

# Annual Report

Conservation Easement Tax Credit Certificates

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Calendar Year 2021

Effective as of January 13, 2022



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Conservation



## **Introduction**

The Colorado Division of Conservation protects the public by preventing fraudulent conservation easement donations from receiving the state income tax credit for conservation easements. The Division ensures the soundness of state income tax credits issued for donated conservation easements

- by determining the credibility of appraisals,
- by assuring that deeds of conservation easement protect conservation purposes in perpetuity, and
- by certifying non-profit and government organizations to hold conservation easements for which the landowner will seek a tax credit.

## **History**

Between 2000 and 2008, Colorado's conservation easement income tax credit program was administered by the Department of Revenue (DOR). Between 2009 and 2013, parts of the program's administration were moved to the Division of Real Estate (DRE) within the Department of Regulatory Agencies (DORA). From January 1, 2014 through May 29, 2018, the program was administered entirely within the DRE, although the DOR continued its pre-2014 examination and enforcement activities.

On May 29, 2018, House Bill 18-1291 was signed into law. It created the Division of Conservation (Division) within DORA, and moved administration of the tax credit, certification of conservation easement holders, and the Conservation Easement Oversight Commission (Commission) out of the DRE into the new Division. This was done to keep a firewall between the disciplinary activity in the DRE and the professional evaluation activity in the Division. It also allowed landowners to exercise their private property rights while protecting taxpayers from the fraud and abuse that existed in the tax credit program prior to 2009.

This annual report, in accordance with section 12-15-106(13)(a), C.R.S., includes aggregate information about conservation easement tax credit applications received and approved between January 1, 2021 and December 31, 2021.

## **Program Process**

The Commission and the Division Director approve or deny applications for the state income tax credit for conservation easements. The Commission has the authority and responsibility to determine whether the conservation easement donation associated with the application is a "qualified conservation contribution" under section 170(h) of the Internal Revenue Code and any federal regulations promulgated in connection with this section. The Director determines whether the donation is supported with a credible appraisal prepared by a qualified appraiser. Applications that meet both requirements are approved, and tax credit certificates are issued to the applicant.

Division staff assists the Commission and the Director by reviewing each application for compliance with relevant state statute, federal law, and associated rules and regulations. Specifically, the Division staff examine the appraisal, the conservation easement deed, and other due diligence associated with the donation. The examinations are structured according to objective compliance checklists.

The Division also administers the tax credit cap, an annual aggregate limit on the total dollar amount of conservation easement tax credits available for a given year. For calendar year 2014 and thereafter, the statutory tax credit cap is \$45 million.

In general, the amount of the income tax credit a taxpayer (landowner) can use is limited to the landowner's net tax liability. If the amount of conservation easement tax credit exceeds the landowner's state income tax liability, the excess credit may be carried forward for up to 20 years after the first year it was eligible to be claimed. This means that the Division may continue to receive tax credit applications for conservation easements recorded in prior years, so long as the cap for that prior year has not been met. For example, in 2020, the Division received applications for easements contributed to certified holders in years dating back to 2015.

Conservation easement tax credit certificates also may be transferred, in full or in part, to other Colorado income tax payers and, in TABOR surplus years, the state must issue refunds to tax credit certificate holders.

Pursuant to sections 12-15-106(7)(a) and (10), the Division must complete its review of all tax credit applications within 120 days, either by issuing the tax credit or sending the landowner a notice identifying potential deficiencies with the application (a Request for Additional Information, or RFAI<sup>1</sup>).

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<sup>1</sup> Since the program began in 2014, this statutory notice has had different names. Irrespective, it offers the landowner 60 days, not counting extensions, to provide the Division with more information about the application. Often, this information consists of a new appraisal. Less often, it consists of a correction to the deed of conservation easement. This process allows the landowner sufficient time to clarify or correct the tax credit application.

