission deems necessary for the efficient and effective administration and execution of the commission's responsibilities under this part 7.
- (5) The commission shall establish a conflict-of-interest policy to ensure that any member of the commission is disqualified from performing an act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by the member.
- (6)
 - (a) The commission shall advise and make recommendations to the director regarding the certification of conservation easement holders in accordance with section 12-61-724. The division may determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division.
 - (b) If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules

promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification. In such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S.

- (c) The division shall notify successful applicants in writing.
 - (d) An applicant that is not certified may reapply for certification in accordance with the procedure established by the division.
- (7) Commission members are immune from liability in accordance with the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.
 - (8) This section is repealed, effective July 1, 2018. Prior to the repeal, the department of regulatory agencies shall review the commission as provided in section 24-34-104, C.R.S.

§ 12-61-726, C.R.S. Conservation easement tax credit certificates – rules.

- (1) The division shall receive tax credit certificate applications from and issue certificates to landowners for income tax credits for conservation easements donated on or after January 1, 2011, in accordance with section 39-22-522 (2.5), C.R.S., and this part 7. Nothing in this section restricts or limits the authority of the division to enforce this part 7. The division may promulgate rules in accordance with article 4 of title 24, C.R.S., for the issuance of the certificates. In promulgating rules, the division may include provisions governing:
 - (a) The review of the tax credit certificate application pursuant to this part 7;
 - (b) The administration and financing of the certification process;
 - (c) The notification to the public regarding the aggregate amount of tax credit certificates that have been issued and that are on the wait list;
 - (d) The notification to the landowner, the entity to which the easement was granted, and the department of revenue regarding the tax credit certificates issued; and
 - (e) Any other matters related to administering section 39-22-522 (2.5), C.R.S., or this part 7.
- (2) The division shall apply the amount claimed in a completed tax credit certificate application against the annual tax credit limit in the order that completed applications are received. The division shall apply claimed tax credit amounts that exceed the annual limit in any year against the limit for the next available year and issue tax credit certificates for use in the year in which the amount was applied to the annual limit.
- (3) The division shall not issue tax credit certificates that in aggregate exceed the limit set forth in section 39-22-522 (2.5), C.R.S., during a particular calendar year.

§ 12-61-727, C.R.S. Conservation easement tax credit certificate application process – conservation easement tax credit certificate review fund – created – definitions – rules.

- (1) For purposes of this section:
 - (a) "Application" means an application for a tax credit certificate submitted pursuant to section 12-61-726 or this section.
 - (b) "Conservation purpose" means conservation purpose as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with such section.
 - (c) "Credibility" means the results are worthy of belief and are supported by relevant evidence and logic to the degree necessary for the intended use.

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- (d) “Deficiency” means noncompliance with a requirement for obtaining a tax credit certificate that, unless such noncompliance is remedied, is grounds for the denial of a tax credit certificate application submitted pursuant to this section.
 - (e) “Director” means the director of the division of real estate or his or her designee.
 - (f) “Landowner” means the record owner of the surface of the land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement in gross pursuant to section 38-30.5-104, C.R.S.
 - (g) “Tax credit certificate” means the conservation easement tax credit certificate issued pursuant to section 12-61-726 and this section.
- (2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7), C.R.S. The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:
- (I) Is a contribution of a qualified real property interest to a qualified organization to be used exclusively for a conservation purpose;
 - (II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the uniform standards of professional appraisal practice; and
 - (III) Complies with the requirements of this section.
- (b) The landowner has the burden of proof regarding compliance with all applicable laws, rules, and regulations.
- (3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:
- (a) Division staff shall review each application and advise and make recommendations to the director and the commission regarding the application;
 - (b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:
 - (I) The appraisal for a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522, C.R.S., is a qualified appraisal from a qualified appraiser, as defined in section 170 (f) of the federal “Internal Revenue Code of 1986”, as amended, and any federal regulations promulgated in connection with such section;
 - (II) The appraisal conforms with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law;
 - (III) The appraiser holds a valid license as a certified general appraiser in accordance with this part 7; and
 - (IV) The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1) (k).
 - (c) The director has the authority and responsibility to determine compliance with the requirements of section 12-61-724.
 - (d) The commission has the authority and responsibility to determine whether a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522, C.R.S., is a qualified conservation contribution as defined in section 170 (h) of the federal “Internal Revenue Code of 1986”, as amended, and any federal regulations promulgated in connection with such section.

- (4) The department of revenue is not authorized to disallow a conservation easement tax credit based on any requirements that are under the jurisdiction of the division, the director, or the commission pursuant to this section.
- (5) A complete tax credit certificate application must be made by the landowner to the division and must include:
 - (a) A copy of the final conservation easement appraisal;
 - (b) A copy of the recorded deed granting the conservation easement;
 - (c) Documentation supporting the conservation purpose of the easement;
 - (d) Any other information or documentation the director or the commission deems necessary to make a final determination regarding the application; and
 - (e) The fee required pursuant to subsection (6) of this section.
- (6) A landowner submitting an application for a tax credit certificate pursuant to this section or an application for an optional preliminary advisory opinion pursuant to subsection (14) of this section shall pay the division a fee as prescribed by the division. The application fee for an optional preliminary advisory opinion may be a different dollar amount than the application fee for a tax credit certificate. The fees must cover the costs of the division and the commission in administering the requirements of this section. The state treasurer shall credit the fees collected pursuant to this subsection (6) to the conservation easement tax credit certificate review fund, which fund is hereby created in the state treasury. The general assembly shall annually appropriate moneys in the fund to the division for the purposes of implementing and administering this section. The moneys shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before January 1, 2014, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of any fees prescribed by the division pursuant to this subsection (6).
- (7)
 - (a) If, during the review of an application for a tax credit certificate, the director or the commission identifies any potential deficiencies, the director or commission shall document the potential deficiencies in a letter sent to the landowner by first class mail. The division shall send letters documenting potential deficiencies to landowners in a timely manner so that the average number of days between the date a completed application is received by the division and the mailing date of the division's letter to the landowner does not exceed one hundred twenty days.
 - (b) The landowner has sixty days after the mailing date of the division's letter to address the potential deficiencies identified by the director and the commission and provide additional information or documentation that the director or the commission deems necessary to make a final determination regarding the application.
 - (c) The director and the commission have ninety days after the date of receipt of any additional information or documentation provided by the landowner to review the information and documentation and make a final determination regarding the application.
 - (d) The deadlines prescribed by this subsection (7) may be extended upon mutual agreement between the director and the commission and the landowner.
- (8) The director or the commission may deny an application if the landowner:
 - (a) Has not demonstrated to the satisfaction of the director or the commission that the application complies with any requirement of this part 7;
 - (b) Does not provide the information and documentation required pursuant to this part 7; or
 - (c) Fails to timely respond to any written request or notice from the division, the director, or the commission.

