

# Annual Report

Conservation Easement Tax Credit Certificates

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Calendar Year 2019

Effective as of January 14, 2020



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Conservation



## Introduction

The Colorado Division of Conservation protects the public and preserves natural resources. The Division ensures the soundness of state income tax credits issued to landowners who donate conservation easements

- by determining the credibility of appraisals,
- by assuring that the deeds of conservation easement protect conservation purposes in perpetuity, and
- by certifying non-profit and government organizations to hold conservation easements where their donors will seek a tax credit.

## History

Between 2000 and the end of 2008, the conservation easement income tax credit program was administered by the Department of Revenue (DOR). Between then and the end of 2013, parts of the program's administration remained within the DOR, and the Division of Real Estate (DRE) within the Department of Regulatory Agencies (DORA) began to assume a larger role. From January 1, 2014 through May 29, 2018, the program was administered entirely within the DRE, although the DOR continued its pre-2014 examination and enforcement activities.

On May 29, 2018, House Bill 18-1291 was signed into law. It created the new Division of Conservation (Division) within DORA, and moved administration of the tax credit, certification of conservation easement holders, and the Conservation Easement Oversight Commission (Commission) out of the DRE into this new division. This was done to keep a firewall between the disciplinary activity in the DRE and the professional evaluation activity in the Division. It also allowed landowners to exercise their private property rights while protecting taxpayers from the fraud and abuse that existed in the tax credit program prior to 2009.

This 2019 annual report, as required at section 12-15-106(13)(a), C.R.S., includes aggregate information about conservation easement tax credit applications deemed complete between January 1, 2019 and December 31, 2019.

## Program Process

The Commission and the Division Director approve or deny applications for the state income tax credit for conservation easements. The Commission has the authority and responsibility to determine whether the conservation easement donation associated with the application is a "qualified conservation contribution" under section 170(h) of the Internal Revenue Code and any federal regulations promulgated in connection with this section. 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 tax credit certificates are issued to the applicant.

Division staff assists the Commission and the Director by reviewing each application for compliance with relevant state statute, federal law, and associated rules and regulations.

Specifically, the Division staff examine the appraisal, the conservation easement deed, and other due diligence associated with the donation. The examinations are structured according to 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 the income tax credit a taxpayer (landowner) can use is limited to the landowner's net tax liability. If the amount of conservation easement tax credit exceeds the landowner's state 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. 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 2019, the Division received applications for easements contributed to certified holders in years dating back to 2015.

Conservation easement tax credit certificates also may be transferred, in full or in part, to other Colorado income tax payers and, in TABOR surplus years, the state must issue refunds to tax credit certificate holders.

Pursuant to sections 12-15-106(7)(a) and (10), the Division must complete its review of all tax credit applications within 120 days, either by issuing the tax credit or sending the landowner a notice identifying potential deficiencies with the application (a Request for Additional Information, or RFAI<sup>1</sup>).

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<sup>1</sup> Since the program began in 2014, this statutory notice has had different names. Irrespective, it offers the landowner 60 days, not counting extensions, to provide the Division with more information about the application. Often, this information consists of a new appraisal. Less often, it consists of a correction to the deed of conservation easement. This process allows the landowner sufficient time to clarify or correct the tax credit application.

## Report contents

Section 12-15-106(13)(c), C.R.S., requires the annual report contain the following aggregate information:

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

As provided for in statute, the annual report also may include additional easement-specific information that would otherwise be publicly available. Accordingly, this report includes information about the number of tax credit applications received, approved and denied, as well as information about optional preliminary advisory opinions.

The report also shows, by county, the number of acres protected by easements associated with applications deemed complete and approved in 2019. Prior year annual reports included information about applications where a RFAI had been issued, but none were issued in 2019.

HB 18-1291 authorized the Director, after consultation with the Commission, “to share publicly-available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement...”. The following year, HB 19-1264 defined “publicly available information” to mean any document recorded by a county clerk and recorder or other information readily available to the public (see section 12-15-106(13)(c), C.R.S.). The same legislation identified the third-party vendor to be the Colorado Ownership, Management, and Protection (COMaP) service administered by the Colorado Natural Heritage Program at Colorado State University.