## Report contents

Section 12-15-106(13)(c), C.R.S., requires the annual report contain the following aggregate information:

- Total number of tax credit applications received, approved and denied, along with average processing times;
- For approved applications:
  - Total acreage under easement summarized by allowable conservation purpose;
  - Total appraised value of the easements;
  - Total donated value of the easements;
  - Total dollar amount of tax credits issued;

As provided for in statute, the annual report also may include additional easement-specific information that would otherwise be publicly available. Accordingly, this report shows, by county, the number of acres protected by easements associated with applications approved in 2021, and may include information about optional preliminary advisory opinions.

HB 18-1291 authorized the Director, after consultation with the Commission, “to share publicly-available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement...”. The following year, HB 19-1264 defined “publicly available information” to mean any document recorded by a county clerk and recorder or other information readily available to the public (see section 12-15-106(13)(c), C.R.S.). The same legislation identified the third-party vendor to be the Colorado Ownership, Management, and Protection (COMaP) service administered by the Colorado Natural Heritage Program at Colorado State University.

The Division has consulted with the Commission to determine that the publicly available information to be shared with a third-party vendor shall consist of recorded deeds of conservation easement. The Division has collected all such information for conservation easements that generated a tax credit between January 1, 2011 and today, and the information is shared in real time with the third-party vendor upon the issuance of every new tax credit certificate.

**Tax Credit Certificate Applications Received, Approved and Denied, and Average Processing Times**

***Applications Received***

The Division received 63 tax credit applications in 2021 related to conservation easement donations made in the two calendar years, representing a 70% increase in the number of applications received:

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<u>Year of Conservation Easement Donation</u>	<u>No. of Applications received in 2020</u>	<u>No. of Applications received in 2021</u>
2015	1	0
2016	1	0
2017	1	0
2018	3	0
2019	16	0
2020	15	29
2021	<u>N/A</u>	<u>34</u>
Total tax credit applications received	37	63

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Of the 63 applications received in 2021, examinations of 42 are complete and the applicants have received state income tax credits. The 21 remaining applications were received in the last four months of the year and are pending review.

***Applications Approved and Denied***

The Division approved 55 tax credit applications in 2021 for conservation easement donations made in four calendar years, representing a 49% increase in the number of applications approved:

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<u>Year of Conservation Easement Donation</u>	<u>No. of Applications approved in 2020</u>	<u>No. of Applications approved in 2021</u>
2015	0	1
2016	1	0
2017	2	0
2018	3	1
2019	28	0
2020	3	38
2021	<u>N/A</u>	<u>15</u>
Total tax credit applications approved	37	55

