GROSS CONSERVATION EASEMENT CREDIT

39-22-522

1) Qualified Taxpayer

- a) Taxpayers qualified to claim the gross conservation easement credit (including transferees of these credits) are:
 - i) Colorado residents,
 - ii) C corporations,
 - iii) trusts,
 - iv) estates,
 - v) partners, shareholders or members of pass-through entities who receive the credit from such entity, regardless of whether such individuals are Colorado residents.
- b) Joint tenancy, tenancy in common, pass through entity such as a partnership or S corporation, or other similar entity or group that makes a donation that generates a gross conservation easement credit must allocate the credit to the entity's owners, partners, shareholders or members in proportion to their distributive shares of income or ownership percentage from such entity or group.
- c) A limited liability company with only one member will generally be disregarded for federal tax purposes (I.R.S. Regulation 301.7701-3) as well as state income tax purposes. Therefore, the sole member does not qualify as a "member of a pass-through entity" and does not qualify for the conservation easement credit unless the member is a Colorado resident.
- d) Individuals who are not residents of Colorado cannot claim the gross conservation easement credit for a donation they make, or utilize a credit they purchase. Part-year residents may claim the credit, but only if they make the donation while they are a Colorado resident. Only a credit apportioned to nonresident partners, shareholders or members of a pass-through entity can be claimed by the nonresidents. Nonresident owners included in a joint tenancy, tenancy in common, and similar groups cannot claim the gross conservation easement credit.

2) Claiming the Gross Conservation Easement Credit

- a) Donations made on or after January 1, 2000 but prior to January 1, 2003.
 - i) A credit is generated from the donation of a single perpetual conservation easement in gross.
 - ii) The credit cannot exceed \$100,000.
 - iii) A taxpayer can claim only one tax credit per income tax year.

- iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:
 - (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
 - (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.
- b) Donations made on or after January 1, 2003 but prior to January 1, 2007.
 - A credit is generated from the donation of a single perpetual conservation easement in gross.
 - ii) The credit cannot exceed \$260,000 (100% of the first \$100,000 plus 40% of any amount in excess of \$100,000).
 - iii) A taxpayer can claim only one tax credit per income tax year that is generated by the donation of a perpetual conservation easement in gross by the taxpayer, either directly or by a pass-through entity in which the taxpayer is a partner, shareholder or member. A taxpayer cannot earn multiple credits in one year from multiple donations even if the donations are made by different pass-through entities. [See §39-22-522(6), C.R.S.]
 - iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:
 - (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
 - (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.
- c) Donations made on or after January 1, 2007.
 - i) A credit is generated from the donation of a single perpetual conservation easement in gross.
 - ii) The credit cannot exceed \$375,000 (50% of the first \$750,000).
 - iii) A taxpayer can claim only one tax credit per income tax year that is generated by the donation of a perpetual conservation easement in gross by the taxpayer, either directly or by a pass-through entity in which the taxpayer is a partner, shareholder or member. A taxpayer cannot earn multiple credits in one year from multiple donations even if the donations are made by different pass-through entities. [See §39-22-522(6), C.R.S.]
 - iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:
 - (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
 - (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.

- d) Transferred Credits.
 - i) A taxpayer cannot purchase a tax credit during a tax year beginning on or after January 1, 2000, but prior to January 1, 2003, if:
 - (1) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, or
 - (2) the taxpayer has a carryover gross conservation easement credit available during the tax year from a prior year, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer, or
 - (3) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the transferred credit to the tax year.
 - ii) A taxpayer cannot purchase a tax credit during a tax year beginning on or after January 1, 2003 if:
 - (1) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer, or
 - the taxpayer has a carryover gross conservation easement credit
 available during the tax year from a prior year, except that this paragraph
 (2) will not apply if the carryover credit is a result of an unused
 purchased credit from a prior year, or
 - (3) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the transferred credit to the tax year.
 - iii) During tax years beginning on or after January 1, 2000, but prior to January 1, 2003, a taxpayer can purchase and claim one gross conservation easement credit each tax year subject to the limitations in paragraph i).
 - iv) During tax years beginning on or after January 1, 2003, a taxpayer can purchase and utilize an unlimited number of credits subject to the limitations in paragraph ii). The total value of the purchased credits utilized in any tax year is not limited to the \$260,000 or \$375,000 amounts.
- e) The total amount of credit a married couple can generate in a year, regardless of whether they file jointly or separately, is \$100,000 for tax years 2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after. Similarly, the sum total of credits that all partners, shareholders or members of a pass-through entity, which makes a donation, can generate is \$100,000 for tax years 2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after.
- f) Tenants in Common, Joint Tenancy, and Similar Ownership Groups. The total credit generated by the donation of a perpetual conservation easement in gross by tenants in common, joint tenants, and similar ownership groups is limited to \$100,000 for tax years

2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after.

