

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 6. EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE
DIRECTOR OR THE COMMISSION**

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 As a result, the existing rules need to be repealed to be in compliance with the legislative directives in House Bills 18-1290 and 1291.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 exceptions and the review of initial decisions by the Director or the Commission.

PROPOSED NEW, AMENDED AND REPEALED RULES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 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.~~

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.