

## Pre-Approval Conservation Easement Tax Credit Certificates

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Applications Submitted in Calendar Year 2016



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Real Estate

Conservation Easement Program

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## Introduction

This 2016 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, 2015 and before January 1, 2017. 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 of Real Estate (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 2016, the Division received two tax credit applications for conservation easements contributed in 2014, along with 20 for easements contributed in 2015, and 13 for easements contributed in 2016.

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 2016:

- 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 includes information about the number of TCC applications received, approved and denied, as well as those where a NOPC has been issued. The report also shows, by county, the number of acres protected by easements associated with applications deemed complete in 2016. In addition, the report includes information about the optional Preliminary Advisory Opinions (PAO).

#### I. Tax Credit Certificate Applications Received in 2016

In 2016, the Division received and deemed complete 35 TCC applications for conservation easement donations made in three separate years:

<u>Year of Easement Donation</u>	<u>No. of Applications received in 2016</u>
2014	2
2015	20
2016	<u>13</u>
Total TCC Applications Received CY2016	35

#### Application Processing Time

Of the 35 applications deemed complete in 2016, the average processing time for all completed reviews, as of the effective date of this report, is 124 days. This accounts for fourteen applications, or eleven TCCs and three NOPCs.

Processing times for the other 21 pending applications will not be known until those reviews have been completed.

#### Processing Time to Send a Notice of Potential Concerns

As noted, the Division has issued three NOPCs for TCC applications received in 2016. Two took 176 days and one took 247 days, for an average of 200 days. Division staff worked extensively with the two appraisers to resolve questions prior to issuing these NOPCs.

#### Processing Time to Issue a Tax Credit Certificate

For applications received in 2016, the average processing time to issue a tax credit certificate was 98 days.

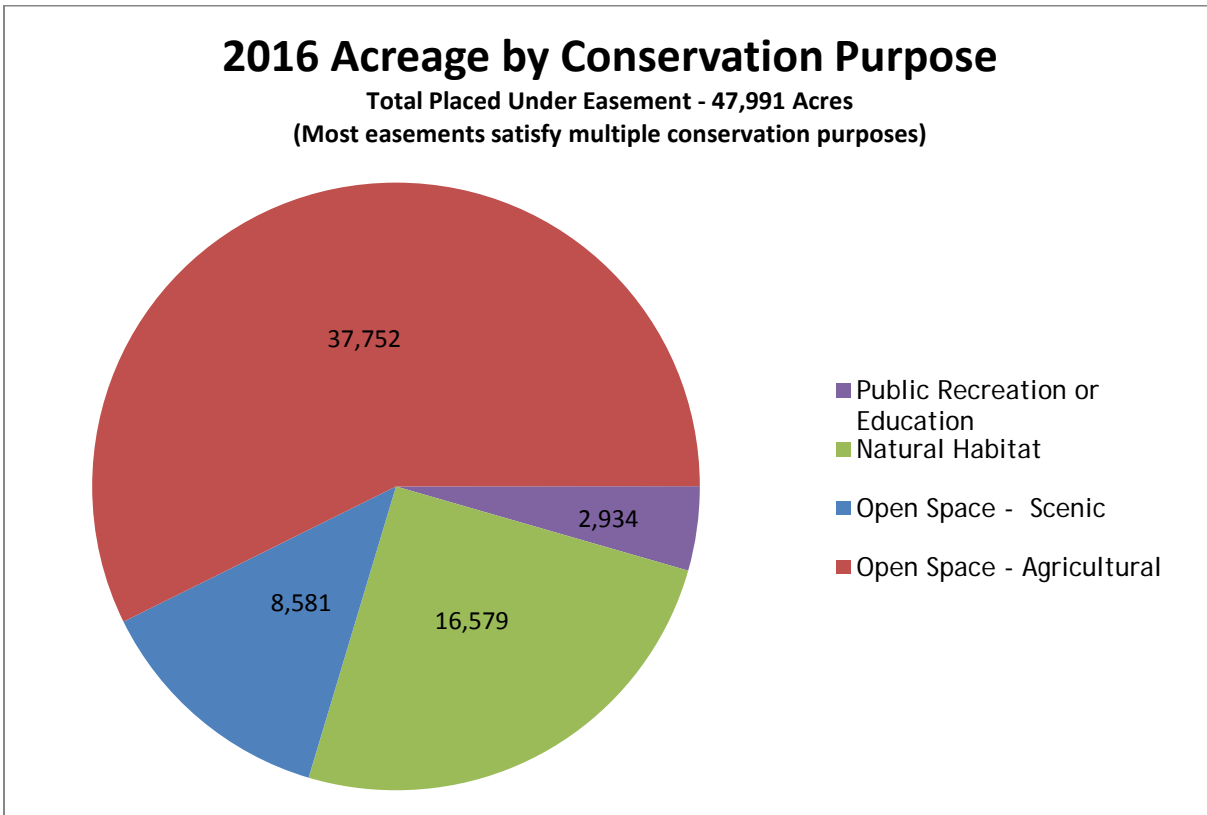
#### Processing Time to Deny an Application

No applications received in 2016 were denied in 2016. However, the Division denied a 2014 TCC application in August, 2016. This denial followed issuance of a NOPC in August, 2015. Again, Division staff worked extensively with the appraiser to resolve this matter prior to denying the application.

