

Pre-Approval Conservation Easement Tax Credit Certificates

Applications Submitted in Calendar Year 2015



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

Conservation Easement Program

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Introduction

This 2015 annual report, as required at § 12-61-727, (13)(A), C.R.S., includes aggregate information on tax credit applications deemed complete after December 31, 2014 and before January 1, 2016. It is current as of March 30, 2017.

Senate Bill 13-221 went into effect on January 1, 2014 to ensure that conservation easement donations were examined sufficiently for compliance with law and regulation before a tax credit certificate was issued. Accordingly, a conservation easement tax credit certificate (TCC) application and review process was established. Prior to 2014, the conservation easement program was administered elsewhere.

The Conservation Easement Oversight Commission (Commission) and the Director of the Division (Director) approve or deny an application for a TCC. The Commission assesses whether the conservation easement donation associated with the application is a “qualified conservation contribution” under section 170(h) of the Internal Revenue Code. The Director determines whether the donation is supported with a credible appraisal prepared by a qualified appraiser. Applications that meet both requirements are approved, and applicants receive TCCs.

Division staff assists the Commission and Director by reviewing each application for compliance with relevant state and federal law, along with associated rules and regulations. Specifically, the Division staff reviews the appraisal, the conservation easement deed, and other aspects of the donation using objective compliance checklists.

The Division also administers the tax credit cap, an annual aggregate limit on the total dollar amount of conservation easement tax credits available for a given year. For calendar year 2014 and thereafter, the statutory tax credit cap is \$45 million.

In general, the amount of credit a taxpayer can use is limited to their net tax liability. If a taxpayer’s conservation easement tax credit exceeds their income tax liability, the excess credit may be carried forward for up to 20 years after the first year it was eligible to be claimed. TCCs may be transferred, in full or in part, to other Colorado income taxpayers and, in TABOR surplus years, the state issues refunds to TCC holders.

This means that the Division may continue to receive tax credit applications for conservation easements recorded in prior years, so long as the cap for that prior year has not been met. For example, in 2015, the Division received one tax credit application for a conservation easement contributed in 2012. However, section 12-61-727, (17), C.R.S. states that this report shall not address tax credits claimed or used prior to January 1, 2014.

In 2015, the Division received 11 applications for conservation easements contributed in 2014, and 17 for easement contributed in 2015. The Division settled five matters where a TCC application received in 2015 had been denied due to an appraisal having been found not credible. On average, the amount of the tax credit issued was 47% of the amount of the tax credit cap that originally had been encumbered.

Statute requires that the Division complete its review of TCC applications, on average, within 120 days, either by issuing the TCC, sending the landowner a notice identifying potential deficiencies with the TCC application (called a Notice of Potential Concerns, or NOPC), or denying the application outright.

The annual report is required to contain the following aggregate information for 2015:

- I. Total number of TCC applications received, approved and denied, along with average processing times;
- II. For approved applications:
 - A. Total acreage under easement summarized by allowable conservation purpose;
 - B. Total appraised value of the easements;
 - C. Total donated value of the easements;
 - D. Total dollar amount of tax credits issued;

The annual report also may include additional easement-specific information that would otherwise be publicly available. The report not only includes information about the number of TCC applications received, approved and denied, as well as those where a NOPC has been issued. The report shows, by county, the number of acres protected by easements associated with applications deemed complete in 2015. In addition, the report includes information about the optional Preliminary Advisory Opinions (PAO).

I. Tax Credit Certificate Applications Received in 2015

In 2015, the Division received and deemed complete 28 TCC applications for conservation easement donations made in three separate calendar years:

<u>Year of Donation</u>	<u>No. of 2015 Applications</u>
2014	11
2015	17
Total Received CY2015	28

Application Processing Time

Of the 28 applications deemed complete in 2015, the average processing to complete a review, either by issuing a TCC or a NOPC, as of the effective date of this report, was 164 days.

Processing Time to Send a Notice of Potential Concerns

The Division issued 12 NOPC to applicants with an average processing time of 203 days. Each applicant was issued a TCC between December, 2015 and March, 2017.

Processing Time to Issue a Tax Credit Certificate

The average processing time to approve an application, without first issuing a NOPC, and to then issue a tax credit certificate was 143 days.

