



# Colorado Coalition of Land Trusts

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*The Mission of the Colorado Coalition of Land Trusts is to promote and support land conservation excellence in Colorado through leadership, advocacy, education and outreach.*

## **FACT SHEET: IRS Audits of Conservation Easements in Colorado May 2008**

In 2004, the IRS issued a nationwide notice that they were aware of improper claims of charitable deductions involving conservation easements and initiated a series of audits around the country. This unprecedented examination is having a significant impact on Colorado, where at least half of the cases are located. **There is no doubt that tax abuses should be identified and stopped, however the current IRS audit process is not working.**

We believe that many of the Colorado cases involve donations to mainstream conservation organizations that are doing their best to follow the letter and spirit of the law. We also believe that many of the remaining cases are the fruit of promotional schemes based on using faulty appraisals to raid Colorado's transferable state income tax credit, with many of these marketed as profit-making investments.<sup>1</sup> **The conservation community is frustrated because the IRS does not appear to be making any distinction between the first set of cases – solid easements from landowners who followed accepted industry standards – from the second.** This means that donors who thought they were doing the right thing are caught up in an expensive and disruptive multi-year audit process, while promoters responsible for abuses continue to operate.

### **Scope and Progress of the Colorado Audits**

- According to information submitted to Senator Wayne Allard in early 2007, there are approximately 290 tax returns under audit in Colorado. Please note that this is the number of tax *returns*, not the number of *easements*. Some charitable deductions can involve multiple tax returns in a single easement donation.
- According to information from our member organizations, there are at least 100 conservation easement donations mistakenly captured that are held by CCLT member organizations. Over half of CCLT's 53 member organizations have at least one easement under audit, and some have as many as 12. **These easements are not abusive schemes and the audits are intimidating and confusing for well-intentioned landowners who followed standard industry practices.**
- Of particular concern is that at least sixteen of the CCLT-member easements were funded by the Great Outdoors Colorado Trust Fund (GOCO), the state agency constitutionally mandated to help preserve, protect, enhance, and manage the state's wildlife, park, river, trail, and open space heritage. Some also received additional funding from other federal, state, and local government programs. These publically-funded conservation easements were extensively reviewed by experts in the field, and their inclusion calls the IRS's methodology into serious question.
- So far, at least thirty nine of these CCLT-member easements have received determination letters from the IRS, and at least three have received letters from the Colorado Department of Revenue regarding repayment of state tax credits. Preliminary reports indicate that all but two of these determination letters claimed there were flaws in the charitable donation. In these "flawed" returns, the IRS is primarily questioning valuation and is only rarely questioning whether an easement meets the

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<sup>1</sup> For evidence of how the state of Colorado is cracking down on faulty appraisals, please see [http://www.dora.state.co.us/real-estate/Enforcement/Julie\\_OGorman.PDF](http://www.dora.state.co.us/real-estate/Enforcement/Julie_OGorman.PDF).

“conservation purposes” test in §170(h) of the tax code. However, in many valuation cases the IRS is claiming that the easement donation has zero value. These determinations are based on an IRS analysis that uses approximately 30 comparable sales across the state to conclude that virtually all easements have no diminution in value. In a fast-growing state like Colorado (especially in communities influenced by the booming resort and second-home industry), we believe this is an untenable assumption. Most landowners are appealing the IRS findings and some are already docketed for court. We suspect that these eventual rulings will guide future IRS treatment of conservation easements.

### **IRS settlement offers and the state of Colorado’s fast-moving investigation**

- In mid-November, the IRS began making settlement offers to a significant number of conservation easement donors under audit in Colorado. According to the IRS, the settlements were only offered in those cases where the sole issue between the donor and the IRS is valuation. The offers generally fell into a “bucket” where the IRS stated only 30%, 60%, or 75% of the original value of the charitable donation was allowed. It is unclear what criteria the IRS used to place different taxpayers into these various “buckets,” and the IRS settlement offer generally included no documentation for why or how the IRS had come to the conclusion and settlement. Therefore, landowners did not even have any basis with which to evaluate the IRS’s case.
- CCLT has been tracking many of the settlements offered to landowners with CCLT member easements and a large majority of landowners have rejected the settlement. Since the IRS’s primary goal was to reduce their caseload, these rejections are yet another failure of the IRS’s broken approach.
- In the meantime, the state of Colorado has diligently pursued abuse and the Colorado Board of Real Estate Appraisers has quickly moved to issue emergency summary suspensions of at least three conservation easement appraisers based on risk to the public “health, safety, and welfare.” These summary suspensions are based on a wider investigation into abuse of the state’s conservation easement tax credit and the Colorado Coalition of Land Trusts strongly supports this state investigation. At least one of these cases has been referred by the Division of Real Estate to the Colorado attorney general’s office. The state has quickly and intelligently uncovered egregious violations and the IRS should follow their example.<sup>2</sup>

### **For More Information**

Information on the audit process, Congressional correspondence, and legal and accounting professionals:  
<http://www.cclt.org/CE%20audit%20info/conservationeasementauditinformation.htm>

Conservation Easement Law Cases, including a new analysis of the Glass case:  
[http://www.lta.org/publicpolicy/easement\\_law\\_cases.html](http://www.lta.org/publicpolicy/easement_law_cases.html)

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<sup>2</sup> For more information, please see <http://www.dora.state.co.us/real-estate/Enforcement/Enforcement.htm> and the “Inquiry into open space program looks east: Probe eyes deals that led to \$35 million of tax credits for plains landowners,” 1/30/07, *Rocky Mountain News*.