- (9) If the director reasonably believes that any appraisal submitted in accordance with this section is not credible, the director, after consultation with the commission, may require the landowner, at the landowner's expense, to obtain either a revised appraisal or a second appraisal from an appraiser who meets the requirements of this part 7 and is in good standing with the board before making a final determination regarding the application.
- (10) If the director and the commission do not identify any potential deficiencies with an application, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-726 in a timely manner so that the average number of days between the date a completed application is received by the division and the date the tax credit certificate is issued does not exceed one hundred twenty days. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39, C.R.S.
- (11)
 - (a) If all potential deficiencies that have been identified are subsequently addressed to the satisfaction of the director and the commission, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section 12-61-726. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39, C.R.S.
 - (b) If any potential deficiencies that have been identified are not subsequently addressed to the satisfaction of the director and the commission, the division shall issue a written denial of the application to the landowner documenting those deficiencies that were the specific basis for the denial. The division shall date the written denial and send it by first class mail to the landowner at the address provided by the landowner on the application. The director may act on behalf of the commission for purposes of administering the process for issuing approvals and denials of applications and for administering subsection (12) of this section.
- (12)
 - (a) The landowner may appeal to the director either the director's or the commission's denial of an application, in writing, within thirty days after the issuance of the denial. This written appeal constitutes a request for an administrative hearing.
 - (b) If the landowner fails to appeal the denial of an application within thirty days after the issuance of the denial, the denial becomes final, and the division shall not issue a tax credit certificate to the landowner.
 - (c) Administrative hearings must be conducted in accordance with section 24-4-105, C.R.S. At the discretion of the director, hearings may be conducted by an authorized representative of the director or the commission or an administrative law judge from the office of administrative courts in the department of personnel. All hearings must be held in the county where the division is located unless the director designates otherwise. The decision of the director or the commission is subject to judicial review by the court of appeals and is subject to the provisions of section 24-4-106, C.R.S.
 - (d) In conducting settlement discussions with a landowner, the director and the commission may compromise on any of the deficiencies identified in the application and supporting documentation, including the dollar amount of the tax credit certificate to be issued. The director shall place on file in the division a record of any compromise and the reasons for the compromise.
 - (e) The director may promulgate rules pursuant to article 4 of title 24, C.R.S., to effectuate the purposes of this subsection (12).
- (13)
 - (a) Commencing with the 2014 calendar year, and for each calendar year thereafter, the division shall create a report, which shall be made available to the public, containing the following aggregate information:

- (I) The total number of tax credit certificate applications received, approved, and denied in accordance with this section, along with average processing times;
- (II) For applications approved in accordance with this section:
 - (A) The total acreage under easement summarized by the allowable conservation purposes as defined in section 170 (h) of the federal “Internal Revenue Code of 1986”, as amended, and any federal regulations promulgated in connection with such section;
 - (B) The total appraised value of the easements;
 - (C) The total donated value of the easements; and
 - (D) The total dollar amount of tax credit certificates issued.
- (b) The division may include additional easement-specific information in the public report that, notwithstanding the provisions of this part 7 or any other law to the contrary, would otherwise be publicly available.
- (14) (a) In addition to the tax credit certificate application process set forth in this section, a landowner may submit a proposed conservation easement donation to the division to obtain an optional preliminary advisory opinion regarding the transaction. The opinion may address the proposed deed of conservation easement, appraisal, conservation purpose, or other relevant aspect of the transaction.
 - (b) The division, the director, and the commission shall review the information and documentation provided in a manner consistent with the scope of their authority and responsibilities for reviewing tax credit certificate applications as outlined in subsection (3) of this section and issue either a favorable opinion or a nonfavorable opinion.
 - (c) The director or the commission may request that the landowner submit additional information or documentation that the director or the commission deems necessary to complete the review and issue an opinion.
 - (d) A nonfavorable opinion shall set forth any potential deficiencies identified by the director or the commission and that fall within the scope of the director’s and the commission’s review of the conservation easement transaction. The preliminary opinion is advisory only and is not binding for any purpose upon the division, the director, the commission, or the department of revenue.
- (15) The division may promulgate rules to effectuate the purpose, implementation, and administration of this section pursuant to article 4 of title 24, C.R.S. The authority to promulgate rules includes the authority to define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section.
- (16) Notwithstanding the provisions of the “Colorado Open Records Act”, part 2 of article 72 of title 24, C.R.S., the division, the director, and the commission shall deny the right of public inspection of any documentation or other record related to information obtained as part of an individual landowner’s application for a tax credit certificate or an optional preliminary advisory opinion pursuant to the requirements of this section, including documentation or other records related to administrative hearings and settlement discussions held pursuant to subsection (12) of this section. The division, the director, and the commission may share documentation or other records related to information obtained pursuant to this section with the department of revenue.
- (17) Nothing in this section affects any tax credit that is claimed or used pursuant to section 39-22-522, C.R.S., for conservation easement donations occurring prior to January 1, 2014.

**§ 24-33-112, C.R.S. Conservation easement holders – submission of information.
(Repealed)**

§ 39-21-113, C.R.S. Reports and returns – rule – repeal.

- (17) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the donation of a conservation easement in gross pursuant to section 39-22-522 and any appraisal submitted in support of the credit claimed be given to the division of real estate in the department of regulatory agencies and the conservation easement oversight commission created pursuant to section 12-61-725 (1), C.R.S., as the executive director determines is necessary in the performance of the department's functions relating to the credit. The executive director may provide copies of any appraisal and may file a complaint regarding any appraisal as authorized pursuant to section 39-22-522 (3.3). Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or appraisal required in accordance with the provisions of this subsection (17).
- (17.5) (a) Notwithstanding the provisions of this section, the executive director may provide such detailed information pertinent to a claim for a credit for the donation of a conservation easement pursuant to section 39-22-522 to taxpayers, including donors and transferees, with cases involving common or related issues of fact or law. The executive director or the executive director's duly authorized agents may also provide such information to the parties to a consolidated administrative hearing pursuant to section 39-22-522.5 (5) (a) as necessary and appropriate for the efficient and fair resolution of disputes.
- (b) Persons who receive taxpayer information pursuant to paragraph (a) of this subsection (17.5) shall be subject to the provisions of this section, including the limitations in subsection (4) of this section and the penalties in subsection (6) of this section regarding disclosure of taxpayer information.

§ 39-22-522, C.R.S. Credit against tax – conservation easements.

