

Pre-Approval Conservation Easement Tax Credit Certificates

Applications Submitted in Calendar Year 2017



COLORADO

**Department of
Regulatory Agencies**

Division of Real Estate

Conservation Easement Program

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Introduction

This 2017 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, 2016 and before January 1, 2018. It is current as of January 19, 2018.

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 (TCC) was issued. Accordingly, a conservation easement 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 also may be transferred, in full or in part, to other Colorado income taxpayers and, in TABOR surplus years, the state must issue 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 2017, while the Division did not receive any TCC applications for conservation easements contributed in 2014, it received three applications for easements contributed in 2015, 17 for easements contributed in 2016, and 15 for easements contributed in 2017.

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 Request for Additional Information, or RFAI)¹, or denying the application outright.

¹ Since program inception, this statutory notice has had different names. Irrespective, it offers the landowner 90 days, not counting extensions, to provide the Division with more information about the application.

This annual report is required to contain the following aggregate information for 2017:

- 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 RFAI has been issued. The report also shows, by county, the number of acres protected by easements associated with applications deemed complete in 2017. In addition, the report includes information about the optional Preliminary Advisory Opinions (PAO).

I. Tax Credit Certificate Applications Received in 2017

In 2017, the Division received and deemed complete 35 TCC applications for conservation easement donations made in three separate calendar years:

<u>Year of Easement Donation</u>	<u>No. of Applications received in 2017</u>
2014	0
2015	3
2016	17
2017	15
Total TCC Applications Received in CY2017	35

Application Processing Times and Outcomes

Of the 35 TCC applications deemed complete in 2017, final determinations for 30 have been completed; this includes three RFAIs and 25 TCCs. Four applications were denied in 2017, two of which were deemed complete in 2017. The average processing time for these 30 applications, as of the effective date of this report, is 62 days. Processing times for the other five pending applications will not be known until those examinations have been completed.

- Requests for Additional Information - As noted, the Division issued three RFAIs for TCC applications received in 2017. Prior to issuance of each RFAI, these applications were in process for 81, 83 and 139 days, respectively, for an average of 101 days. Prior to issuing these three RFAIs, staff worked extensively with the two different appraisers to resolve questions. Ultimately, all three landowners received TCCs.

- Issuance of Tax Credit Certificates - For applications deemed complete in 2017, the average processing time to issue a TCC was 76 days.

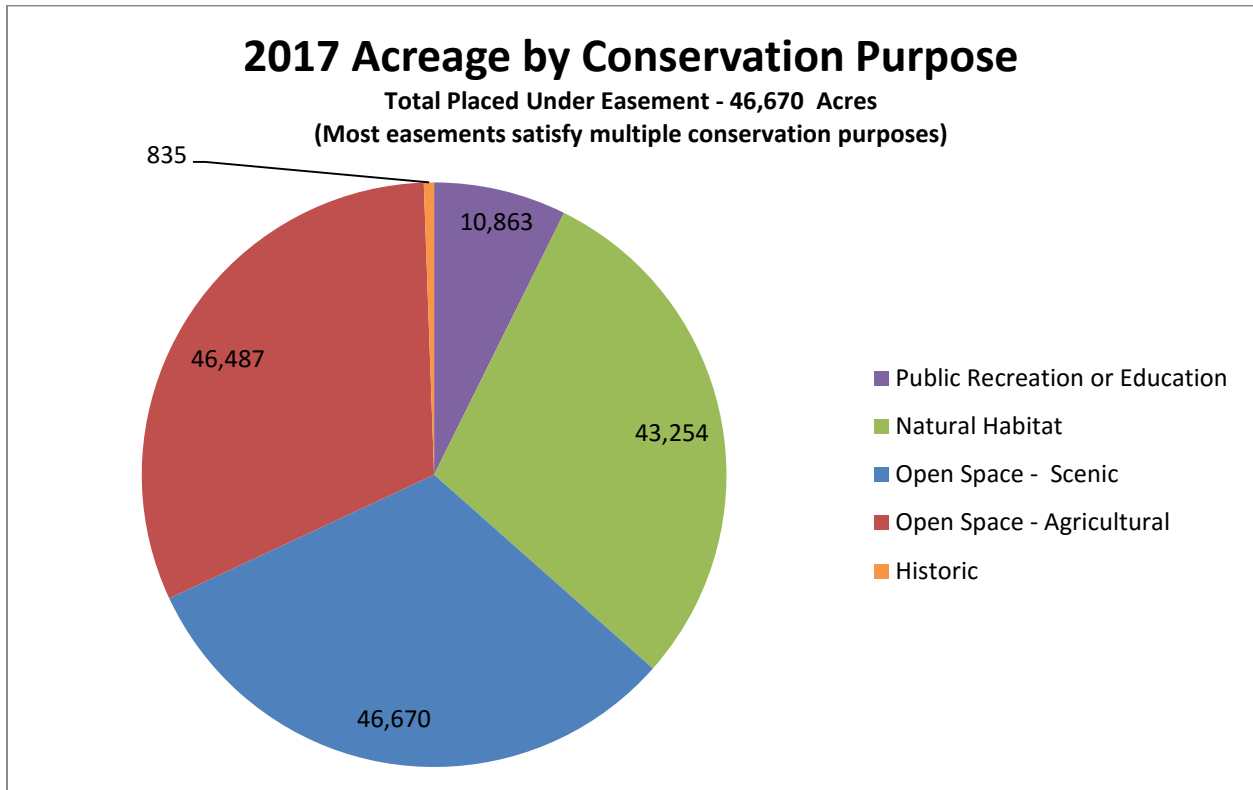
Denial of Applications - As noted, four applications were denied. The Director denied three applications in 2017. One application was denied because the appraisal was not credible. Two applications were denied because the appraisers failed to complete the mandatory

