



**Dora**  
Department of Regulatory Agencies

Division of Real Estate

# **The Colorado Division of Real Estate Conservation Easements**

Presented By  
**Harold Ovsowitz**  
**Compliance Investigator**

# What are Conservation Easements?

- ⦿ Voluntary legal agreement between landowner and qualified organization
- ⦿ Permanently restrict use of land
- ⦿ Preserve land and water rights
- ⦿ Protect Conservation Values



# What are Tax Credits?

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- Used against state taxes dollar for dollar
- Similar to a 'gift certificate'
- More valuable than deductions

# How do Conservation Easements Work?

- ◉ Run with the land
- ◉ Donated development rights have monetary value
- ◉ Landowner Rights:
  - Remains owner of property
  - Manages property
  - Retains all rights not conveyed in easement
  - Public access not generally required
  - Land may be sold, leased or mortgaged
- ◉ Grantee's Rights and Obligations:
  - Monitoring obligations
  - Enforces restrictions of easement over time
  - Has all rights granted in the easement

# How Conservation Easement Income Tax Credits are Valued (cont'd)

- ◎ Appraisal Requirements, cont'd
  - Comparable Sales must be used to determine value
    - Look at properties similar to easement
    - Use 'Before and After Valuation'

Example:

\$1,000,000 'Before'

- \$600,000 'After'

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= \$400,000 'Conservation Easement Value'

(if full donation, this is also the 'Donation Value')

# IRS VALUATION REGS

- ⦿ General Rule is the *Before and After Approach*
- ⦿ Conservation Easement value is the difference between
  - ⦿ value of property before easement and
  - ⦿ value of property after easement

# IRS VALUATION REGS

- ⦿ Example: 100-acre parcel worth \$200,000 in unrestricted state
- ⦿ After easement, parcel is worth \$80,000.
- ⦿ Easement is valued at \$120,000

# How Conservation Easement Income Tax Credits are Valued (cont'd)

## ◎ Bargain Sales

- When a portion of the conservation easement value is purchased or grant-funded
- Affect donation value

### EXAMPLE

\$400,000	Conservation easement value
- <u>\$100,000</u>	Purchase price for conservation easement
= \$300,000	Donation value

# How Conservation Easement Tax Credit are Valued (cont'd)

- ⦿ Tax credits are calculated based on donation value
- ⦿ FORMULA = 50% of donation value, up to a total credit of \$375,000
- ⦿ EXAMPLE
  - \$400,000 donation value
  - $50\% \times \$400,000 = \underline{\$200,000}$  tax credit



# IRS VALUATION REGS

- **Rule for Contiguous Family Land:**
- *If CE covers portion of contiguous property owned by donor and donor's family,*
- *value of CE is equal to value of entire contiguous parcel before CE minus value of entire contiguous parcel after CE*



# IRS VALUATION REGS

- ⦿ **Enhancement Rule for “Other Property”**
- ⦿ Regs require an offset to CE value if "any other property owned by the donor or a related person" increases in value as a result of the easement, *whether or not such property is contiguous*



# What is needed to complete a conservation easement appraisal?

- Legal Descriptions of
- the entire property,
- the area subject to the easement, and
- any property owned by the landowners, their family, or
- "related persons."



- Copies of closing documents (if recent enough to be meaningful),
- copies of deeds and deeds of trust,
- Recent title insurance policy or title insurance commitments, including copies of material exceptions to title,
- Maps, surveys and sketches that identify the subject property, any specific building envelopes or restricted zones, and any other property owned by the landowners, their family, or "related persons,"
- Draft or final version of the proposed conservation easement.



- Depending on the complexity of a property or assignment, additional consultant reports may be appropriate
- land planner,
- engineer with expertise in land development,
- water engineer.



# FREQUENTLY COMMITTED SINS

- ⦿ Things to watch for
- ⦿ *Wrong definition of Market Value*
- ⦿ *Failure to state that appraisal is for income tax purposes*
- ⦿ *Appraisal has date of value older than 60 days before effective date of CE*



# FREQUENTLY COMMITTED SINS

- ⦿ Appraising the wrong property
- ⦿ Over-reliance on Subdivision Development Analysis or Discounted Cash Flow (DCF)
- ⦿ Ignoring or omitting impacts of zoning, covenants, or other existing restrictions that impact before-CE highest & best use
- ⦿ *quid pro quo* (mutual backscratching)

# Attorneys Examining Appraiser's Report