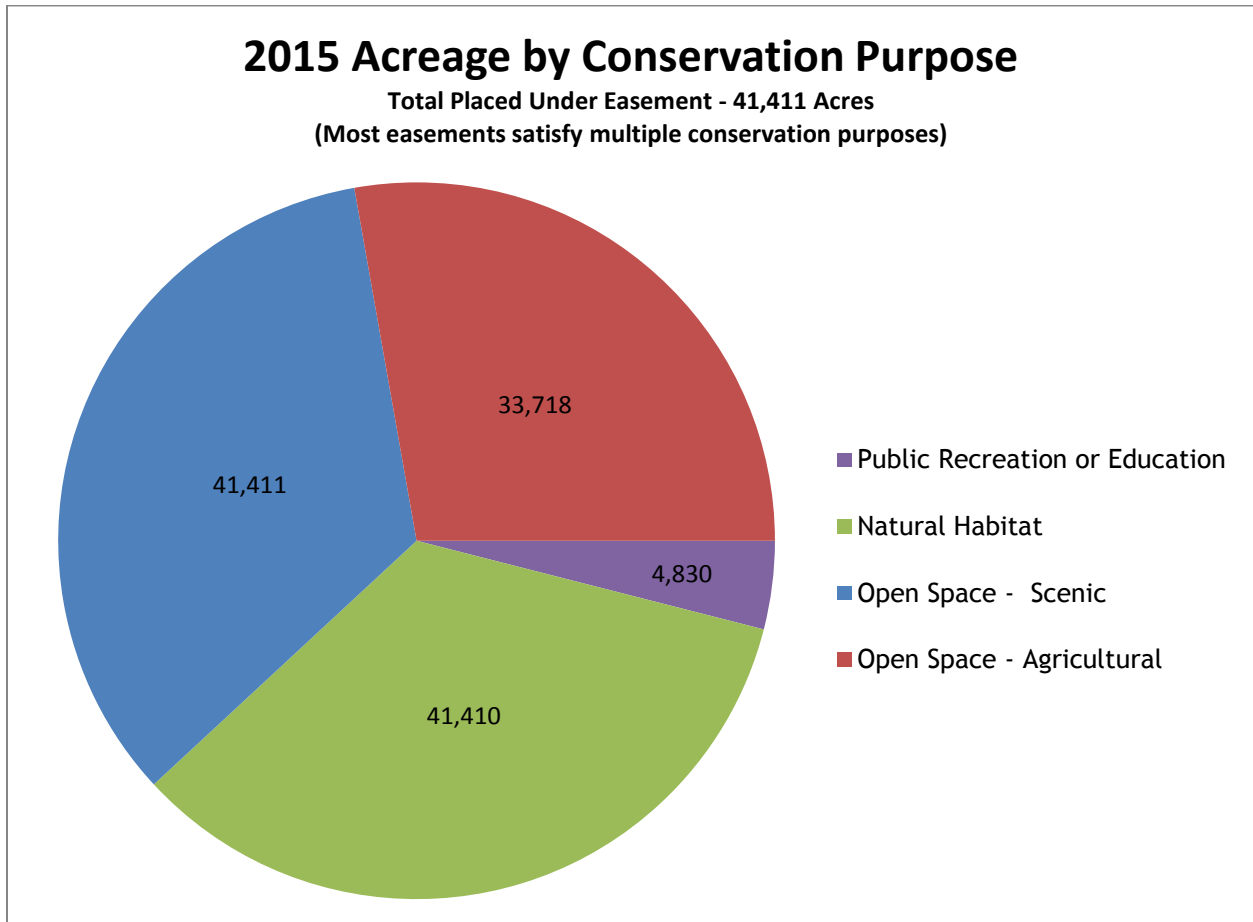
Processing Time to Deny an Application

No applications received in 2015 were denied in 2015. One, however, was denied in 2016 and issued a TCC in 2017.

II. For Applications Received and Approved in 2015

Total acreage under easement summarized by allowable conservation purpose

Since most easements satisfy more than one conservation purpose, the gross acreage, 121,369 acres, exceeds the net land area encumbered by easements, 41,411 acres:



The above chart shows the distribution of conservation purposes for applications received and approved in 2015. Section 170(h) of the Internal Revenue Code (IRC) sets forth the four recognized conservation purposes. To qualify for a TCC, the conservation easement must satisfy at least one of these purposes:

1. Land area for outdoor recreation by, or the education of, the general public (4,830 acres)
2. Relatively natural habitat for fish, wildlife, or plants, or similar ecosystem (41,410 acres)
3. Open space,
 - a. for scenic enjoyment (41,411 acres)
 - b. agriculture (33,718 acres)
4. Historically important land area or a certified historic structure (none)

