

MINUTES

COLORADO DIVISION OF REAL ESTATE

**CONSERVATION EASEMENT OVERSIGHT
COMMISSION MEETING**

May 12, 2009, 3:00 PM

MINUTES – INDEX

PAGE #

CERTIFICATION PROGRAM FUNDING

2

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COMMISSION MEETING

May 12, 2009, 3:00 PM
Colorado Division of Real Estate
1560 Broadway, Suite 925
Denver, CO 80202

An emergency Conservation Easement Oversight Commission public meeting was held on May 12, 2009. The commissioners who joined the meeting by phone were Lise Aangeenbrug, representing Great Outdoors Colorado; Doug Robotham, representing the Colorado Department of Natural Resources; Cindy Lair, representing the Colorado Department of Agriculture; Martha Cochran, representing a local land trust; Dan Pike, representing a statewide land trust; Janis Whisman, representing a historic preservation organization with experience in easements on properties of historical significance; and Mark Weston, representing certified general appraisers. Commissioner R. Jay Winner and Commissioner Max Vezzani were absent. Also attending were Erin Toll, Director; Marcia Waters, Director of Compliance and Investigations; Zachary Urban, Communications and Operations Director; Hollis Glenn, Conservation Easement Program Manager; and several members of the Division's staff. The meeting was open to the public and one person attended.

Full and timely notice of the meeting was given to the public and the meeting was held pursuant to the Colorado Sunshine Law, Title 24, Article 6, C.R.S., as amended.

The meeting was called to order by Director Toll at 3:06 PM.

Certification Program Funding:

Director Toll told the Commission that the purpose of the meeting was to announce that the Department of Regulatory Agencies (DORA) has set the fee for land trusts that wish to apply for certification. She explained that DORA's budget office sets the fees for all of the programs in the department, and that the Division of Real Estate (the Division) doesn't set any fees.

She thanked the Commission for their patience as the Division has worked out the statutory problems with the first bill that necessitated the passage of the second bill.

Director Toll said that, as the Commission knows, the Division's work to date on the certification program for conservation easement holders has not yet been funded, so it's time to collect the fees and get the program geared up.

Finally, she apologized for the short notice – but reiterated that it's time to collect the fees to fund the program – and handed the floor to Hollis Glenn to explain the details of the fees.

Hollis said that, as Director Toll pointed out, DORA's office of planning and budget has determined the necessary fees for this fiscal year and beyond. Hollis explained that these fees

are necessary because the Division needs to pay for the expenses accrued during the first year of the program, which is fiscal year 2008-2009. He added that, due to statutory requirements, the Division needs to account for these expenditures before this fiscal year ends on June 30, 2009. He said the Division is going to do this by prescribing a fee that will be due on June 30, 2009 if a land trust wants to be certified by January 1, 2010.

He clarified that this fee is not a certification fee in the sense that the submission of the fee won't mean that the applicant is actually certified – it is just a portion of the fee or a partial fee. Hollis reiterated that this fee is going to be used to cover the administrative expenses from fiscal year 2008-2009 that the Division has already accrued. He explained that in conjunction with this fee, there will be another portion of the fee that will be necessary for certification, which will be prescribed later in the calendar year and collected in December 2009. He said that the Division understands that it is short notice for land trusts to pay a fee by June 30, 2009, but the Division was just made aware of this issue.

Hollis told the Commission that the partial fee due by June 30, 2009 is \$4,200. He said that if the Division receives this fee from the 35 land trusts that it is anticipated will apply for certification, then the second portion of the fee will be roughly \$4,500 and will be collected at the end of this calendar year. He emphasized that \$4,500 for the second portion of the fee is an approximation, and that the actual second portion of the fee will be set in the fall.

He said that the first portion of the fee will be collected when the land trust submits the Organizational Profile. He explained that once the Division prescribes the initial fee of \$4,200, which the Division should do in the next 24 hours, the Division will post a new version of the Organizational Profile. This new version of the Organizational Profile will disclose the fee, and will include a clause at the end of the Organizational Profile that the applicant will sign that says that the applicant is submitting their \$4,200 fee and intends to apply for certification by January 1, 2010.

Finally, Hollis said that the Division needs the Commission's help to get the word out that a \$4,200 partial fee is due from land trusts by June 30, 2009 to ensure that the integrity of the program can continue.

Chair Pike asked Hollis what the Division's prognostication is for local government applicants in 2010.