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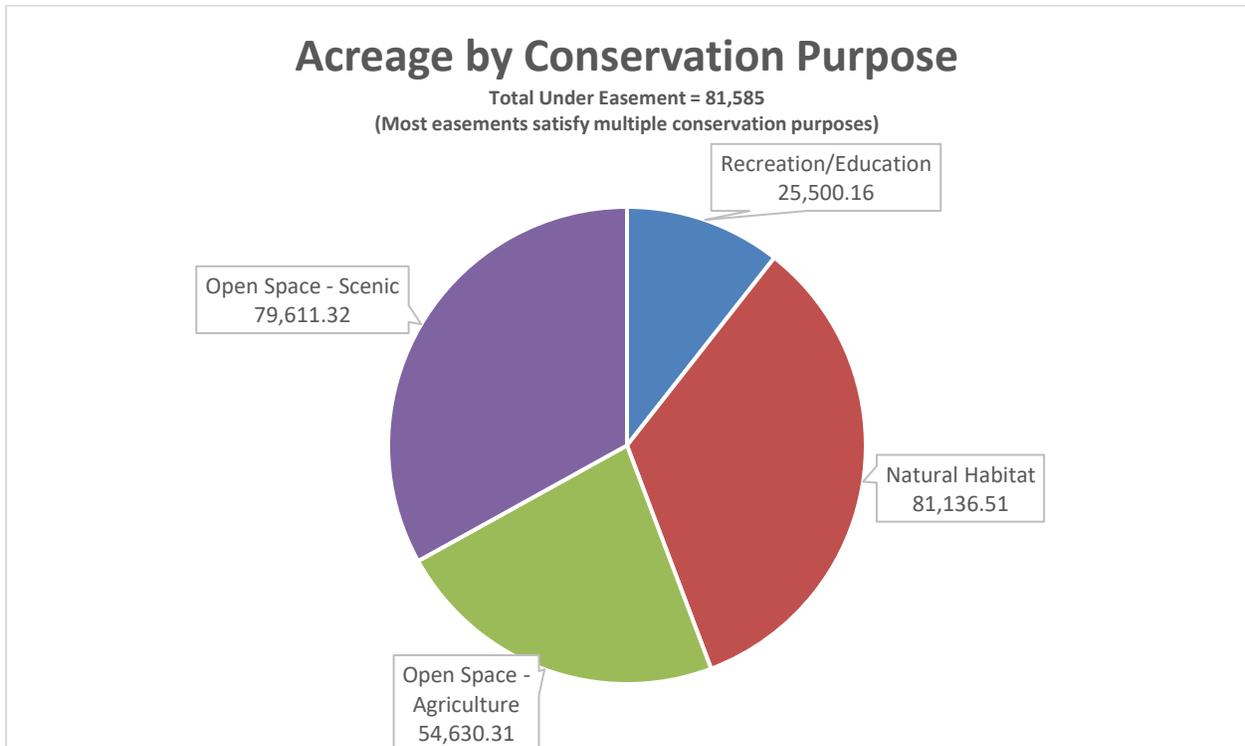
Please note that the total number of applications received and the total number of applications approved do not represent the same set of applications because applications received at the end of the year are approved in the subsequent year.

***Processing Times***

All applications approved in 2021 were processed within the required 120 days, with an average processing time of 117 days. No applications were denied.

## Total Acreage Under Easement Summarized by Allowable Conservation Purpose

The 55 applications approved in 2021 were for easements that protect a total of 81,585 acres.



Section 170(h) of the Internal Revenue Code (IRC) requires that tax-purposed conservation easements comprise restrictions granted in perpetuity exclusively for conservation purposes. The allowable conservation purposes are defined in four broad categories:

- Preservation of land area for outdoor recreation by, or the education of, the general public (*25,500 acres*)
- Protection of relatively natural habitat of fish, wildlife, or plants, or similar ecosystem (*81,137 acres*)
- Preservation of open space,
  - for scenic enjoyment (*79,611 acres*)
  - farmland and forest land - agriculture (*54,630 acres*)
- Preservation of an historically important land area or a certified historic structure (*no such conservation easements in 2021*)

To qualify for a Colorado state income tax credit, the conservation easement must satisfy at least one of these purposes, however most easements satisfy more than one conservation purpose. For this reason, the gross encumbered acreage reported here exceeds the 81,585 acres of actual land area encumbered by easements.