- (1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.
- (2) (a) For income tax years commencing on or after January 1, 2000, but prior to January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.
- (b) For income tax years commencing on or after January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a

charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that meets the requirements of section 170 of the federal “Internal Revenue Code of 1986”, as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

- (2.5) Notwithstanding any other provision of this section and the requirements of section 12-61-727, C.R.S., for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of section 12-61-727, C.R.S., submit a claim for the credit to the division of real estate in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5); except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year. The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter. No claim for a credit is allowed for any income tax year commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under section 12-61-727, C.R.S., and this section are met, the right to claim the credit is vested in the taxpayer at the time a credit certificate is issued.
- (2.7) Notwithstanding any other provision, for income tax years commencing on or after January 1, 2014, no claim for a credit shall be allowed unless a tax credit certificate is issued by the division of real estate in accordance with sections 12-61-726 and 12-61-727, C.R.S., and the taxpayer files the tax credit certificate with the income tax return filed with the department of revenue.
- (3) For conservation easements donated prior to January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:
- (a) A statement indicating whether a deduction was claimed on the taxpayer’s federal income tax return for a conservation easement in gross;
 - (b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;
 - (c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170 (h) of the internal revenue code that are protected by the easement; the county, township, and range where the easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;
 - (d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;
 - (e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the

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provisions of section 12-61-719, C.R.S., as said section existed prior to its repeal on July 1, 2013;

- (f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-724, C.R.S., applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:
 - (I) An acknowledgment that the holder has filed the information with the department of revenue and the division of real estate in accordance with section 24-33-112, C.R.S.;
 - (II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and
 - (III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.
- (3.3) The appraisal for a conservation easement in gross donated prior to January 1, 2014, and for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f) (11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1) (k), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal “Pension Protection Act of 2006”, Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.
- (3.5) (a) For conservation easements donated prior to January 1, 2014:
 - (I) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-725 (1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation misstatement from the division of real estate, or receives notice from the division of real estate that an enforcement action has been taken by the board of real estate appraisers against the appraiser, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of

the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

- (II) In consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-725 (1), C.R.S., the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this subparagraph (II).
- (b) For conservation easements donated on or after January 1, 2014, and subject to the restrictions of section 12-61-727 (4), C.R.S., the executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the amount of the credit and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, the executive director shall have the authority, for good cause shown, to review and accept or reject, in whole or in part, the amount of the credit and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation, except those requirements for which authority is granted to the division of real estate, the director of the division of real estate, or the conservation easement oversight commission pursuant to section 12-61-727, C.R.S.
- (3.6) For conservation easements donated on or after January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer must submit the following in a form, approved by the executive director, to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:
 - (a) (I) A tax credit certificate issued under section 12-61-727, C.R.S.; and
 - (II) The information required in subsections (3) (a), (3) (b), (3) (d), and (3) (f) (II) of this section.
 - (b) Notwithstanding any other provisions of law, the executive director retains the authority to administer all issues related to the claim or use of a tax credit for the donation of a conservation easement that are not granted to the director of the division of real estate or the conservation easement oversight commission under section 12-61-727, C.R.S.
 - (c) The information required in paragraph (f) of subsection (3) of this section will no longer be required from the holder of the conservation easement.
- (3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170 (e) and 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of

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qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.

- (4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.
- * (II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, and prior to January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that, in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.
- * (II.5) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to seventy-five percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and fifty percent of all amounts of the donation in excess of one hundred thousand dollars; except that, in no case shall the credit exceed one million five hundred thousand dollars per donation.
- (III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers who may legally file a joint federal return but actually file separate federal returns, exceed the dollar limitations of this paragraph (a).
- (b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners,

partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

- (5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.
 - (b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.
 - (II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.
 - (III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.
- (6) (a) For conservation easements donated prior to January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.

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- (b) For conservation easements donated on or after January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits.
- (7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:
 - (a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;
 - (b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;
 - (c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;
 - (d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.
 - (e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee;
 - (f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.
 - (g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return;
 - (h) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.
 - (i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.
 - (j) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.

- (8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.
- (9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.
- (10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report. This report shall not be required for conservation easements donated on or after January 1, 2014.
- (11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000. This report shall not be required for conservation easements donated on or after January 1, 2014.

V. Conservation Easement Regulations

DEPARTMENT OF REGULATORY AGENCIES DIVISION OF REAL ESTATE

RULES REGARDING CONSERVATION EASEMENTS 4 CCR 725-4

CHAPTER 1: DEFINITIONS

- 1.1 Assignment of a Tax Credit Certificate: Occurs when the tax credit certificate application pursuant to section 12-61-727, C.R.S. is deemed complete and the requested dollar amount from the application is encumbered and credited from the tax credit cap.
- * 1.2 *Repealed (Effective 01/01/2016).*
- 1.3 Co-Hold: Two or more nonprofit or government entities are named grantees of the conservation easement and both entities hold the easement for the purposes of implementing rule 2.6.
- 1.4 Commission: The Conservation Easement Oversight Commission created by section 12-61-725, C.R.S.
- 1.5 Conservation Easements: Conservation easements that have a charitable donation component. This includes full donations and bargain sale conservation easements.
- 1.6 Days: Calendar days for the purposes of implementing section 12-61-727, C.R.S.
- 1.7 Deemed Complete: The application pursuant to section 12-61-727, C.R.S. is date stamped by the Division and includes, at a minimum, the final appraisal, the recorded conservation easement deed, baseline document report and prescribed nonrefundable fee.
- * 1.8 Director: Has the same meaning as set forth in section 12-61-727(1)(E), C.R.S.
- 1.9 Division: The Division of Real Estate within the Department of Regulatory Agencies.

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- 1.10 Examination: The review conducted by the Division and preparation of a report to be presented to the Director and Commission for the purposes of implementing section 12-61-727, C.R.S.
- 1.11 Final Determination: The final decision by the Director and/or the Commission to approve or deny a tax credit certificate application pursuant to section 12-61-727, C.R.S.
- 1.12 Issuance of a Tax Credit Certificate: Occurs after the Director and the Commission have made the final determination to approve the application pursuant to section 12-61-727, C.R.S. The tax credit certificate for the assigned amount is mailed to the landowner.
- 1.13 Petitioner: Any person who has been granted leave to intervene by either the Director or Commission for the purposes of implementing the provisions of Chapter 5 of these rules.
- 1.14 Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.
- 1.15 Settlement: For the purposes of implementing section 12-61-727, C.R.S., an official agreement intended to compromise on any deficiencies identified in the application and any supporting documentation, including the dollar amount of the tax credit certificate to be issued by the Division.
- 1.16 Tax Credit Cap: The total dollar amount of tax credits available for a given year as defined in section 39-22-522, C.R.S.
- * 1.17 Conservation Easement Holder: An organization that is certified by the Division under section 12-61-724, C.R.S.
- * 1.18 Phased Conservation Easement: A conservation easement that is or will be part of a series of transactions by the same landowner.