## II. For Applications Received and Approved in 2016

### Total acreage under easement summarized by allowable conservation purpose

Since most easements satisfy more than one conservation purpose, the gross acreage, 65,846 acres, exceeds the 47,991 acres of net land area encumbered by easements:



The above chart shows the distribution of conservation purposes for applications received and approved in 2016. 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 (2,934 acres)
2. Relatively natural habitat for fish, wildlife, or plants, or similar ecosystem (16,579 acres)
3. Open space,
  - a. for scenic enjoyment (8,581 acres)
  - b. agriculture (37,752 acres)
4. Historically important land area or a certified historic structure (none)

### Easement Valuation and Amount of Tax Credits Issued

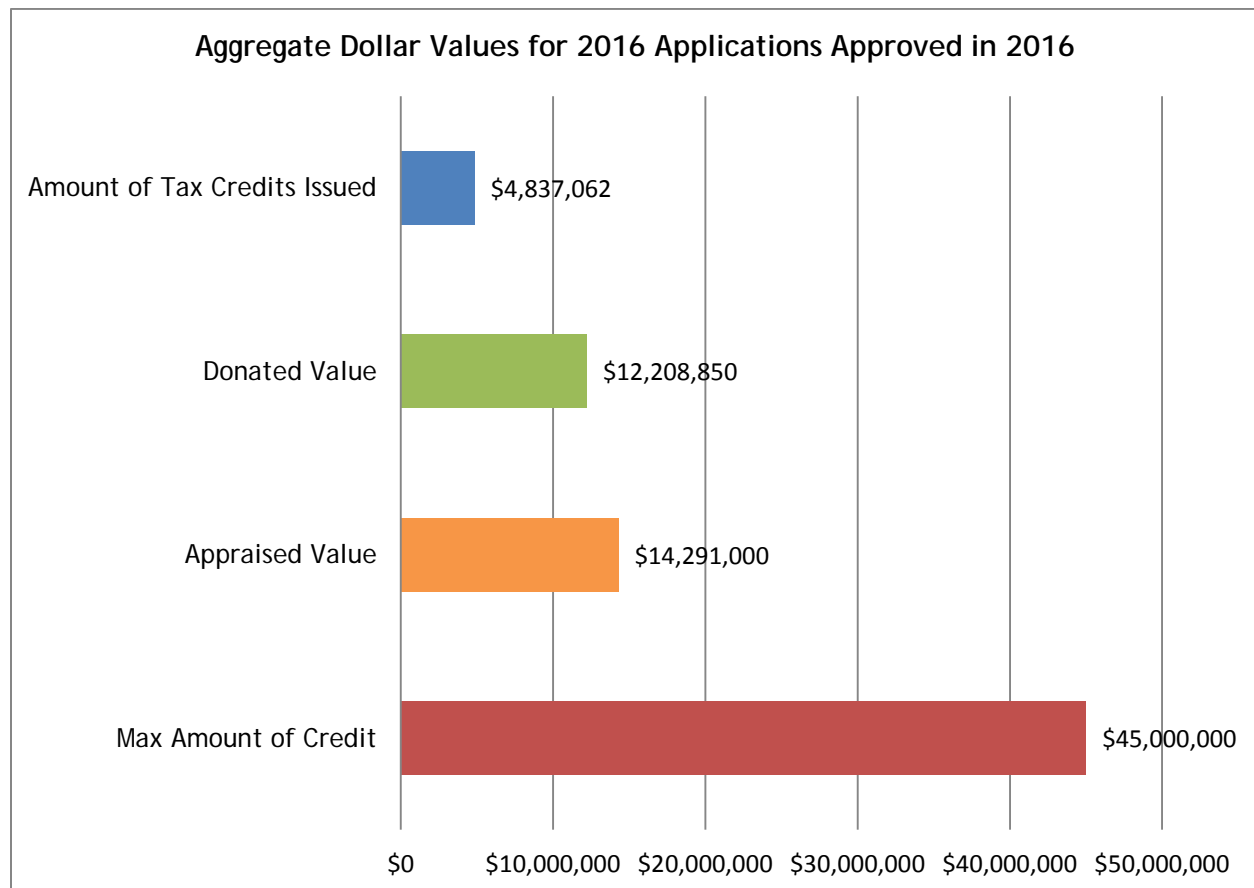
The qualified appraisal submitted with each TCC application sets forth the appraiser's opinion of the fair market value of the conservation easement. This value opinion is the basis for calculating the amount of the applicant's Colorado income tax credit.