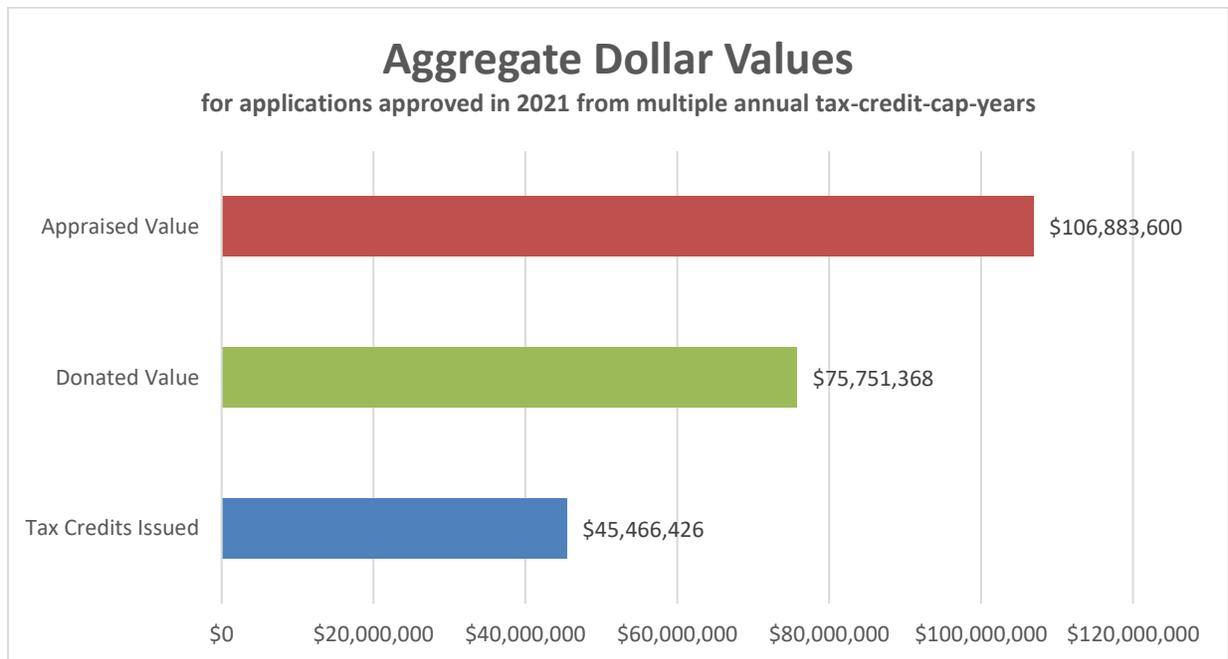
## Easement Valuation and Amount of Tax Credits Issued

The 55 applications approved in 2021 were for easements with a combined appraised value of more than \$106 million. Much of the total, more than \$75 million, was donated value which resulted in \$45 million in tax credits issued by the Division.<sup>2</sup>

The qualified appraisal submitted with each tax credit application sets forth the appraiser's opinion of the fair market value of the conservation easement. This value opinion is the basis for calculating the amount of the applicant's Colorado income tax credit.

For a conservation easement to qualify for a tax credit, it must have a charitable component, either a full donation or a bargain sale; this is sometimes referred to as donative intent.<sup>3</sup> Easements where a landowner receives full value in exchange for the easement do not qualify for a Colorado income tax credit.

For bargain sale easements, an applicant must deduct the amount of its proceeds from the appraised value of the easement before calculating the allowed amount of the tax credit. In addition, applicants who have donated an easement within one year of the date when they purchased the property are subject to other limitations on the amount of appraised easement value that can be used to calculate the tax credit.