CHAPTER 2: CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

2.1. Qualifications for Certification to Hold Conservation Easements

- * The Division may conditionally certify or deny, refuse to renew, or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:
 - A. Organization
 - The conservation easement holder:
 - * 1. Meets the requirements of a qualified organization under section 12-61-724, C.R.S. and the qualifications in section 38-30.5-104(2), C.R.S., to hold a conservation easement for which a state tax credit may be claimed;
 - * 2. Has the capacity, including, but not limited to, a sufficient number of board members, staff, and/or volunteers, to accomplish the work of the organization; and
 - * 3. *Repealed (Effective 01/01/2016).*
 - * 4. If a non-governmental entity, the organization must be in good standing and have a good registration status with the Colorado Secretary of State.
 - B. Process: Conservation Easement Selection, Review and Approval
 - * 1. The conservation easement holder has and follows reasonable written policies and procedures for selecting conservation easements. These must include, but are not limited to:
 - * a. Establishing and following selection criteria to identify conservation easements with a conservation purpose as defined in section 12-61-727(1)(b), C.R.S.;
 - * b. Identifying and documenting the conservation purposes and the public benefits associated with protecting those purposes prior to accepting the conservation easement;

- * c. Working with the conservation easement grantor to identify and design the permitted uses, reserved rights, and prohibited uses for the conservation easement on an individual basis;
- * d. *Repealed (Effective 01/01/2016).*
- * e. Establishing and following a policy for phased conservation easements such that each proposed conservation easement of a phased project has an independent conservation purpose as defined in section 12-61-727(1)(b), C.R.S.; and
- * f. Advising potential conservation easement grantors that the organization does not guarantee the qualification of the conservation easement for tax credit purposes, and that they should seek their own legal, financial and tax advice.
- * 2. The conservation easement holder has and follows reasonable written policies and procedures for reviewing conservation easements. These must include, but are not limited to:
 - * a. Performing due diligence on the title, water and mineral rights on the property prior to accepting the donation.
 - * b. Ensuring any liens or encumbrances are released, subordinated, or addressed in a manner so that the conservation purposes protected by the conservation easement will be preserved in perpetuity.
 - * c. *Repealed (Effective 01/01/2016).*
 - * d. Obtaining a legal review of each transaction.
 - * e. *Repealed (Effective 01/01/2016).*
 - * f. Requesting, receiving, and reviewing a copy of the appraisal for all conservation easements for which a tax credit may be claimed pursuant to section 39-22-522, C.R.S. The review should assess, at a minimum:
 - * i. The physical and legal aspects of the property description;
 - * ii. The conservation easement terms;
 - * iii. The ownership of the property;
 - * iv. The intended use of the appraisal report; and
 - * v. Whether there are any significant errors affecting the credibility of the appraisal.
 - * g. Receiving and reviewing a baseline documentation report for the conservation easement before accepting the donation. The baseline documentation report documents the condition of the property and its conservation purposes at the time of the donation. Any updates should be documented in a separate document to be preserved in the conservation easement holder's records.
- * 3. The conservation easement holder has and follows reasonable written policies and procedures for approving conservation easements. These must include, but are not limited to:
 - * a. Declining projects that do not have conservation purpose, do not appear to have the necessary donative intent, or appear to be fraudulent;
 - * b. Having the board approve all conservation easement donations, or establishing policies delegating the authority to approve transactions to a qualified committee or other designee; and
 - * i. Such review and approval must be documented; and
 - * ii. If an entity other than the holder performs the due diligence, the holder must review the transaction and document that the project is consistent with its policies and procedures.

- * c. Providing sufficient information to the board, a qualified committee or other designee for review before a conservation easement is approved.
- * d. *Repealed (Effective 01/01/2016).*
- C. Stewardship: Practices and Capacity
 - * 1. The conservation easement holder has and follows reasonable written policies and procedures to ensure the fulfillment of the perpetual stewardship responsibilities of its conservation easements. These must include, but are not limited to:
 - * a. Having adequate capacity and resources in place to provide annual monitoring of each conservation easement held in Colorado;
 - * b. Monitoring all conservation easements on at least an annual basis, including one of the following methods: physically inspecting the property, visually inspecting the property from the air, utilizing remote sensing technology or other methods currently considered as meeting best practices for monitoring conservation easements;
 - * c. Monitoring is documented in written format, and the documentation is reviewed by either the board, a qualified committee, or other designee;
 - * d. Enforcing every conservation easement deed, including violations in a manner appropriate to the scale of the violation;
 - * e. Reviewing proposed amendments to conservation easement deeds to confirm they do not result in a net loss of conservation value and do not create an impermissible private benefit to the grantor; and
 - * f. Preserving original and duplicate copies of necessary and important records, such as deeds, baseline documentation reports, monitoring reports and appraisals, in a safe and secure manner.
 - * 2. The conservation easement holder has the necessary capacity and written policies and procedures to ensure the organization can meet its perpetual stewardship responsibilities. These must include, but are not limited to:
 - * a. If a non-governmental entity, the organization must establish dedicated funds for the stewardship and enforcement of every conservation easement held. The funds must be supported by a financial plan that:
 - * i. Ensures the longevity of the dedicated stewardship and enforcement funds;
 - * ii. Determines the amount of stewardship and enforcement funds that will be needed for the perpetual stewardship of all conservation easements; and
 - * iii. The plan may consider enforcement insurance.
 - * b. Using the dedicated stewardship and enforcement funds for stewardship- and enforcement-related purposes only, or other allowable uses only as established through written policies.
 - * c. *Repealed (Effective 01/01/2016).*
 - * d. Procuring the adequate stewardship and enforcement funds needed for all conservation easements as determined by the organization's financial plan or governmental budget as applicable.
 - * e. If a government entity, sufficient funds must be allocated in the budget to acquire, accept, steward, and enforce conservation easements through the sunset of the funding tax initiative. Funds may not necessarily be held in a dedicated stewardship fund.

D. Finance

* The conservation easement holder has and follows reasonable written fiscal policies and procedures to ensure the transparent and responsible management of its assets. These must include, but are not limited to:

1. Having the board review and/or regularly assess the organization's financial status, including the annual budget and any financial changes that have occurred; and
- * 2. Having a financial evaluation conducted on an annual basis by an independent qualified accountant who has no financial or other interest in the organization. The level of evaluation is determined by the holder's total annual operating revenue without the value of conservation easements and/or fee properties:
 - * a. Less than \$100,000 requires an annual compilation;
 - * b. \$100,000-\$500,000 requires an annual financial review; and
 - * c. More than \$500,000 requires an annual financial audit.

E. Governance

* The conservation easement holder demonstrates it has and follows reasonable written policies and procedures to ensure responsible management of its organization. These must include, but are not limited to:

- * 1. The organization has board meetings to accomplish its work;
- * 2. The organization has a written conflict of interest policy; and
- * 3. Conservation easements and financial transactions with insiders must be documented to show that there is no private inurement.

2.2. Expiration Date for Certification

Certification for a conservation easement holder expires on December 31 following the date of issuance.

2.3. Eligibility for Conservation Easement Holders After Revocation

A conservation easement holder whose certification to hold a conservation easement has been revoked is rendered ineligible to re-apply for certification until more than two years have elapsed from the date of revocation of the certification. Any re-application after such two-year period is required to be submitted on a new application.

2.4. Certification Renewal

Renewal of a conservation easement holder certification can be executed only with the renewal application provided by the Division, submitted and accompanied by the prescribed nonrefundable fee by December 31 of each year.