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.

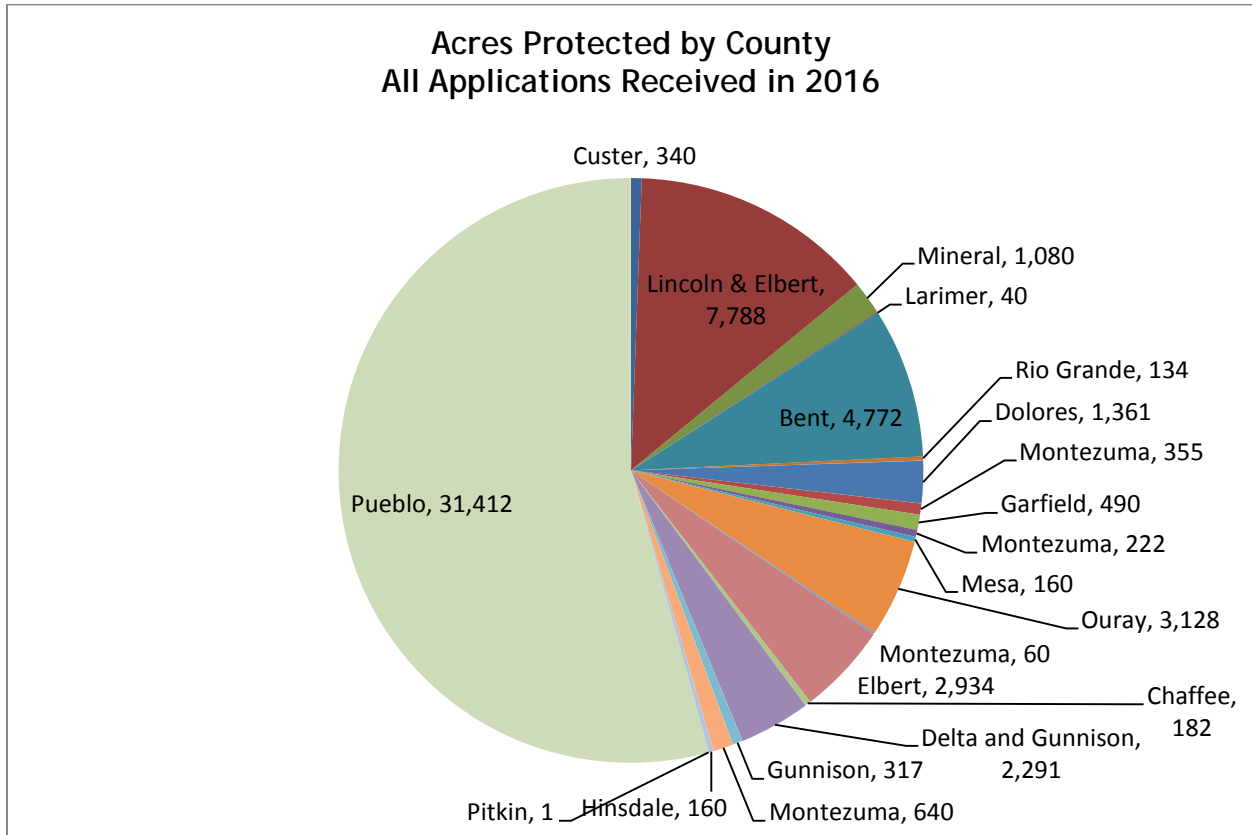
For a conservation easement to qualify for a TCC, it must have a charitable component, either a full donation or a bargain sale. Easements where the landowner receives full value in exchange for the easement do not qualify for a Colorado income tax credit.

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 2016 TCC applications encumbered properties in 22 of Colorado’s 64 counties. The breakdown of acres per county is shown below. These data reflect all TCC applications received in 2016, whether completed or pending.



**Preliminary Advisory Opinions**

Pursuant to statute, the Division also offers an optional Preliminary Advisory Opinion (PAO). A PAO informs an applicant as to whether the anticipated donation is likely to be approved for a TCC. PAOs may be requested for a proposed donation’s conservation purpose and/or appraisal. In 2016, the Division received 32 PAOs; one was for conservation purpose only, one was for both appraisal and conservation purpose, and 29 were for appraisals only.

As of the effective date of this report, the division has issued 20 PAOs. Nine were unfavorable and eleven were favorable (appraisals). Both conservation purpose PAOs were favorable.

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