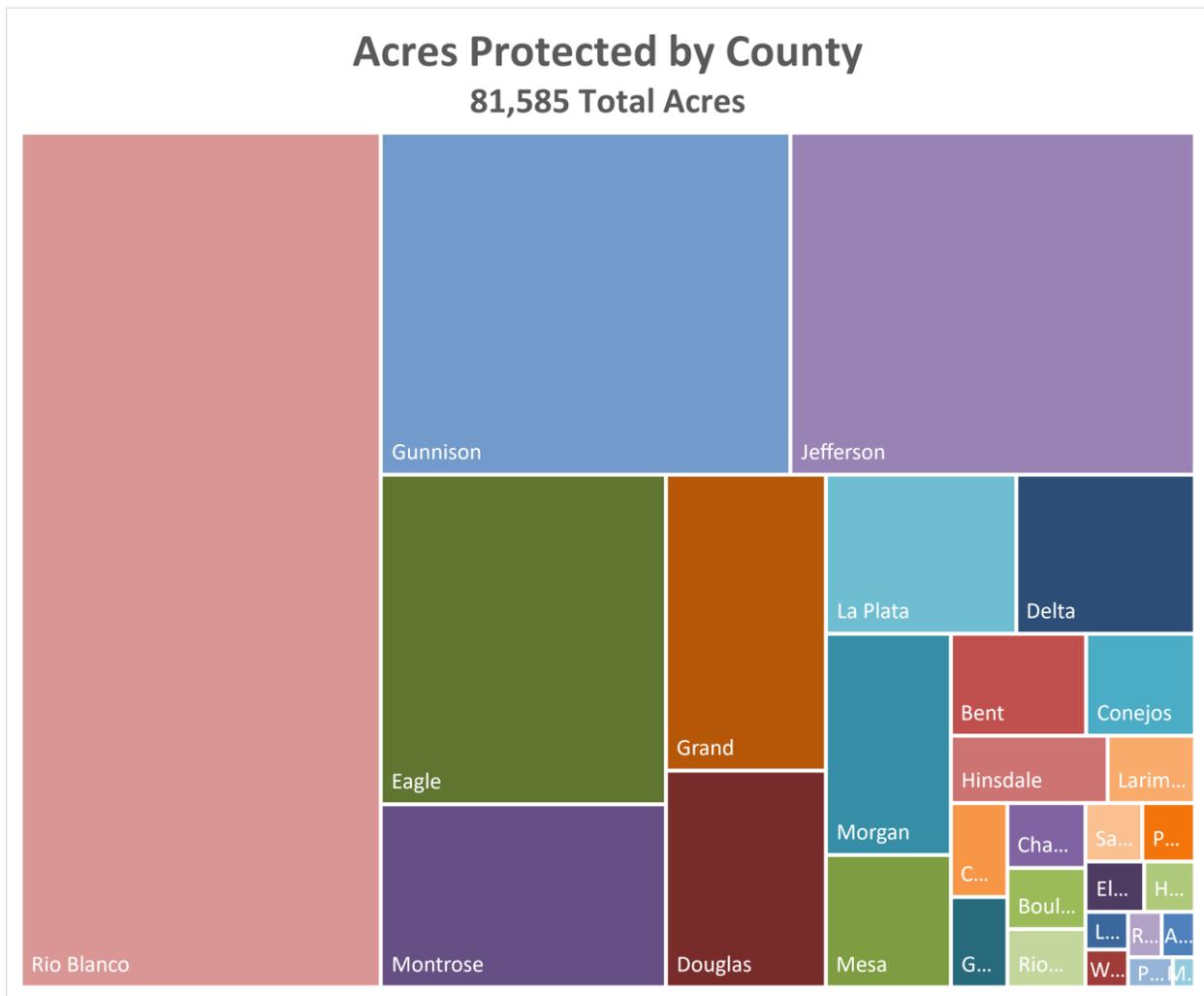
<sup>2</sup> The total amount of tax credits issued in a given calendar year is comprised of portions of multiple annual tax credit caps and may exceed \$45 million.

<sup>3</sup> Section 12-15-106(1)(a) requires compliance with section 170(h) of the Internal Revenue Code and any federal regulations promulgated in connection with this code section. The landowner's "qualified appraisal" must comply with section 170(f) of the Internal Revenue code and any federal regulations promulgated in connection with this code section. Section 39-22-522(2)(B), C.R.S. specifies that a "...credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section."

### Additional Information Otherwise Publicly Available

The 55 applications approved in 2021 were for conservation easements that encumber properties in 30 of Colorado’s 64 counties<sup>4</sup>:

Archuleta 123 acres	Garfield 417 acres	Moffat 54 acres
Bent 1,121 acres	Grand 3,852 acres	Montrose 4,241 acres
Boulder 388 acres	Gunnison 11,392 acres	Morgan 2,242 acres
Chaffee 411 acres	Hinsdale 859 acres	Park 250 acres
Conejos 900 acres	Huerfano 207 acres	Pueblo 110 acres
Custer 433 acres	Jefferson 11,250 acres	Rio Blanco 25,019 acres
Delta 2,310 acres	La Plata 2,462 acres	Rio Grande 367 acres
Douglas 2,819 acres	Larimer 478 acres	Routt 125 acres
Eagle 7,642 acres	Logan 131 acres	Saguache 270 acres
Elbert 240 acres	Mesa 1,342 acres	Washington 131 acres



<sup>4</sup> Conservation easements that encumber properties that span county lines have been allocated equally between counties.