Easement Valuation and Amount of Tax Credits Issued

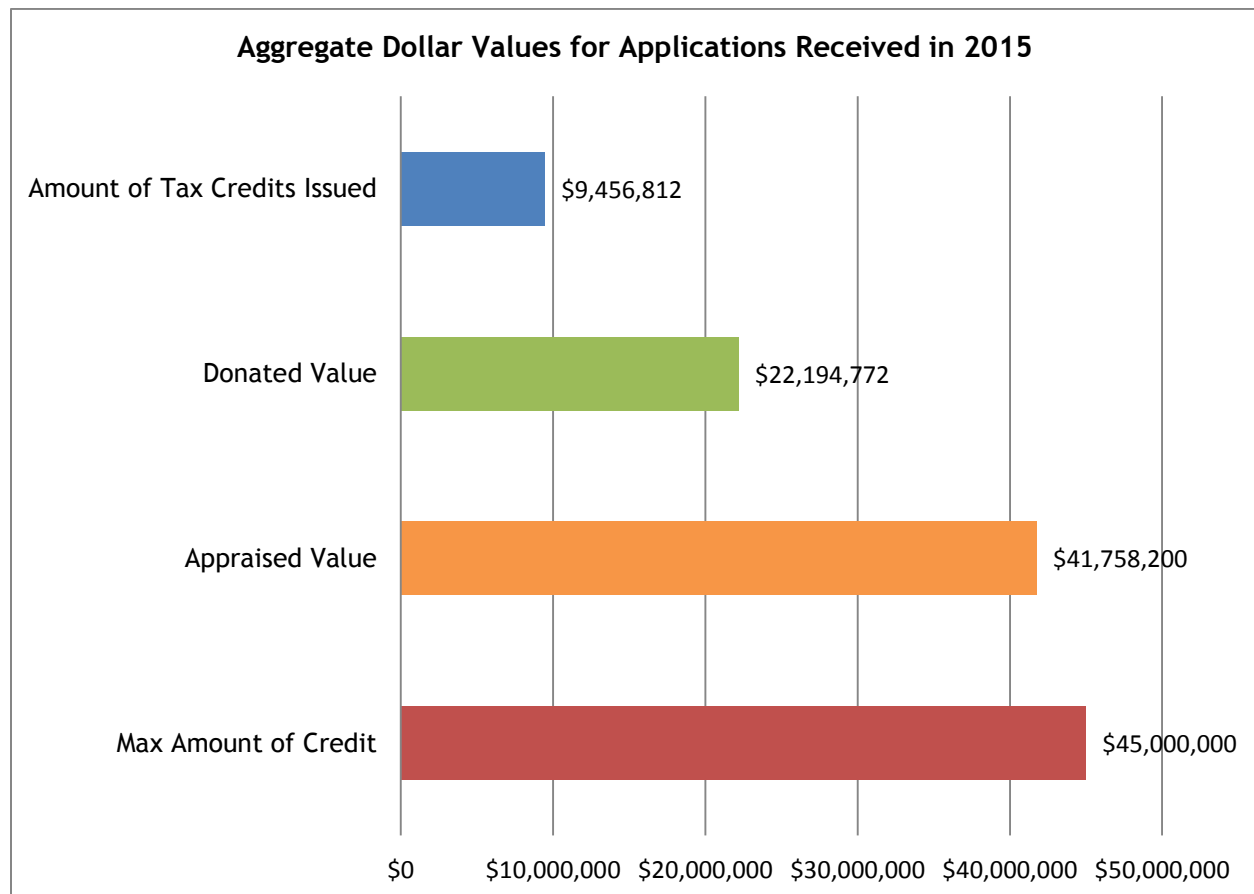
The qualified appraisal submitted with each TCC application sets forth the appraiser's opinion of the fair market value of the conservation easement. This value opinion is the basis for calculating the amount of the applicant's Colorado income tax credit.

State and federal statutes allows landowners to

- donate outright an easement to a certified holder (full donation),
- donate a portion of the easement's value and receive consideration, in cash or other consideration, for a portion of its value (bargain sale), or
- be paid or receive other consideration for the full value of the easement.