As of the effective date of this annual report, the Division has consulted with the Commission to determine that the publicly available information to be shared with a third-party vendor shall consist of recorded deeds of conservation easement. The Division is collecting and retaining such information for conservation easements that generated a tax credit between January 1, 2011 and today. The information will be shared with the third-party vendor once the task of collating of prior year information is complete.

## Tax Credit Certificate Applications Received, Approved and Denied, and Average Processing Times

The Division received and deemed complete 41 tax credit applications related to conservation easement donations made in four separate calendar years, representing a 2.4% decrease in 2019 applications over 2018:

<u>Year of Conservation Easement Donation</u>	<u>No. of Applications received in 2018</u>	<u>No. of Applications received in 2019</u>
2015	5	1
2016	3	N/A
2017	20	2
2018	14	23
2019	N/A	15
Total tax credit applications received	42	41

Of the 41 applications deemed complete in 2019, examinations of 27 are complete and the applicants have received state income tax credits. The 14 remaining applications were received in the last four months of the year and are pending review. Processing times for these four will not be known until the examinations have been completed. As of the effective date of this report, no pending review has exceeded the 120 day limit.

No applications were issued an RFAI in 2019, and no applications were denied in 2019.

The average time to complete the examination of the 27 completed applications is 118 days. However, in six instances, the credits were issued after the statutorily required period of 120 days.<sup>2</sup> The 120-day deadline may be “extended upon mutual agreement between the Director and the Commission and the landowner [applicant]” as provided for at section 12-15-106(7)(d), C.R.S.

## Total Acreage Under Easement Summarized by Allowable Conservation Purpose

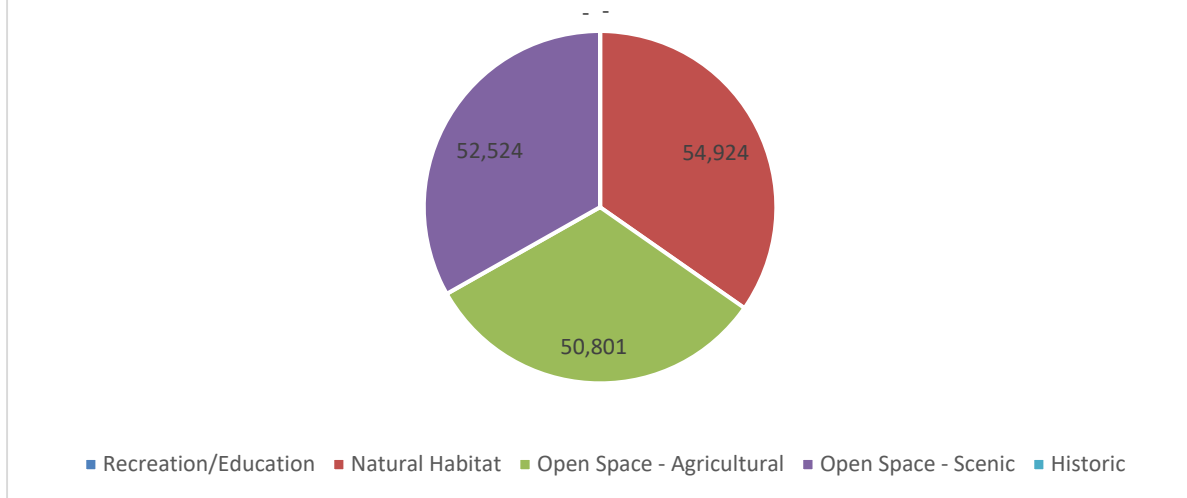
(For the 27 approved applications for which tax credits have been issued, as of the effective date of this report)

Since most easements satisfy more than one conservation purpose, the gross encumbered acreage exceeds the 54,924 acres of net land area encumbered by easements:

<sup>2</sup> Following separation of the tax credit program from the DRE, staffing decreased. While at DRE, program staff consisted of one program manager, two to four staff examiners, occasional independent appraisal examiner contractors, and general administrative support. When the Division was created on May 30, 2018 and until September 4, 2019, staff consisted of just two persons, the Director and one application examiner. Since the retirement of the former Director on September 4, 2019 and continuing through the effective date of this report, staff consists of just one person, the Acting Director.