* 2.5. Reinstatement of Certification After Expiration

* A certification that has expired may be reinstated within one year after the date of expiration if the holder meets all the requirements in section 12-61-724, C.R.S. and rule 2.1. A complete renewal application and the prescribed nonrefundable renewal fee must be submitted to the Division for reinstatement. Certification is effective on the date reinstatement is issued and cannot be applied retroactively. Any certification that has been expired greater than one year may not be reinstated and requires a new application for certification.

2.6. Conditional Certification

A. The Director in consultation with the Commission may issue conditional certification to any conservation easement holder that does not clearly demonstrate, to the satisfaction of the Director, compliance with rule 2.1. titled Qualifications for Certification to Hold Conservation Easements. The terms and length of conditional certification will be determined by the Director and may include, but are not limited to:

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1. A requirement that the conditionally certified conservation easement holder co-hold conservation easements for which a state tax credit may be claimed with a fully certified conservation easement holder.
 2. Submission of all requested project and governance documentation in a manner prescribed by the Director.
 3. Approval of project documentation by the Director prior to the conservation easement holder accepting a new conservation easement.
 4. Any other restriction or term deemed necessary by the Director to ensure ongoing compliance with all applicable statutes and rules.
- B. Conservation easement holders granted conditional certification are subject to all fees, statutes and rules promulgated for certified conservation easement holders, including, but not limited to rule 2.1. titled Qualifications for Certification to Hold Conservation Easements, and all other rules regarding expiration and renewal of state certification.
- 2.7. Disciplinary Action
- * The Director may impose an administrative fine not to exceed two thousand five hundred dollars (\$2,500) for each separate offense, as defined in subparagraphs A-E, below; may issue a letter of admonition; may place a conservation easement holder on probation under the Director's close supervision on such terms and for such time as the Director deems appropriate; and may refuse to renew, revoke, or suspend the certification of any conservation easement holder if, after an investigation and after notice and hearing pursuant to the provisions of section 24-4-104, C.R.S., the Director determines that the conservation easement holder:
- A. Has made false or misleading statements or material omission in their application for certification;
 - B. Has misrepresented or concealed any material fact from a conservation easement grantor;
 - C. Has employed any device, scheme, or artifice with intent to defraud a conservation easement grantor or any government agency;
 - * D. Has failed to comply with any stipulation or agreement made with the Director; or
 - E. Has failed to comply with any of the certification requirements, or any lawful rule or regulation promulgated by the Director.
- 2.8. Information Request
- * A conservation easement holder must furnish to the Director such information or documentation as the Director in her/his sole discretion deems reasonably necessary for the enforcement of title 12, article 61, part 7, C.R.S. or any rules enacted by the Division. If information or documentation is required, the Director must give written notice, in detail, of the information so required and must allow an additional twenty-one (21) days from delivery to present such material, which period may be extended only upon showing of good cause. Written notice may be hand-delivered or mailed to the party entitled thereto. If hand delivered, said notice is deemed delivered upon hand delivery. If mailed, said notice must be mailed by registered or certified mail, return receipt requested, and said notice is deemed delivered the date of mailing.
- 2.9. Cease and Desist
- If the Division has reasonable cause to believe any public or private organization is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-724, C.R.S., the Director may enter an order requiring such organization to cease and desist from attempting to hold a conservation easement for which a state tax credit may be claimed.
- 2.10. Transferring Conservation Easements to Non-Certified Entities
- * A conservation easement holder must not assign or otherwise transfer any interest in a conservation easement for which a state tax credit has been or may be claimed to a non-

certified organization. An organization must not accept an assigned or otherwise transferred interest in a conservation easement for which a state tax credit has been or may be claimed if it is not certified by the Division at the time of acceptance. Governmental entities transferring a partial interest in a conservation easement to another governmental entity in accordance with an established written agreement are exempt from this prohibition on transferring a partial interest in a conservation easement. All certified organizations retaining ANY interest in the conservation easement must remain responsible for stewardship and defense of the conservation easement.

2.11. Courtesy Filing

A certified conservation easement holder must provide the following information and/or documentation to the Division within 30 days of a substantive change in:

- * A. Physical or mailing address of the organization; or
- * B. Authorized contact person.
- * C. *Repealed (Effective 01/01/2016).*

CHAPTER 3: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

- 3.1. A valid deed of conservation easement must be recorded before a claim can be submitted and a tax credit certificate issued.
- 3.2. A claim for a tax credit certificate must include the following:
 - A. A signed and completed form titled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division;
 - B. A signed and completed form titled: "Affidavit for Conservation Easement Appraisals," approved by the Colorado Board of Real Estate Appraisers; and
 - C. A copy of the recorded deed of conservation easement.
- 3.3. A taxpayer who submits a claim for a tax credit certificate to the Division must pay a nonrefundable fee as prescribed by the Division.
- 3.4. An alternative document may be substituted for the copy of the recorded deed of conservation easement as evidence a conservation easement was conveyed. The alternative document must originate from the county or counties in which the conservation easement was recorded and disclose the following:
 - A. The reception number;
 - B. A description of the property;
 - C. The date and time which the easement was recorded; and
 - D. The name of the grantor and grantee.
- 3.5. A claim for a tax credit certificate is deemed received by the Division for purposes of section 39-22-522 (2.5), C.R.S., when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any claims not received. Only after the claim is deemed to be received will the claim be applied towards the limit for the applicable year.
- 3.6. The taxpayer must sign, understand, and adhere to all disclosures listed in part three of the form titled: "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division at the time the claim is made.
- 3.7. After the tax credit certificate has been issued, the Department of Revenue has the authority to determine if the conservation easement tax credit does not comply with statutory and regulatory requirements under its jurisdiction. The Division is not responsible should the Department of

- Revenue determine a conservation easement tax credit does not comply with statutory and regulatory requirements under its jurisdiction.
- 3.8. A claim for a tax credit certificate is ineligible to receive a tax credit certificate and will not be applied towards the limit for the applicable year if it is based on a conservation easement donation where:
 - A. The appraiser associated with the claim does not hold a valid active license as a certified general appraiser as of the effective date of value in the appraisal report or the certified general appraiser has a practice restriction prohibiting that appraiser from conducting an appraisal for a conservation easement; or
 - B. The conservation easement holder is not certified by the Division at the time of the donation.
 - 3.9. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division.
 - 3.10. If more than one claim is submitted to the Division on the same day, the tax credit certificates with respect to those claims will be issued in the order that the conservation easement deeds were first recorded with the appropriate county or counties.
 - 3.11. In the event a portion of a claim does not qualify under the aggregate limit for 2011 or 2012, a second certificate will be issued for the remaining tax credit amount for the subsequent year.
 - 3.12. In the event a tax credit certificate has been issued for a conservation easement donation and the donation value increases pursuant to a revised appraisal, the taxpayer may submit a second claim to the Division for the increased amount. A second claim must be submitted to the Division in accordance with this rule and will be assigned a tax credit certificate in the order received among all other claims submitted to the Division. A second tax credit certificate for a second claim may be issued for a different year.
 - 3.13. The Division may consult with the taxpayer, the taxpayer's authorized representative, the conservation easement holder, appraiser, the Commission and the Department of Revenue regarding a claim for a tax credit certificate.
 - 3.14. In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated on or after January 1, 2011, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded prior to or during the year in which the aggregate limit was not reached.