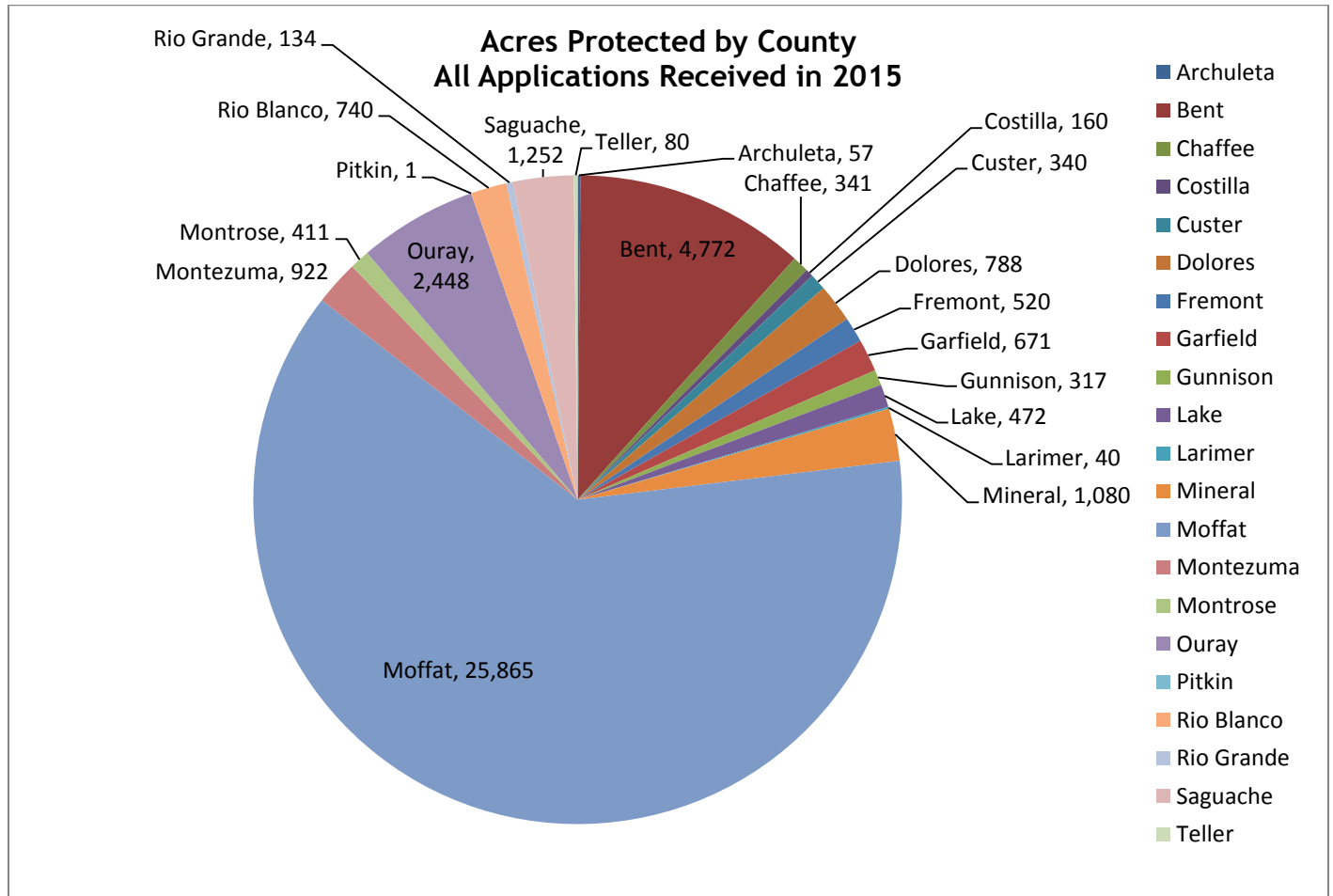
For a conservation easement to qualify for a TCC, it must have a charitable component, either an outright donation or a bargain sale. Easements where the landowner receives full value in exchange for the easement do not qualify for a Colorado income tax credit.

For bargain sale easements, an applicant must deduct the amount of its proceeds from the appraised value of the easement before calculating the allowed amount of the tax credit. In addition, applicants who have donated an easement within one year of the date when they purchased the property are subject to other limitations on the amount of appraised easement value that can be used to calculate the tax credit.



Additional Information Otherwise Publicly Available

Easements received in 2015 TCC applications encumbered properties in 21 of Colorado's 64 counties. The breakdown of acres per county is shown below. These data reflect all TCC applications received in 2015.



Preliminary Advisory Opinions

The Division also offers an optional Preliminary Advisory Opinion (PAO) for a conservation easement tax credit certificate. A PAO informs an applicant as to whether the anticipated donation is likely to be approved for a tax credit certificate. PAOs may be requested for a proposed donation's conservation purpose and/or appraisal. In 2015, the Division received 32 PAO applications. Two were for conservation purpose only, 20 were for appraisal only, and five applicants (totaling ten applications) sought opinions for both.

The division issued 28 PAOs, 11 being unfavorable and 12 being favorable (appraisals). Five conservation purpose PAOs were favorable, and none were unfavorable. However, four applicants withdrew their PAO applications (two conservation purpose and two appraisals) and were allowed to credit the application fee to a TCC application.

For more information regarding conservation easement tax credit certificates, please contact the Division at 303-894-2166.