



Conservation Update

December 24, 2008

Happy Holidays!

This is CCLT's last conservation policy update of the year, and there is a LOT of news to report. However, I first want to thank and congratulate all of you - our members and friends - for what our community has accomplished in 2008.

This same time last year headlines about conservation easements were generally negative and the future looked uncertain. **A year later, we can reflect proudly on our accomplishments.** A tough new law is in place to ensure that a few bad actors will not abuse the critical state conservation easement tax credit program. Five Colorado land trusts were accredited, and three more are on their way for 2009. There is even progress on the IRS audits. And most importantly, I hear that all of you are busy with year-end closings that will preserve tens of thousands of new acres of working farms and ranches, wildlife habitat, and scenic landscapes across our wonderful state.

Please take time to celebrate this holiday season and accept a big CONGRATULATIONS and THANK YOU from the staff and Board of CCLT. May you all have a happy, safe, and blessed New Year.

HB1353 reforms are working! Plus recent press on civil suits and new enforcement actions

As all of you know, the appraisal review portions of HB1353 have been in place since July. Director Erin Toll recently announced that the reforms of HB1353 are working. Of 78 appraisals received and reviewed so far, five were questionable enough to merit the launch of a full investigation -- these are similar to earlier cases from 2008 that resulted in summary suspensions. All of the other appraisals moved cleanly through the process, with the exception of just a few that were considered "sloppy" and were sent back to the appraiser for minor clean-up and re-submission. We trust that as the state's funding situation clears (see next update below), the Division will continue to effectively identify and pursue bad actors.

12/24/08. [Five Colorado easement deals get closer look: The properties, all in Adams County, are tied to a lawyer who was sued by clients and faces a state ethics complaint.](#) *The Denver Post.*

Many of you have asked for an update on the DRE's subpoenas of non-CCLT members and the Attorney General's grand jury investigation. This is a confidential process and I have no new information to report at this time. However, you may be

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Save-the-Date for CCLT's 2009 Conference!

CCLT's 2008 Conservation Policy Conference and Professional Workshops will be in Denver on **March 18-20, 2008.**

Please consider CCLT for a year-end donation!



Did you know we moved?

Our new address is:
1245 E. Colfax
Suite 203
Denver, CO 80218

interested to know that a civil suit has begun that involves many of the parties involved in the transactions of Noah Land Conservation, aka the Colorado Natural Land Trust. Please remember that this is not a mainstream conservation organization and is not a member of CCLT.

12/23/08. [Lawyer sued over tax-credit failure.](#) *The Denver Post.*

12/24/08. [Group sues over scenic easements: Plaintiffs claim they were misled.](#) *Rocky Mountain News.*

Fees for Land Trusts, Government Entities, and Appraisers

As we reported on November 26, 2008, there will be changes to the fees for appraisal filings and easement holder certification in HB1353. The Department of Regulatory Agencies (DORA) is backing a bill to be introduced on Day 1 of the Colorado General Assembly (January 9, 2009). The bill will eliminate the fee caps for both parts of the program and will change the certification program from a 3-year program to a one-time certification with an annual renewal.

CCLT is aware that a change to these expected fees could be a significant burden to conservation organizations. However, we also need to make sure that DORA has secure funding to continue its enforcement role and preserve the integrity of the conservation easement tax credit program. Due to state funding rules, DORA simply cannot fund the program with the caps in place. However, the agency is being very reasonable and we have worked out an arrangement that we hope will actually work better for easement holders over time.

Here is how the certification program currently works: A land trust or government entity pays a \$5,810 certification fee in year 1. Once certified, that status stands for 3 years (unless a DORA investigation finds reason to revoke it). In year 3, the organization would have to re-apply and pay the full fee all over again.

If the bill we expect on January 9 passes, DORA would set a new fee with a 30-day notice. If DORA certifies an organization, the certification would be active indefinitely as long as the organization files their 1299 with an annual renewal fee (again, unless a DORA investigation finds reason to revoke it). While DORA cannot set fees until the bill passes, Director Erin Toll estimated at a 12/8/2008 meeting that the fees would be as follows:

Year 1 -- \$4,000
 Year 2 -- \$4,000
 Year 3 -- \$3,000
 Year 4 and beyond -- \$2,000 or less annually.

Please trust that CCLT shares our members' frustration because these fees are higher than we anticipated when HB1353 was being developed. However, the compromise is that the fee will be less than our members budgeted for 2009 and the extensive certification process should not have to be repeated. The Colorado budget rules that necessitate this immediate action are complicated, but if you want an extensive explanation please let me know and we will post one on CCLT's website.

The bottom line is that DORA's hands are tied and they cannot implement HB1353 unless the fee caps are removed. Rep. Joel Judd and Senator Jim Isgar have agreed to introduce the bill and we expect it to move very quickly in January 2009. CCLT will

keep you informed as this legislation moves forward.