CHAPTER 4: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2014

- 4.1. Application Submission and Review for a Tax Credit Certificate
 - A. An application is deemed complete by the Division in accordance with section 12-61-727, C.R.S., when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any application not received. Only after the application is deemed complete will the application be reviewed.
 - B. For an application to be deemed complete and a tax credit certificate to be assigned in accordance with rule 4.2., the application must include the documentation and fee as required in section 12-61-727(5), C.R.S., and also provide a signed and completed form titled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division. The fee is nonrefundable.

- C. Upon the application being deemed complete, the Director or Commission may request additional information or documentation necessary to make a final determination regarding the application.
- D. The landowner or its authorized designee to sign on behalf of the landowner must sign, understand, and adhere to all disclosures listed in the “Application for a Conservation Easement Tax Credit Certificate,” in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph D.
 - 1. If the landowner is a corporation, one of the officers or directors authorized to apply on behalf of the corporation;
 - 2. If the landowner is a partnership, one of the general partners of the partnership authorized to apply on behalf of the partnership;
 - 3. If the landowner is a joint owner, such individual authorized to apply on behalf of all joint owners;
 - 4. If the landowner is a limited liability company, one of the managers or member-managers authorized to apply on behalf of the company;
 - 5. If the landowner is a trust, one of the trustees authorized to apply on behalf of the trust;
 - 6. If the landowner is a S corporation, one of the shareholders authorized to apply on behalf of the S corporation; and
 - 7. If the landowner is an estate, one of the personal representatives authorized to apply on behalf of the estate.
- E. A tax credit certificate application is ineligible and will not be applied towards the limit for the applicable year if it is based on a conservation easement donation in which:
 - 1. The appraiser who conducted the appraisal submitted with the application does not hold a valid active license as a certified general appraiser as of the effective date of value in the appraisal report or the certified general appraiser has a practice restriction prohibiting that appraiser from conducting an appraisal for a conservation easement; or
 - 2. The conservation easement holder is not certified by the Division at the time of the donation.
- F. Submission of an application does not guarantee issuance of a tax credit certificate.
- G. The Director or Commission may consult with the landowner, the landowner’s authorized representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual necessary to assist in the review of an application for a tax credit certificate.
- H. Applications deemed completed will be reviewed in an average of 120 days in accordance with section 12-61-727, C.R.S.
- I. Any extensions of deadlines in accordance with section 12-61-727(7)(d), C.R.S., must be agreed to in writing.
- J. The Director has the authority, in accordance with section 12-61-727(9), C.R.S., to request a second appraisal if the Commission and the Director determine the original appraisal is not credible. The second appraisal must be conducted by an appraiser who holds a valid active license as a certified general appraiser with no practice restrictions prohibiting that appraiser from conducting the assignment and who is independent and not affiliated with the first appraiser. The request for a second appraisal may include a new appraisal or a USPAP Standard 3 Review with an opinion of value.

- K. The Director or the Commission may conduct settlement discussions with the landowner at any time during the application review process.
- 4.2. Assignment and Issuance of a Tax Credit Certificate
- A. Once an application is deemed complete, the dollar amount applied for in the application will be assigned to the landowner and applied toward the aggregate annual cap in the order the application is deemed complete. The amount applied toward the aggregate annual cap will not be available to any subsequent application.
 - B. If more than one application is deemed complete by the Division on the same day, the amount applied for will be applied toward the aggregate annual cap in the order that the conservation easement deeds were recorded with the respective counties.
 - C. A tax credit certificate will only be issued in whole dollar amounts.
 - D. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division.
 - E. In the event a portion of an approved tax credit certificate application cannot be issued under the available tax credit cap for any given year, a second certificate will be issued for the remaining tax credit amount for the subsequent year subject to the waitlist limit set forth in section 39-22-522 (2.5), C.R.S.
 - F. In the event that all or a portion of an approved tax credit certificate application cannot be issued under the available waitlist limit for the following calendar year, the remaining amount will be issued a tax credit certificate in the next available calendar year.
 - G. In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated on or after January 1, 2011, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded prior to or during the year in which the aggregate limit was not reached.
- 4.3. Application Denial and Appeal
- A. If an application is denied, the assigned dollar amount applied toward the aggregate annual cap for that application will not be available for use by any subsequent application.
 - B. The landowner may submit a new application if the denial of the original application is final pursuant to section 12-61-727(12), C.R.S. The new application must be submitted pursuant to rule 4.1. and will be applied toward the aggregate annual cap in the order the new application is deemed complete.
 - C. Appeal of the Director's or the Commission's denial of an application must be made in writing by either the landowner or the landowner's authorized representative. The written appeal of the denial must be sent by certified mail and postmarked within 30 days of the issuance of the denial.
- 4.4. Preliminary Advisory Opinions
- A. Prior to an application for a tax credit certificate, a landowner may request a preliminary advisory opinion regarding the issuance of a tax credit certificate. Such opinions may consider:
 - 1. The credibility of the appraisal pursuant to section 12-61-727(3)(b), C.R.S.; and/or
 - 2. Whether a conservation easement donation for which a tax credit is to be claimed is a qualified conservation contribution pursuant to section 12-61-727(3)(d), C.R.S.
 - B. A landowner requesting such an opinion must do so in a form titled: "Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion," approved

- by the Division. An application for a preliminary advisory opinion is deemed complete by the Division when the application and all other required documents are signed and initialed, properly filled out and date-stamped by the Division upon receipt. The Division is not responsible for any applications not received. Only after the application is deemed complete will the application be reviewed.
- C. The landowner or its authorized designee to sign on behalf of the landowner must sign, understand, and adhere to all disclosures listed in the “Application for a Conservation Easement Tax Credit Certificate Preliminary Advisory Opinion,” in the form approved by the Division at the time the application is made. The signatory for the application must be authorized as described in this sub paragraph C.
1. If the landowner is a corporation, one of the officers or directors authorized to apply on behalf of the corporation;
 2. If the landowner is a partnership, one of the general partners of the partnership authorized to apply on behalf of the partnership;
 3. If the landowner is a joint owner, such individual authorized to apply on behalf of all joint owners;
 4. If the landowner is a limited liability company, one of the managers or member-managers authorized to apply on behalf of the company;
 5. If the landowner is a trust, one of the trustees authorized to apply on behalf of the trust;
 6. If the landowner is a S corporation, one of the shareholders authorized to apply on behalf of the S corporation; and
 7. If the landowner is an estate, one of the personal representatives authorized to apply on behalf of the estate.
- D. A landowner requesting a preliminary advisory opinion is not an applicant for a tax credit certificate. The issuance of a favorable preliminary advisory opinion does not guarantee the approval of a tax credit certificate application or the issuance of the tax credit certificate. The issuance of either a favorable or nonfavorable preliminary advisory opinion by the Division will not act to prohibit a landowner from submitting an application for a tax credit certificate.
- E. To be deemed complete, a request for a preliminary advisory opinion regarding the credibility of the appraisal must include:
1. The draft or final appraisal to be considered; and
 2. Any other relevant information or documentation the Director deems necessary to make a preliminary opinion regarding the appraisal; and
 3. The required fee as prescribed by the Division. The fee is nonrefundable.
- F. To be deemed complete, a request for a preliminary advisory opinion regarding the qualification of the conservation contribution must include:
1. The draft or recorded deed of conservation easement to be considered;
 2. Documentation supporting the conservation purpose of the easement;
 3. Any other relevant information or documentation the Commission deems necessary to make a preliminary opinion regarding the qualification of the conservation contribution; and
 4. The required fee as prescribed by the Division. The fee is nonrefundable.
- G. The Director and the Commission will review applications for preliminary advisory opinions and issue either a favorable or nonfavorable opinion within an average of 120 days.