## 2019 Acreage by Conservation Purpose

Total Placed Under Easement - 54,924 acres  
(Most easements satisfy multiple conservation purposes)



Section 170(h) of the Internal Revenue Code (IRC) requires that tax-purposed conservation easements comprise restrictions granted in perpetuity exclusively for conservation purposes. The allowable conservation purposes are defined in four broad categories:

- Preservation of land area for outdoor recreation by, or the education of, the general public (*no such conservation easements in 2019*)
- Protection of relatively natural habitat of fish, wildlife, or plants, or similar ecosystem (*54,924 acres*)
- Preservation of open space,
  - for scenic enjoyment (*52,524 acres*)
  - farmland and forest land - agriculture (*50,801 acres*)
- Preservation of an historically important land area or a certified historic structure (*no such conservation easements in 2019*)

To qualify for a Colorado state income tax credit, the conservation easement must satisfy at least one of these purposes.

## Easement Valuation and Amount of Tax Credits Issued

(For the 27 approved applications for which tax credits have been issued, as of the effective date of this report)

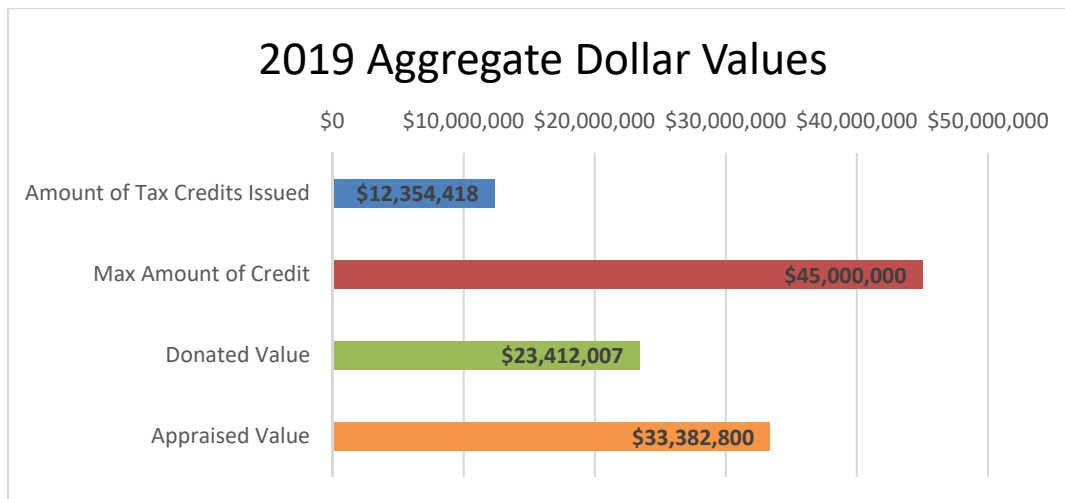
The qualified appraisal submitted with each tax credit application sets forth the appraiser's opinion of the fair market value of the conservation easement. This value opinion is the basis for calculating the amount of the applicant's Colorado income tax credit.

State and federal statutes allows landowners to

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

For a conservation easement to qualify for a tax credit, it must have a charitable component, either a full donation or a bargain sale; this is sometimes referred to as donative intent.<sup>3</sup> Easements where a 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.