education as required. The Commission denied on application because the transaction failed to satisfy the charitable intent requirement of Section 170 of the Internal Revenue Code

II. For Applications Received and Approved in 2017

Total acreage under easement summarized by allowable conservation purpose

Since most easements satisfy more than one conservation purpose, the gross acreage, 147,274 acres, exceeds the 46,670 acres of net land area encumbered by easements:



The above chart shows the distribution of conservation purposes for applications received and approved in 2017. 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 (10,863 acres)
2. Relatively natural habitat for fish, wildlife, or plants, or similar ecosystem (43,254 acres)
3. Open space,
 - a. for scenic enjoyment (46,670 acres)
 - b. agriculture (46,487 acres)
4. Historically important land area or a certified historic structure (835)

Easement Valuation and Amount of Tax Credits Issued

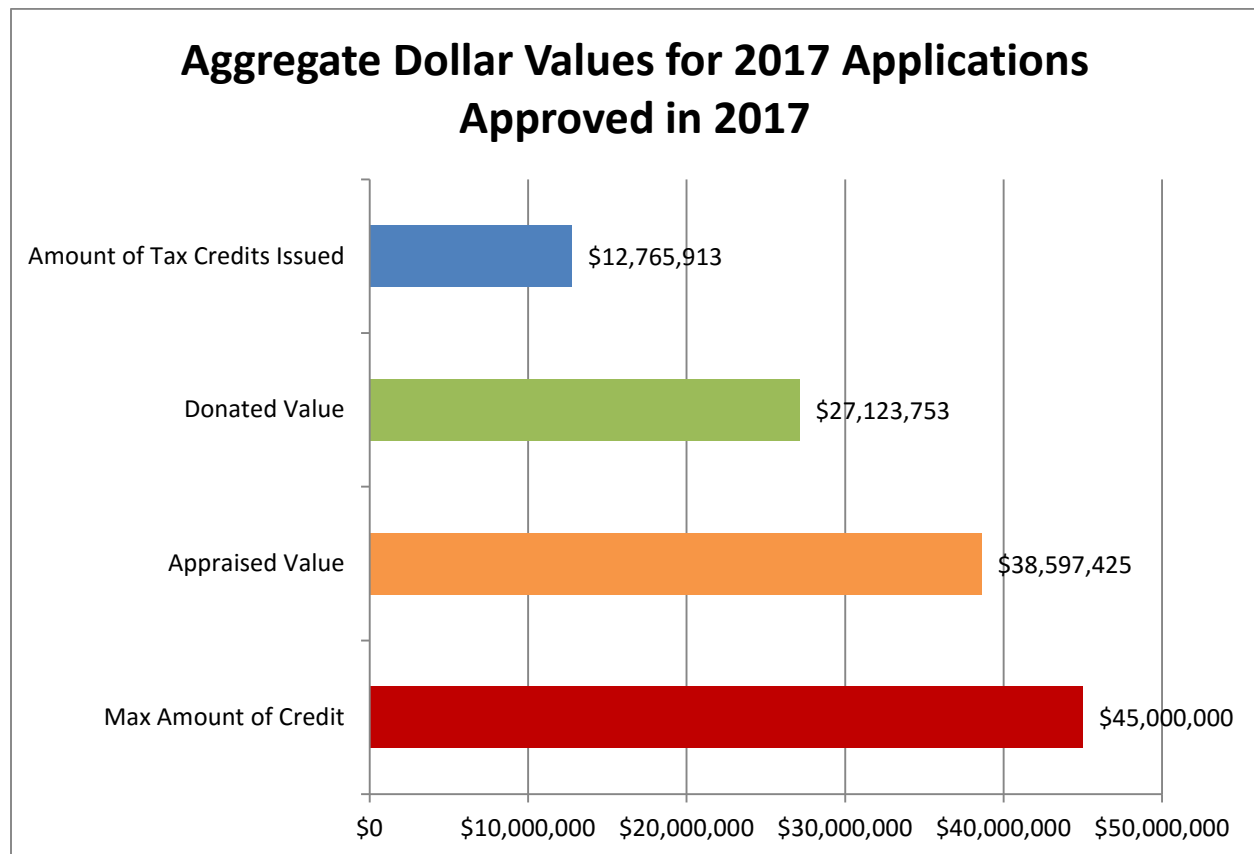
The qualified appraisal submitted with each TCC application sets forth the appraiser's opinion of the fair market value of the conservation easement. This value opinion is the basis for calculating the amount of the applicant's Colorado income tax credit.