- H. A nonfavorable opinion will include a description of any potential deficiencies identified by the Director or the Commission in writing.
- I. The issuance of a preliminary advisory opinion will not limit the authority of the Director or the Commission to make a final determination to approve or deny an application for a tax credit certificate contrary to the preliminary advisory opinion; limit the Director's authority to investigate a conservation easement holder; or limit the Board of Real Estate Appraisers' authority to investigate an appraiser.
- J. The Director or Commission may consult with the landowner, the landowner's authorized representative, the conservation easement holder, the appraiser, the Department of Revenue and any other entity or individual necessary in assisting in the review of an application for a preliminary advisory opinion.
- K. Preliminary advisory opinions are not appealable.

CHAPTER 5: DECLARATORY ORDERS

5.1. Petition for an Order

Any person may petition the Director or the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or of any rule or order of either the Director or the Commission.

- A. A petitioner may petition the Director for a declaratory order based upon his/her authority and responsibility described in section 12-61-727(3)(b) and (c), C.R.S.
- B. A petitioner may petition the Commission for a declaratory order based upon its authority and responsibility described in section 12-61-727(3)(d), C.R.S.

5.2. Determination Whether to Rule

Without prior notice to the petitioner, the Director in his/her discretion or the Commission in its discretion will determine whether to rule upon any such petition. If the Director or the Commission determines to not rule upon such a petition, the Director or the Commission will issue a written order disposing of the same, stating therein the reasons for such action. A copy of such order will be provided to the petitioner.

5.3. Considerations Whether to Rule

In determining whether to rule upon a petition filed pursuant to this rule, the Director or the Commission may consider the following matters, among others:

- A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Director or the Commission;
- B. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or application currently pending before the Director or the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Director or the Commission, which matter or application will be specified by the Director or the Commission;
- C. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or application currently pending before the Director or the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Director or the Commission, which matter or application will be specified by the Director or the Commission and in which petitioner may intervene;

- D. Whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;
- E. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

5.4. Petition Contents

Any petition filed pursuant to this rule must set forth the following:

- A. The name and address of the petitioner and whether the petitioner is certified pursuant to section 12-61-724, C.R.S.
- B. The statute, rule or order to which the petition relates.
- C. A concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- D. A concise statement of the legal authorities if any, and such other reasons upon which the petitioner relies.
- E. A concise statement of the declaratory order sought by the petitioner.

5.5. Procedures to Rule

If the Director or the Commission determines to rule on the petition, the following procedures will apply.

- A. The Director or the Commission may rule upon the petition without a hearing. In such a case:
 - 1. The Director or the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;
 - 2. The petitioner may be requested to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;
 - 3. The petitioner may be required to file a written brief, memorandum or statement of position based on the facts set forth in petition and any amendment;
 - 4. Any ruling will apply only to the extent of the facts presented in the petition and any amendment to the petition;
 - 5. The Director or the Commission may take administrative notice of facts pursuant to the administrative procedure act (C.R.S., section 24-4-105(8)) and utilize their experience, technical competence and specialized knowledge in the disposition of the petition;
 - 6. If the Director or Commission rules upon the petition without a hearing, a written order, stating therein the basis for the order will issued. A copy of such order will promptly be transmitted to the petitioner.
- B. The Director or the Commission may, in their discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing will set forth, to the extent known, the factual or other matters into which the Director or the Commission intends to inquire and whether the hearing will be evidentiary or non-evidentiary in nature. For the purpose of such a hearing, to the extent necessary, the petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Director or the Commission to consider.

5.6. Parties to Proceedings

The parties to any proceeding pursuant to this rule will be the Director or the Commission and the petitioner. Any other person may seek leave of the Director or the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director or Commission. A petition to intervene must set forth the same matters as required by rule 5.4.

5.7. Orders Subject to Judicial Review

Any declaratory order or other order disposing of a petition pursuant to this rule will constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S. as amended.

CHAPTER 6: EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR THE COMMISSION

6.1. Written Form, Service and Filing Requirements

- A. All designations of record, requests, exceptions and responsive pleadings (“pleadings”) must be in written form, mailed with a certificate of mailing or hand-delivered to the Director or the Commission.
- B. All pleadings must be received by the Director or the Commission by 5:00 p.m. on the date the filing is due. A pleading is considered filed upon receipt by the Director or the Commission. These rules do not provide for any additional time for service by mail.
- C. Any pleadings must be served on the opposing party by mail or by hand delivery on the date which the pleadings are filed with the Director or the Commission.
- D. All pleadings must be filed with the Director or the Commission and not with the Office of Administrative Courts. Any designations of record, requests, exceptions or responsive pleadings filed in error with the Office of Administrative Courts will not be considered. The Director’s and the Commission’s address is:

Division of Real Estate
1560 Broadway, Suite 925
Denver, Colorado 80202

6.2. Authority to Review

- A. The Director hereby preserves the Director’s option to initiate a review of an initial decision on his/her own motion pursuant to section 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the (30) thirty day period after service of the initial decision upon the parties.
- B. The Commission hereby preserves the Commission’s option to initiate a review of an initial decision on its own motion pursuant to section 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the (30) thirty day period after service of the initial decision upon the parties without requiring a vote of each case.
- C. This option to review will apply regardless of whether a party files exceptions to the initial decision.

6.3. Designation of Record and Transcripts

- A. Any party seeking to reverse or modify the initial decision of the administrative law judge must file with the Director or the Commission a designation of the relevant parts of the record for review (“designation of record”). Designations of record must be filed with the Director or the Commission within (20) twenty days of the date on which the Director or the Commission mails the initial decision to the parties’ address of record with the Director or the Commission.

