

**MEETING MINUTES
CONSERVATION EASEMENT OVERSIGHT COMMISSION MEETING
March 15, 2023**

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MINUTES
CONSERVATION EASEMENT OVERSIGHT COMMISSION MEETING
March 15, 2023
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; William Fales, representing a certified conservation easement holder; and Jill Ozarski, representing a member of the general public.

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 1:34 p.m.

The agenda was reordered to accommodate the needs of attendees.

Approval of Minutes - December 9, 2022

It was moved by Commissioner Fales and seconded by Commissioner Holsinger to approve the December 9, 2022 minutes.

Motion carried.

Public Comment

Jody Barbour, Conservation Tax Credit Transfer, asked about the reserved 2023 cap and the timing of issuing tax credits. Mike Strugar, Tax Credit Exchange, introduced himself as a resource available to answer questions about Preliminary Advisory Opinion PAO-2022-002 while Greg Powell, Powell & Murphy, P.C., introduced himself as a resource available to answer questions about Tax Credit Application TCC-2022-025.

POLICY MATTERS

Applications Update

Director Welch summarized application activity since the last meeting. The Division has received 15 applications so far this year (11 applications for conservation easements donated in 2022 and 4 applications for conservation easements donated in 2023). The rate of incoming applications suggests the Division can anticipate 65-75 tax credit applications this year, which would be an increase of 25% to 44% over the average number of applications across the last four years. Three tax credit applications resulted in a formal request for additional information (RAI), and no application has been denied. The Division currently certifies 36 organizations to hold conservation easements. One organization has yet to apply for renewal in 2023. There are no pending applications for new organizations seeking to become certified. Director Welch also addressed the 2023 cap being hit and proceeded to field questions from members of the public and the Commission.

Preliminary Advisory Opinion PAO-2022-002

Beatrice Lawson provided a summary of the PAO application where the applicant requested an opinion of the conservation purpose of a proposed conservation easement following legislation enacted in 2021, which, for the first time, allowed Ditch and Reservoir Companies to earn conservation easement tax credits. The applicant, the applicant's tax credit broker (Mike Strugar), and the conservation easement holder (Wetlands America Trust) joined the meeting and fielded questions from the Commission regarding the viability of the conservation values if the reservoir was to be drained, development threats to the reservoir, and the ownership of the water within the reservoir.

Commissioner Holsinger made a motion to offer an opinion in favor of the PAO application, noting the strong conservation benefits provided by the reservoir. Commissioner Farmer seconded the motion, Chair Ozarski called for a vote.

Motion carried.

Tax Credit Application TCC-2022-025

This policy matter was addressed in the December 9, 2022 meeting. The Commissioners requested additional information about the application before being able to give the Division guidance. 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. The commission was joined by the applicant, Jennifer Thurston, as well as the applicant's legal counsel, Greg Powell. Greg Powell stated that this correction deed would ultimately strengthen the CE's enforceability, add restrictions, and add detail. Greg Powell and Jennifer Thurston fielded questions from the Commission.

Commissioner Fales made a motion to offer an opinion that this conservation easement is a qualified conservation contribution with conservation values that should generate a conservation easement tax credit pending review. Commissioner Holsinger seconded the motion, Chair Ozarski called for a vote.

Motion carried.

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 creating a draft position for retained mineral interests and annual training for all Commissioners.

ADJOURN

The Commission adjourned the meeting at 3:40 p.m. on March 15, 2023.