Conservation Easement Holder Certification

As you know, the Division of Real Estate (DRE) has been working very hard to complete the application for land trust certification by the December 31, 2008 deadline. I am happy to announce that after over 20 drafts and 100 comments, the application will be released to the public on [DRE's website](#) on December 31, 2008! There is no rush because the DRE and the Conservation Easement Oversight Commission will not even begin reviewing applications until the second quarter of 2009. CCLT will be ready in the New Year to provide education and training related to certification, and we expect to have a major Q&A session at our upcoming conference on March 18-20, 2009.

The entire Colorado conservation community thanks the people who worked so hard on this application, especially DRE staff, Commissioners, CCLT's Greg Yankee (our CCT Conservation Fellow), and Tammara Van Ryn from the Land Trust Accreditation Commission. CCLT also personally thanks the staff and Board of the Legacy Land Trust and the Estes Valley Land Trust for taking an afternoon to do a "mock certification" test during their busy December season. The staff of these organizations report that the process is extensive and very comprehensive, but definitely doable and worth the work to ensure that only reputable organizations can work with landowners to utilize the state CE tax credit.

Please let us know what you think when you review the application, and especially how CCLT can help you work through and understand the process. Contact Jill Ozarski (jill.ozarski@cclt.org) or Greg Yankee (greg.yankee@cclt.org) with all your questions and comments - we truly want to hear from you!

Conservation Easement Oversight Commission

Congratulations and welcome to the two newest Commissioners - Lise Aangeenbrug of GOCO and Janis Whisman of Boulder County. These appointments complete our 9-member Commission and we urge CCLT friends and members to reach out to their representatives.

The Commission has met five times already and we will continue to post our notes after each meeting on [CCLT's Commission website](#). Please keep checking back regularly because these meetings have developed into a primary method for DRE to communicate with our community. For your information, the Commission meeting schedule and official minutes are posted on DRE's website. [Click here](#) to see past meeting agendas, official minutes, and upcoming meetings. All members of the public are welcome to attend.

Progress on IRS Audits and the Colorado Department of Revenue

The audits of many conservation easement donors continue to work their way through the legal process. While some have settled with the federal government, many others continue the fight. CCLT continues to track the status of cases where the easement is held by CCLT member organizations and welcome updates at any time. As always, we keep landowner and legal information confidential.

In one interesting development, a magistrate judge in the U.S. District Court for Colorado has granted a plaintiff's motion to compel the IRS to produce a "matrix" which is a compilation of valuation data on thirty-five sales of real property subject to conservation easements. Plaintiffs argued the matrix and identity of the additional properties would reveal the analysis and methodology used by the IRS to determine the value of Plaintiffs' easements and enable Plaintiffs to bear their burden of rebutting the valuation made by the IRS and putting forth the appropriate valuation. The court agreed. For the full story, please see the [article at the Planned Giving Design Center](#). CCLT members will remember that Senators Allard and Salazar asked the IRS for this matrix over a year ago to no avail.

The Colorado Department of Revenue (DOR) has begun its part of implementing HB1353. CCLT is heartened that DOR staff have begun attending Commission meetings and appear ready to pursue cases related to appraisers who have been sanctioned by the DRE.

At Monday's Joint Budget Committee hearing, DOR Executive Director Roxy Huber responded to a question posed by Senator Jim Isgar about the status of HB1353 implementation (see question #25 on the [hearing agenda](#)). Here are several key points made in that hearing:

- (1) DOR is comfortable with the reforms moving forward, and their energy is currently focused on the backlog of past CE tax credits from 2004-2007. DOR will be involved with the Commission.
- (2) DOR has one new staffer working on the backlog and will be hiring an appraiser to add to their in-house expertise. Director Huber emphasized that the appraiser would not be doing appraisals, but instead would provide appropriate expertise so that DOR could improve its internal analytics and know better when to consult with DRE and the Commission.
- (3) Director Huber characterized the backlog of conservation easement donors as falling into three groups: (a) those currently under IRS audit; (b) those already under DOR investigation; and (c) those yet to be considered in the 3-year window. She emphasized that these are challenging cases because they are not like other tax issues and can involve review of the appraisal, conservation purpose, and whether the land trust is valid.
- (4) Governor Ritter intends to send her "on the road" in an outreach capacity in 2009 to educate taxpayers and their advisors about the process and options for landowners under each scenario.
- (5) In response to a question from Rep. Joel Judd, Director Huber indicated that easements that have a state component, such as funding from Great Outdoors Colorado, may not be analyzed differently. However, she looks forward to working with the DRE on the analytics.

We'll be back with more news in 2009!

Happy New Year!

Sincerely,

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