- B. Within (10) ten days after a party's designation of record is due, any other party may file a supplemental designation of record requesting inclusion of additional parts of the record.
 - C. Even if no party files a designation of record, the record must include the following:
 - 1. All pleadings;
 - 2. All applications presented or considered during the hearing;
 - 3. All documentary or other exhibits admitted into evidence;
 - 4. All documentary or other exhibits presented or considered during the hearing;
 - 5. All matters officially noticed;
 - 6. Any findings of fact and conclusions of law proposed by any party; and
 - 7. Any written brief filed.
 - D. Transcripts: Transcripts will not be deemed part of a designation of record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:
 - 1. The designation of the record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
 - 2. Any party who includes a transcript or a portion thereof as part of the designation of record must order the transcript or relevant portions by the date on which the designation of record must be filed (within (20) twenty days of the date on which the Director or the Commission mails the initial decision to the parties).
 - 3. When ordering the transcript, the party must request a court reporter or transcribing service to prepare the transcript within (30) thirty days. The party must timely pay the necessary fees to obtain and file with the Director or the Commission an original transcription and one copy within (30) thirty days.
 - 4. The party ordering the transcript must direct the court report or transcribing service to complete and file with the Director or the Commission the transcript and one copy of the transcript within (30) thirty days.
 - 5. If a party designates a portion of the transcript, the opposing party may also file a supplemental designation of record, in which the opposing party may designate additional portions of the transcript.
 - 6. An opposing party filing a supplemental designation of record designating additional portions of the transcript must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Director or the Commission the transcript and one copy of the transcript within (30) thirty days.
 - 7. Transcripts that are ordered and not filed with the Director or the Commission in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Director or the Commission.
- 6.4. Filing of Exceptions and Responsive Pleadings.
- A. Any party wishing to file exceptions must adhere to the following timelines:
 - 1. If no transcripts are ordered, exceptions are due within (30) thirty days from the date on which the Director or the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.

2. If transcripts are ordered by either party, the following procedure will apply. Upon receipt of all transcripts identified in all designations of record and supplemental designations of record, the Director or the Commission will mail notification to the parties stating that the transcripts have been received by the Director or the Commission. Exceptions are due within (30) thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.
 - B. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings must be filed within (10) ten days of the date on which the exceptions were filed with the Director or the Commission. No other pleadings will be considered except for good cause shown.
 - C. It is within the sole discretion of the Director or the Commission to grant an extension of time to file exceptions or responsive pleadings. The Director or the Commission may delegate the discretion to grant such an extension of time to their designee.
- 6.5. Request for Oral Argument.
- A. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.
 - B. It is within the sole discretion of the Director or the Commission to grant or deny a request for oral argument. If oral argument is granted, both parties will have the opportunity to participate.
 - C. If a request for oral argument is granted, each side will be permitted (10) ten minutes of oral argument unless such time is extended by the Director or the Commission or their designee.

VI. Conservation Easement Commission Statements

Position Statement – CE 1 – Holding Conservation Easements (Effective Date: February 28, 2011)

Section 1. Scope and Purpose

Section 2. Applicability

Section 3. Definitions

Section 4. Position Statement

Section 5. Issuance Date

Section 1. Scope and Purpose

The Colorado Division of Real Estate finds that a position statement regarding section 12-61-724 (8), C.R.S. is necessary to provide clarification to conservation easement holders. Section 12-61-724 (8), C.R.S., requires entities that hold a conservation easement for which a state tax credit is claimed to be certified by the Division of Real Estate at the time of conveyance.

After consulting with industry leaders, The Department of Revenue, and the Conservation Easement Oversight Commission, the Division has learned that there is uncertainty regarding the application of this requirement when entities co-hold conservation easements for which a state tax credit is claimed. The purpose of this position statement is to clarify uncertainties regarding if all co-holders of a conservation easement for which a state tax credit is claimed must to be certified by the Division of Real Estate at the time the easement is conveyed.

Section 2. Applicability

This position statement concerns all holders of a conservation easement for which a state tax credit is claimed.

Section 3. Definitions

“Co-holder” means a nonprofit entity or government entity that is part of a group of two or more nonprofit entities and/or government entities that;

- a. are individually named as a grantee of a conservation easement,
- b. are individually named as a potential future substitute or replacement grantee of a conservation easement, and/or
- c. would automatically become a grantee of a conservation easement at some future date.

Section 4. Position Statement – CE 1

The Division’s position is that Section 12-61-724 (8), C.R.S requires that any organization acting as a co- holder of a conservation easement for which a state tax credit is claimed pursuant to Section 39-22-522 C.R.S., must be certified by the Division of Real Estate at the time the conservation easement is conveyed. Certification is not required to co-hold a conservation easement that does not involve a state tax credit.

Section 5. Issuance Date

The Division of Real Estate issues this position statement Monday, February 28, 2011.

Position Statement – CE 2 – Tax Credit Certificate Eligibility for Donations to Federal Agencies (Effective Date: March 21, 2011)

Section 1. Scope and Purpose

Section 2. Applicability

Section 3. Definitions

Section 4. Position Statement

Section 5. Issuance Date

Section 1. Scope and Purpose

The Colorado Division of Real Estate finds that a position statement regarding section 12-61-726, C.R.S., section 39-22-522 (2.5), C.R.S. and Division Rule 3.8(B) is necessary to provide clarification as to the eligibility of conservation easement donations to federal agencies to receive a tax credit certificate.

After consulting with industry leaders, the Division has learned that there is uncertainty regarding the application of the certification requirement to federal agencies when an application for a tax credit certificate is made. The certification requirement in section 12-61-724 C.R.S. does not apply to federal agencies and conservation easement donations made to federal agencies are eligible to receive a state tax pursuant to section 39-22-522 C.R.S. Rule 3.8(B) does not usurp statute by creating a requirement that federal agencies be certified by the Division in order for a conservation easement donation to that entity to be eligible for a state tax credit during years in which a tax credit certificate is required.

The purpose of this position statement is to clarify uncertainties regarding if a conservation easement donated to a federal agency or a conservation easement co-held by a federal agency is eligible to receive a tax credit certificate.

Section 2. Applicability

This position statement concerns all applicants for a tax credit certificate who donate a conservation easement to a federal agency or where a federal agency is a co-holder of the conservation easement.

Section 3. Definitions

“Co-holder” means a nonprofit entity or government entity that is part of a group of two or more nonprofit entities and/or government entities that;

- a. are individually named as a grantee of a conservation easement,
- b. are individually named as a potential future substitute or replacement grantee of a conservation easement, and/or
- c. would automatically become a grantee of a conservation easement at some future date.

Section 4. Position Statement – CE 2

It is the Division's position that a conservation easement is eligible to receive a conservation easement tax credit certificate if:

1. a federal agency holds the conservation easement,
2. a federal agency is a co-holder with another federal agency and/or an organization or organizations certified by the Division, and
3. all other applicable requirements are satisfied.

Section 5. Issuance Date

The Division of Real Estate issues this position statement Monday, March 21, 2011.

