

**MEETING MINUTES  
CONSERVATION EASEMENT OVERSIGHT COMMISSION MEETING  
December 9, 2022**

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MINUTES  
CONSERVATION EASEMENT OVERSIGHT COMMISSION MEETING  
December 9, 2022  
COLORADO DIVISION OF CONSERVATION  
1560 BROADWAY, SUITE 1550  
DENVER, CO 80202

## Commissioners in Attendance

Paul Holsinger, an individual who is qualified to analyze conservation purpose; Carmen Farmer, representing a certified conservation easement holder; Tim Mauck, representing the Department of Natural Resources; and William Fales, representing a certified conservation easement holder; Jill Ozarski representing a member of the general public; and Hollis Glenn, representing the Department of Agriculture.

## Staff in Attendance

Aaron Welch, Director, Beatrice Lawson, Compliance Specialist, and Josh Berry, Assistant Attorney General.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

## ORDER OF BUSINESS

The meeting was called to order at 9:32 a.m.

The agenda was reordered to accommodate the needs of attendees.

### Approval of Minutes - August 2, 2022

It was moved by Commissioner Fales and seconded by Commissioner Farmer to approve the August 2, 2022 minutes.

*Motion carried.*

### Public Comment

None.

# POLICY MATTERS

## Qualified Conservation Contributions and Retained Mineral Interests

Two matters regarding qualified conservation contributions and retained mineral interests were discussed.

First, a representative of one of the Division's certified holders, Sarah Parmar, Colorado Open Lands, and an oil and gas attorney, Matt Sura, made the Commission aware of mineral lease language that includes a worker housing provision. At issue is the likelihood, or lack thereof, of the provision being implemented. Parmar and Sura fielded questions from the Commissioners and then Director Welch proposed that the Division add a line to the Conservation Purpose checklist regarding a worker housing provision. No official position was adopted by the Commission.

Second, Director Welch introduced the IRS memo regarding whether easements should be considered to have been made exclusively for conservation purposes in instances where the donor owns both the surface estate and mineral estate and the donor retains a right for surface mining. Director Welch asked the Commission's thoughts on whether this memo will impact the treatment of borrow pits used for the limited and localized extraction of sand and gravel. Melinda Beck, Attorney, gave her legal perspective stating that borrow pits fall within the limited and localized exception, and further suggested that to classify borrow pits, which are commonly used for personal use, under law as mining is not accurate. A discussion followed wherein Director Welch confirmed that Beck's assessment jibes with the Division's historical interpretation of reserved rights for borrow pits. No official position was adopted by the Commission.

## Applications Update and 2023 Fees

Director Welch gave an update on the increased fees being implemented in 2023. He noted that fees increased across the Division's programs because the Division has spent down a positive fund balance carried over from the time of the Division's establishment in 2018, and in anticipation of a substantial increase in the volume of tax credit applications. Director Welch then fielded questions from members of the public and the Commission.

Beatrice Lawson summarized application activity since the last meeting. The Division has received 50 applications this year (22 applications for conservation easements donated in 2021 and 28 applications for conservation easements donated in 2022). The rate of incoming applications suggests the Division can anticipate 50-60 tax credit applications this year, which would be an increase of 25% to 50% over the historic average of 40 applications per year. The Division has issued tax credit certificates for 22 applications received this year. The conservation easements involved encumber nearly 17,000 acres in 13 counties. Two tax credit applications resulted in a formal request for additional information (RFI), and no application has been denied. The Division currently certifies 34 organizations. This is two less than last year: two organizations have yet to apply for renewal. One pending certified holder application will be discussed later in the agenda.

## Certified Holder Application 202102

Director Welch provided a summary of the certified holder application from the Colorado Historical Foundation and asked the Commission to make a formal motion regarding whether the organization should be certified. Catherine Stroh and Cindy Nasky representing the Colorado Historical Foundation joined the meeting to take questions from the Commissioners. Director Welch noted that the Division's only concern is the valuation of the easements.

It was moved by Commissioner Fales and seconded by Commissioner Mauk that the Colorado Historical Foundation should be awarded certification

*Motion carried.*

### **Tax Credit Application TCC-2022-025**

Director Welch provided a summary of the tax credit application for a correction deed of conservation easement which was recorded to amend, replace, and supersede an earlier conservation easement. Director Welch emphasized that the wholesale replacement of an easement by a correction deed of conservation easement is an extraordinary measure. Director Welch asked for guidance from the Commission as to whether the correction deed of conservation easement adequately meets the requirements of a “qualified conservation contribution” and should, pending review of the appraisal, generate a conservation easement tax credit. Commissioner Ozarski requested legal guidance to move forward because the Commission was not confident to move forward with giving the Division guidance. Director Welch suggested the Commission return to this agenda item at the next commission meeting after consulting Josh Berry, Assistant Attorney General.

### **Agenda Items for Next Meeting**

The next meeting has yet to be scheduled. The date will depend upon the availability of members of the Commission and the capacity of the Division. Topics may include addressing tax credit application TCC-2022-025, creating a draft position for retained mineral interests, and annual training for commissioners.

## **ADJOURN**

The Commission adjourned the meeting at 11:57a.m. on December 9, 2022.