

**COLORADO DEPARTMENT OF REVENUE
GROSS CONSERVATION EASEMENT**

GUIDELINE FOR ADMINISTRATIVE HEARINGS

Scheduling – Administrative Hearing and Status Conference

Upon receipt of a request for hearing from the tax matters representative (TMR), the Executive Director (ED) shall send a notice to the TMR setting forth the deadline for filing and serving the Pre-hearing Data Certificate (PHDC), which deadline shall be not less than twenty days from the date of the notice. The Department of Revenue (Department) shall file and serve its responsive PHDC within ten days of receipt of the TMR's PHDC. The PHDCs shall be submitted in both paper and electronic formats.

Each PHDC must include the following information and documentation:

1. A listing of each legal issue.
2. For each legal issue, a statement of the amount of tax, penalty and interest in controversy and the time periods involved, followed by total amounts for all issues.
3. For each legal issue, a statement of facts, referencing attached exhibits as appropriate.
4. For each legal issue, citation to the relevant statutes and regulations that are on point, with copies included as an attachment.
5. For each legal issue, citation to the applicable case authority, with copies included as an attachment.
6. A listing of witnesses with brief summaries of the testimony to be presented.
7. A position statement stating the issue with an articulation of the party's argument, application of relevant facts and law, and referencing the exhibits and attachments as appropriate.
8. Copies of all exhibits and attachments, including full copies of all appraisals done for the relevant properties.
9. The party's proposals regarding the consolidation of cases involving common or related issues of fact or law. *See* § 39-22-522.5(5), C.R.S.
10. A list of the transferees who have claimed or are eligible to claim a credit for the TMR's gross conservation donation, and a proposal regarding transferees and affected parties who should be invited to participate in the proceedings. The list of transferees should include contact information for each transferee, including the transferee's mailing address and email address.

Concurrently with the notice to the TMR, the ED shall give notice of the TMR's request for hearing to all known transferees or persons who have claimed a credit or are eligible to claim a credit for that particular TMR's conservation easement donation. The notice shall advise the transferees that they may be admitted as parties to the proceeding by filing a written request in accordance with Reg. 39-22-522(10)(e) and 39-22-522(11)(a). *See also* § 39-22-522.5(5)(d), C.R.S. Any written request from a transferee asking to be admitted as a party shall be filed with the Department within forty days from the date of the ED's notice. In accordance with Section 39-22-522(7)(j), C.R.S., transferees are bound by the final resolution of disputes regarding gross conservation easement credits between the Department and the TMR, notwithstanding a transferee's failure to request to be admitted as a party to the proceedings. *See also* Reg. 39-22-522(3)(j)(i).

Following receipt of the Department's PHDC and after all transferee written requests to be admitted and consolidation issues have been resolved, the ED may schedule a pre-hearing status conference to be conducted by a hearing officer of the Department. The TMR and all admitted parties shall be given reasonable written notice of at least five days of the conference. At the conference, the hearing officer and the parties may discuss and consider preliminary matters including any pre-hearing motions, proposed discovery, stipulations, conflicts, and a hearing date. If the parties cannot agree on a hearing date, the date shall be set by the hearing officer, who shall give all parties written notice of the date of the hearing no less than thirty days prior to the scheduled hearing pursuant to Section 39-21-103(4), C.R.S.

Following the hearing, the ED or her designee will issue, pursuant to Section 39-21-103, C.R.S., a notice of final determination to the TMR and all known transferees of the credit, without regard to whether a transferee requested to be admitted as a party to the proceeding.

With regard to deadlines and filing times set forth above, "days" shall mean calendar days as opposed to working days. Therefore, weekend days are included in the calculation of time for filing or submitting documents.

Tax Matters Representative (TMR) Changes

Any person who has claimed a credit or may be eligible to claim a credit for a TMR's conservation easement donation may petition the Department to change the TMR if the TMR is unavailable, underage, or fails or neglects to adequately participate in the proceedings before the ED. Reg. 39-22-522(3)(j)(iv). To change the TMR designation, the person must file a petition in writing with the Department at the Department's email address, GCETMRChange@dor.state.co.us. This email address will be available after October 15, 2011. The petition shall contain the information required by Reg. 39-22-522(3)(j)(v). Upon receipt of the petition, the Department shall give the TMR and other known transferees notice of the petition. The TMR and the transferees shall have at least five days in which to respond to the petition. Following the deadline for responses, the ED or her designee will issue an order granting or denying the petition and ordering such other relief as is appropriate.

Joinder and Consolidation

Transferees who have claimed a credit or may be eligible to claim a credit for a TMR's conservation easement donation may be admitted as parties to the proceeding. § 39-22-522.5(5)(d), C.R.S. To be admitted, the transferee must file a written request with the Department that includes a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided. The ED may admit the transferee for limited purposes. § 39-22-522.5(5)(d), C.R.S.; Reg. 39-22-522(10)(e), (11)(a). In order to meet the statutory deadlines set forth in Section 39-22-522.5(7), C.R.S., and to expedite the equitable resolution of requests for administrative hearings, the ED or her designee may consolidate TMR cases. Pursuant to Section 39-22-522.5(5), C.R.S., the ED or her designee may consider common issues of law or fact in related cases to determine whether cases should be consolidated and a joint hearing shall be conducted for all the matters in issue in the actions. For example, the ED may consolidate cases involving a TMR with conservation easement donations in multiple tax years. *See also* § 39-22-522.5(a), C.R.S.

The TMR and the Department shall have twenty days to respond to the opposing party's proposal set forth in its PHDC regarding the joinder of parties and the consolidation of cases involving common or related issues of fact or law. After receipt of the responses regarding consolidation, the ED or her designee shall decide whether the parties or cases should be consolidated. An appropriate order will be entered forthwith.

Continuances / Extensions

By statute, any appeals before the ED must be decided within specified deadlines. For that reason, continuances or extensions shall be granted only in special or exigent circumstances. The ED and the TMR may agree in writing to extend the deadlines or due dates to a specified date. § 39-22-522.5(3) and (4), C.R.S. Any request by the TMR or other taxpayer to continue, stay or postpone a hearing shall be deemed a consent by the TMR or other taxpayer to enter into a written agreement with the ED to extend the time for the final determination by a period of time equal to the requested period of postponement. Reg. 39-22-522(11)(c).

Discovery

Because of the documents and information required to be filed by the TMR and Department with the PHDCs, the need for further discovery is slight. Discovery can only be conducted if specifically authorized by the hearing officer, which authorization will be given only under unusual circumstances. Any proposed discovery request must be made prior to the status conference and shall state the type of discovery sought, the person or persons to whom the discovery is directed, and the relevance such discovery has to the issues in the matter.

Appointment of Special Hearing Officers

It is anticipated that most if not all of the hearings for Gross Conservation Easements will be conducted by hearing officers of the Department's Hearings Division. In the event that a hearing officer from the Hearings Division is unavailable to conduct a hearing, the ED may appoint a qualified person within the Department to act on the ED's behalf to hear such dispute. All hearing officers, including special hearing officers, shall be authorized to exercise all powers and are bound by all duties imposed by virtue of Section 39-21-103, C.R.S., and any rules promulgated by the Department governing the conduct of these hearings.