

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 5. DECLARATORY ORDERS

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 As a result, the existing rules need to be repealed to be in compliance with the legislative directives in House Bills 18-1290 and 1291.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 to petition for a declaratory order.

PROPOSED NEW, AMENDED AND REPEALED RULES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 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.~~

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.