Hollis said that the local government application is still being developed. He explained that local governments will be required to pay the same amount that land trusts are required to pay now – an initial fee of \$4,200 plus a fee of \$4,500, if that's what the final part of the fee ends up being. He added that local governments won't submit a fee until next year.

Commissioner Whisman asked if Hollis could speak to the conversion of the three-year fee to an annual fee, and how that is going to affect the second and third year fees.

Hollis explained that the Division can't certify land trusts until the Division consults with the Commission, which will happen at the Commission meetings in September and December. He

said that when the Division makes final determinations on certification following these Commission meetings, the fee will be an annual fee.

Commissioner Whisman asked if this means that the \$8,700 is an annual fee.

Hollis said no. Hollis said that the initial fee of \$4,200 that is due before the end of the fiscal year is basically a one-time fee. He explained that the \$4,500 fee is basically what the Division anticipates will be the renewal fee, and that this fee will likely drop in 2011 and 2012. He said that the reason why the Division has to charge a fee now is because the Division has to account for the expenditures of the first year of the program now.

Commissioner Whisman explained that she was just looking for a straight comparison of the \$5,810 initial application fee in HB08-1353 and the \$8,700 fee that is now being charged.

Hollis said that the issue with HB08-1353 is that there are fewer applicants actually applying for certification than HB08-1353 anticipated, so the \$6,000 fee no longer applies because it is not adequate to fund the program.

Commissioner Whisman asked whether the Division had thought about what the fee would be after December.

Hollis said no. He explained that the fee is set by the Department of Regulatory Agencies' Office of Planning and Budget, and the office doesn't project that far ahead. He added that HB09-1014 is set up in such a way as to allow the fee to drop, so the fee could be less.

Commissioner Weston said that he is thinking of the \$4,200 as a catch-up fee to pay for the first year of the program when there wasn't sufficient money in the budget, and then the \$4,500 as akin to the annual fee that will hopefully decrease as time goes by.

Hollis said that that is an excellent way to describe it.

Commissioner Weston asked whether local governments will have to pay a one-time start-up fee.

Hollis said yes, the Division intends to charge local governments this "start-up fee" because one, it's fair to the land trusts, and two, doing so will mean that renewal fees will drop more quickly.

Vice-Chair Cochran asked how the \$600 appraisal fee will fit into this.

Hollis explained that the appraisal fees are separate from the conservation easement holder certification fees, and according to statute, the Division can't pool the two fees. He said that according to the Office of Planning and Budget, the appraisals fees don't need to change at this time.

Chair Pike asked whether Hollis anticipated those expenses staying at current levels.

Hollis said that he can't anticipate anything. He said that the Division is still waiting for final word from the Office of Planning and Budget on the amount of the appraisal fees. However, he said that the Office of Planning and Budget currently expects the appraisal fees to stay the same, at \$600 per appraisal.

Chair Pike said that the Commission and the Division have talked about the Division being able to help the Department of Revenue with some appraisal services, maybe contract some appraisal services, to look at pre-1353 conservation easement appraisals that are currently under review. He asked whether the funds for these services would come out of the appraisal fees.

Hollis said that while the Division and the Department of Revenue are still formulating the details of this plan, most likely it would come out of the appraisal proceeds

Commissioner Whisman asked how the Division is going to get the word out about the fee.

Hollis said that the Division is going to send out a blast email immediately after the meeting, as well as post information on the Division's website.

Commissioner Weston asked whether it would be a year from now when the Division begins to receive the \$4,200 fee from local governments.

Hollis said that the Division is going to post the local government application as soon as the Division can, and that local governments have one year from the day that the application is posted to become certified. He said that at some point within that year, the Division would probably make a statement that the initial fee is due by a certain date. He said that the Division knows that the initial fee is going to need to cover expenses in fiscal year 2009-2010, and that it is going to need to be submitted sometime within fiscal year 2009-2010, but the Division doesn't know exactly when yet.

The Conservation Easement Oversight Commission meeting adjourned at 3:28 PM on May 12, 2009.

Lisa Aangeenbrug, Great Outdoors
Colorado

Doug Robotham, Colorado Department of
Natural Resources

Cindy Lair, Colorado Department of
Agriculture

Martha Cochran, Commissioner

Dan Pike, Commissioner

R. Jay Winner, Commissioner

Janis Whisman, Commissioner

Mark Weston, Commissioner

Max Vezzani, Commissioner

Erin Toll, Director
Colorado Division of Real Estate