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.

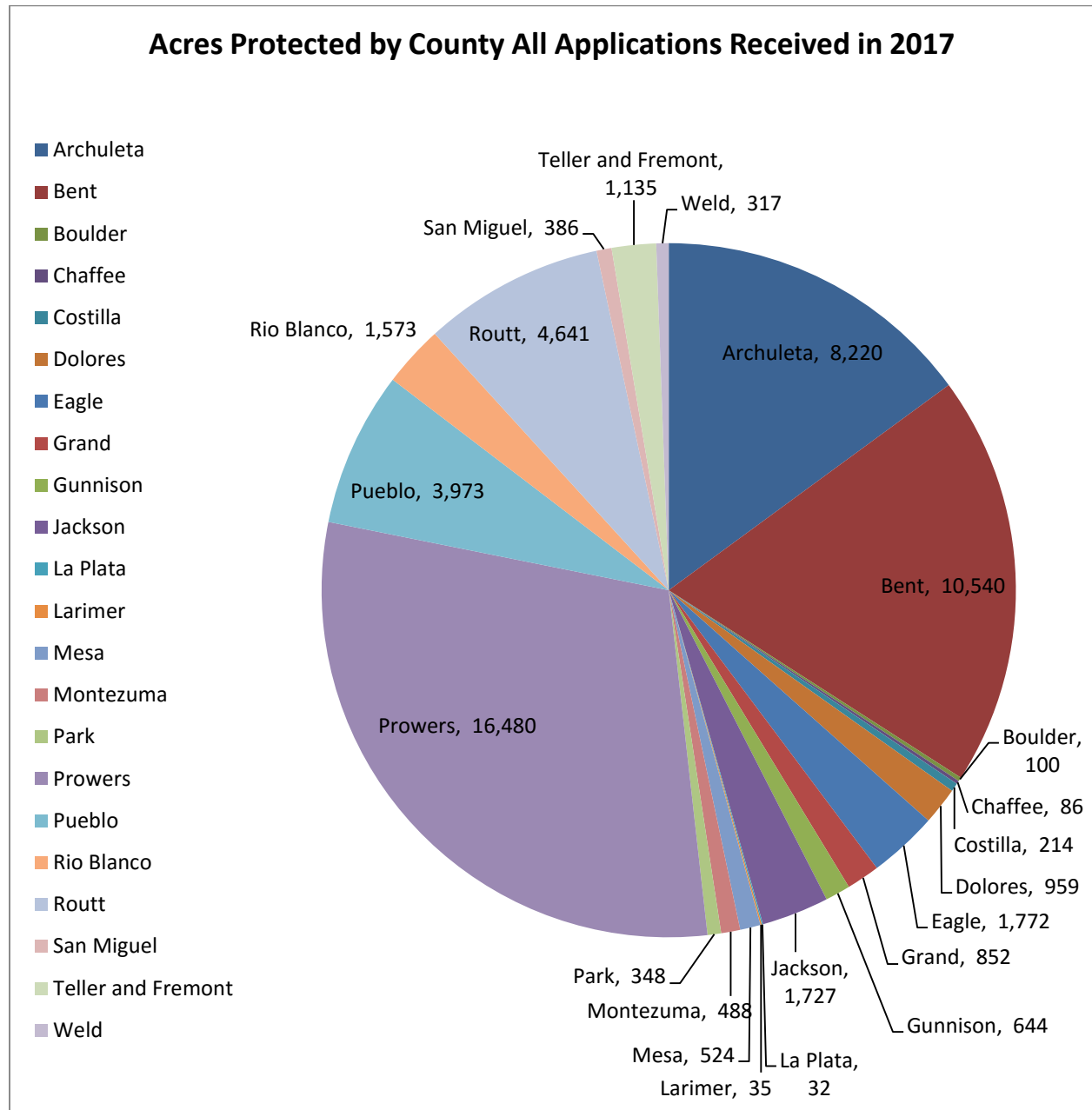
For a conservation easement to qualify for a TCC, it must have a charitable component, either a full donation or a bargain sale. Easements where the landowner receives full value in exchange for the easement do not qualify for a Colorado income tax credit.

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 2017 TCC applications encumbered properties in 23 of Colorado's 64 counties. The breakdown of acres per county is shown below. These data reflect all TCC applications received in 2017, whether completed or pending.



Preliminary Advisory Opinions

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. The Division issues "favorable" or "unfavorable" opinions.

In 2017, the Division received two PAOs for appraisals, and issued one favorable and one unfavorable opinion. The landowner submitting the application resulting in the favorable PAO subsequently filed for, and received, a TCC (for income tax year 2016). The landowner receiving the unfavorable PAO has not submitted a TCC application.

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