

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4 CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
May 3, 2018

**RULE CHAPTER 4. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER
JANUARY 1, 2014**

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled Conservation Easements is Part 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

House Bills 18-1290 and 18-1291 repeal the authority of the Division of Real Estate ("Division") and the Division Director in the oversight and administration of the Conservation Easement Tax Credit Program. As a result, the existing rules need to be repealed to be in compliance with the legislative directives in House Bills 18-1290 and 1291.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose is to repeal the requirements and procedures regarding the submission and review of applications for a preliminary advisory opinion and a tax credit certificate for conservation easements donated on or after January 1, 2014.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material is showed by ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.colorado.gov/dre.

~~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 or fails to meet all of the education and experience requirements established in accordance with section 12-61-704(1)(k), C.R.S. 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 in a timely manner.~~
- ~~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.~~

A hearing on the above subject matter will be held on Thursday, May 03, 2018, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 1:00 p.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking

hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.