

Outline of Audit Results

1. **Conservation Easement Purposes:** Conservation Easement Purposes are supposed to be for the good of the citizens in the State of Colorado.
2. **Timeliness-Page 22 Audit-** As outlined in Section 12-61-727, C.R.S. the Division of Real Estate (Division) must process each application for a conservation tax easement credit in a timely manner, ensure the appraisal supporting the landowner's requested tax credit amount is credible and ensure its overall administration of the program is fiscally sound and transparent. **Page 26 Audit-** We found that the Division exceeded the 120-day statutory limit for the average time spent on initial reviews of tax credit certificate applications that the Division received since January 2015, spending an average of 133 days for **Page 27-28 Audit.** We found that the Division exceeded the 120-day statutory limit for the average time spent on initial reviews of tax credit certificate applications that the Division received since January 2015, spending an average of 133 days for applications received between January 2015 and June 2016.
3. **Accounting Errors**
 - a. Posted \$43,800 as an asset instead of a liability **Page 47 Audit Results-**Improper Accounting of funds showing \$48,300 as assets instead of liabilities. **Page 60 Audit Results-**The proper accounting would have shown the Division running a deficit for years 2014 to 2016 and violated CRS 24-75-109(2)(b).
 - b. Did not match the applications with the fees paid. **Page 49 Audit-**Lack of adequate records makes it difficult to reconcile fee payments to applications received.
 - c. Did not properly track the prepaid placement holder fees. **PAGE 48 Audit-**shortly after making the accounting adjustments, as of September 30, 2016, the fund balance was \$-17,500.00.
4. **Prepaid Placeholder Certificates- Page 43 Audit-**CEOC collected \$144,900 in advance in violation of CRS 24-75-109 (2)(b) **Page 43 Audit Results-**From February to June 2014, the Division sold 63 placeholder certificates, collecting a total of \$144,900 in advance for preliminary advisory opinion application fees. The Division also promised future discounts to 11 landowners who submitted complete or partial applications for 21 preliminary advisory opinions between January and June 2014.
5. **Commission operating at a deficit- April 8, 2014 CEOC** minutes state "The Conservation Easement program has been running a deficit for the new pre-approval process. There are criminal liabilities associated with running a deficit in a state program. " The commission knew there were problems and their attempt to fix them only made matters worse. They then made the decision to solicit land trusts, brokers, and others to purchase blank placeholders.

6. **Third Party Placeholders-- Page 44 Audit-**Statute [Section 112-61-727(6), C.R.S.], authorizes the Division to collect a fee from "landowners" applying for a tax credit certificate or a preliminary advisory opinion. Section 12-61-727(1)(f)C.R.S., defines the landowners as "the record owner of the surface land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement." **Page 44 Audit-** Thus the Division sold 45 of the 63 placeholder certificates to non land owners, including three tax brokers, a land trust, a law firm, and a non-profit organization that helps facilitate conservation easement donations.

7. **Loan from General Assembly-Page 46 Audit results** In Senate Bill 13-221, the General Assembly authorized the Department to borrow from the State's General Fund without interest during Fiscal Year 2014 to provide financing needed to implement the new review process "prior to sufficient moneys becoming available in the [Fund]." However, his loan provision did not help the Department as the General Assembly had intended. According to the State Controller, had the Department obtained the loan authorized by Senate Bill 13- 221, any portion of the loan used to fund expenditures that the Department did not pay back by the end of Fiscal Year 2014 with offsetting revenue would have caused the Fund's balance to be negative and constituted an over-expenditure that violates statute [Section 24-75-109(2)(b), C.R.S.

8. **Communication of prepaid Certificates-Page 47 Audit results DIVISION PROGRAM STAFF DID NOT FULLY COMMUNICATE THE PLACEHOLDER PROCESS TO DEPARTMENT BUDGETING STAFF AND DIVISION ADMINISTRATIVE STAFF.** Department budgeting staff reported being unaware that the purchasers of the placeholder certificates had not submitted applications for preliminary advisory opinions at the time they paid the fee, or that the Division still had outstanding obligations 2 years later to provide preliminary advisory opinions to some purchasers.

7. **Diversity of the commission-PAGE 20 Audit.** The Commission members represent a number of different stakeholder interests. By statute [Section 12-61-725(1), C.R.S.], the Great Outdoors Colorado Trust Fund, Department of Agriculture, and Department of Natural Resources each have a permanent member on the Commission, and the Governor appoints the remaining six members for 3-year terms. The six gubernatorial appointments must represent (1) a land trust, (2) a local government agency concerned with open space or land conservation, (3) a land trust *or* a local government agency concerned with open space or land conservation, (4) an individual who is competent and qualified to analyze the conservation purpose of conservation easements, (5) a certified general appraiser with conservation easement appraisal experience, and (6) a landowner who has donated a conservation easement in Colorado. No more than three of the Governor's appointees serving at the same time may be from the same political party.

8. **Budget-April 8 minutes-** Director waters expressed that the Conservation Easement program constantly struggles with funding issues. The funding is based upon the number of applications they receive, which is difficult to forecast. **Page 36 Audit-**The discounting of fees in 2014, resulted in fee increases in 2015 and 2016.

9. **Staffing-Page 31 Audit-**First we found that the Division had not analyzed staff work load capacity, which is the number of applications staff can process in a given period.

Page 33-Audit-Although the Division hired part-time external contractors to review applications and manage the backlog for about \$21,000 in October 2015, the backlog persisted. **Page 35 Audit-** According to the Division Staff, the reports, particularly for appraisal reviews, are often repetitive and sometimes takes weeks to write and revise.