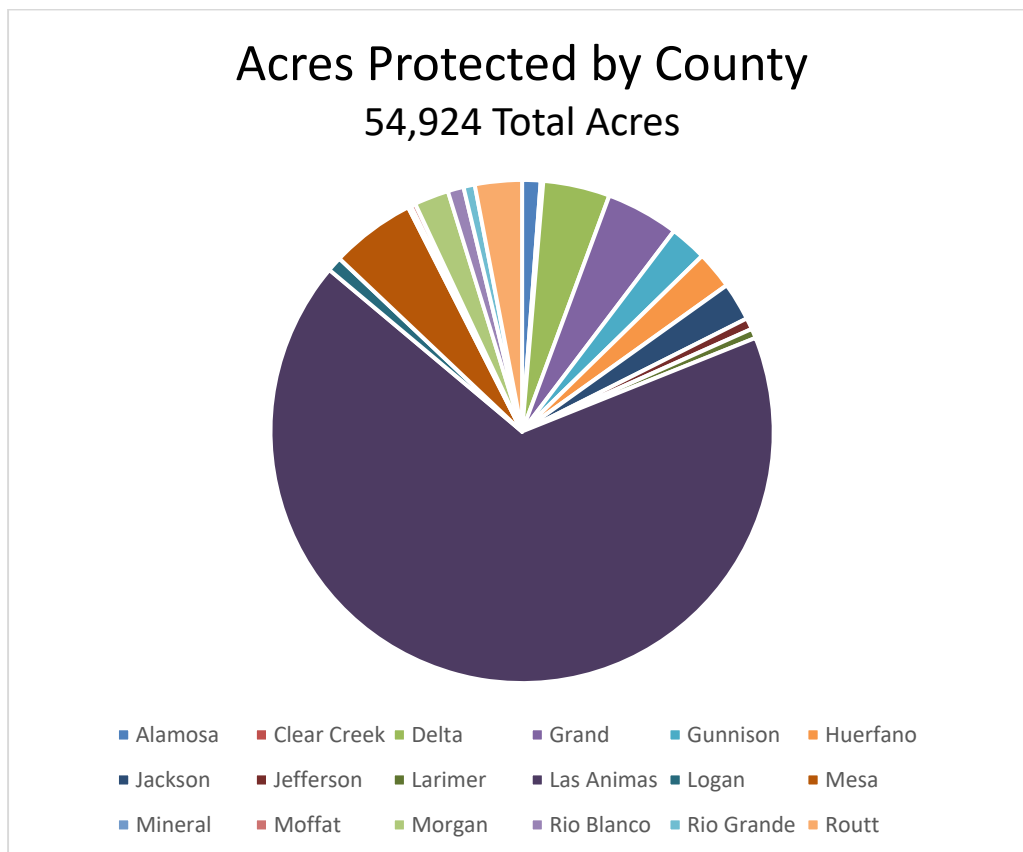
<sup>3</sup> Section 12-15-106(1)(a) requires compliance with section 170(h) of the Internal Revenue Code and any federal regulations promulgated in connection with this code section. The landowner's "qualified appraisal" must comply with section 170(f) of the Internal Revenue code and any federal regulations promulgated in connection with this code section. Section 39-22-522(2)(B), C.R.S. specifies that a "...credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state."

### Additional Information Otherwise Publicly Available

(For the 27 approved applications for which tax credits have been issued, as of the effective date of this report)

Conservation easements encumbered properties in 18 of Colorado’s 64 counties<sup>4</sup>:

Alamosa	652 acres	Las Animas	36,900 acres
Clear Creek	89 acres	Logan	526 acres
Delta	2,356 acres	Mesa	2,992 acres
Grand	2,570 acres	Mineral	110 acres
Gunnison	1,307 acres	Moffat	164 acres
Huerfano	1,333 acres	Morgan	1,218 acres
Jackson	1,350 acres	Rio Blanco	562 acres
Jefferson	404 acres	Rio Grande	397 acres
Larimer	335 acres	Routt	1,659 acres



<sup>4</sup> Conservation easements that encumber properties that span county lines have been allocated equally between counties.

### **Preliminary Advisory Opinions**

The Division also offers an optional preliminary advisory opinion (PAO), informing an applicant whether the anticipated donation is likely to be approved for a tax credit. PAOs may be requested for a proposed donation's conservation purpose, appraisal, or other relevant aspect of the transaction. Pursuant to section 12-15-106(14)(b), C.R.S., the Division, Director and Commission shall issue "favorable" or "unfavorable" opinions.

In 2019, the Division received one application for a PAO of a proposed donation's conservation purpose. The anticipated donation was reviewed by the Commission and the Division issued a favorable opinion based on the findings of the Commission.

No applications were received for a proposed donation's appraisal or other relevant aspect of the transaction.

*For more information regarding conservation easement tax credit certificates, please contact the Division at 303-894-2305.*