- g) For each tax year commencing in calendar years 2011 and 2012, the aggregate gross conservation easement credit claimed by all taxpayers is limited to \$22-million. For each tax year commencing in calendar year 2013, the aggregate gross conservation easement credit claimed by all taxpayers is limited to \$34 million.
 - i) Donors of conservation easements during the 2011, 2012 or 2013 calendar years must claim the credit first with the Division of Real Estate to obtain a Tax Credit Certificate, which will designate the tax year in which the credit may be claimed on a Colorado income tax return. The credit may be waitlisted to a later year if the \$22 million cap for each tax year commencing in calendar years 2011 and 2012, or the \$34 million cap for each tax year commencing in calendar year 2013, has been exceeded by previously claimed credits.
 - ii) The right to claim a tax credit with the Department of Revenue vests in the taxpayer when the Division of Real Estate issues the Tax Credit Certificate. To make a successful claim for the credit with the Department of Revenue, the taxpayer must establish compliance with all requirements of section 39-22-522, C.R.S., including the federal statutory and regulatory requirements incorporated therein, and with this Regulation. The determination of whether a claimed conservation easement tax credit complies with the statutory and regulatory requirements rests with the Department of Revenue and not with the Division of Real Estate.
 - iii) When a credit is waitlisted, the taxpayer may claim that credit only on their return for the designated tax year beginning in calendar year 2012 or 2013. Any limitation to the number of credits that may be claimed by the taxpayer in the designated year will include the waitlisted credit. If the taxpayer makes another easement donation in the designated year, a credit will not be allowed for that donation even if the Division of Real Estate would have waitlisted the second credit to a later year. Because the first credit is still available for use, no additional credit can be claimed in the designated year, either on a tax return or on an application to the Division of Real Estate.
 - iv) The charitable deduction addback for any waitlisted credit must still be reported beginning in the year of the donation.
 - v) The twenty year carryforward period will be based on the year the credit is actually claimed on a tax return, not on the year of the donation.
 - vi) Total credits available for donations occurring in calendar years 2011 and 2012 may not exceed \$22 million per calendar year. Total credits available for donations occurring in calendar year 2013 may not exceed \$34 million. These credits can not be waitlisted until 2014.
 - vii) Fiscal year filers.
 - (1) Taxpayers can not claim a credit for a donation that occurs in 2011 prior to the end of their fiscal year that begins in 2010 because the Division of Real Estate must certify all credits generated by a donation in 2011 for tax years starting on or after January 1, 2011.

- (2) Taxpayers can not claim a credit for a donation that occurs in 2014 prior to the end of their fiscal year that begins in 2013 because the Division of Real Estate must certify all credits for tax years beginning prior to January 1, 2014 and may certify those credits only for donations made in calendar years 2011, 2012, or 2013.
- viii) The amount of the credit allowed on the Tax Credit Certificate can be further reduced if other credit limitations exist including, but not limited to, a subsequent reduction in the appraised and/or donated value of the easement or the determination that a prior year credit is not fully utilized by the taxpayer.
- In certain cases due to the annual cap, a single credit generated by one easement donation will be split between two tax years with a Tax Credit Certificate being issued for each year. In this situation, the taxpayer may claim the second part of the credit in the second designated tax year in addition to using any unused carryforward from the first part of the credit. Despite the limitation on when parts of the credit can be claimed and utilized, only one credit is generated by the donation. The twenty year carryforward period for each part of the credit will be based on the designated tax year for that part of the credit. The limitation referenced in paragraph iii) above still prohibits the taxpayer from claiming another credit from a separate donation.

3) Transfer of credits

- a) A taxpayer can transfer all or part of a credit to a transferee who meets the qualifications of a taxpayer who can claim the credit. The portion of the credit being transferred must not be utilized by the transferor to offset tax or to claim a refund on any income tax return.
- b) A credit can be transferred only once. A transferee, to whom a credit is transferred, cannot thereafter transfer the credit to another taxpayer. Likewise, a transferee cannot transfer the credit back to the donor of the easement for the donor to either utilize the credit to offset a tax liability, or transfer the credit to another taxpayer.
- c) For donations made during tax years beginning prior to January 1, 2003, the minimum amount of credit that can be transferred to any one taxpayer is \$20,000. For donations made during tax years beginning on or after January 1, 2003, the donor can transfer all or any pro-rated portion of the credit. Credits transferred after January 1, 2003 that arise from donations made prior to that date are subject to the \$20,000 limit.
- d) A transferred credit utilized by a transferee can never exceed the net tax liability reported on the tax return.
- e) Transfer Timing.
 - i) For transfers completed prior to June 7, 2005, a transferee of a conservation easement credit must purchase the credit prior to the end of the tax year to be able to utilize the credit during that tax year. A purchased credit cannot be utilized in, or carried back to, a tax year that ended prior to the day the credit was purchased.
 - ii) For transfers completed on or after June 7, 2005, a transferee of a conservation easement credit must purchase the credit by the due date of the income tax return, not including extension of time for filing, on which the credit will be utilized. However, the donation of the conservation easement must occur prior to the end of the transferee's tax year.

- f) If a taxpayer sells a conservation easement credit to another taxpayer and that credit is later disallowed in an audit, the transferee will be held liable for the disallowed credit that was utilized plus any applicable penalty and interest.
- g) A pass through entity can directly transfer a credit if:
 - i) Each partner, shareholder or member consents to the transfer, and
 - ii) Each partner, shareholder or member could, under the restrictions of the law and this regulation, have claimed and transferred their pro rata share of the credit directly.
- h) Conservation easement credits may only be transferred to individuals or C-corporations. A pass through entity may not purchase or otherwise be the transferee of a credit.
- i) Upon the death of a taxpayer, a gross conservation easement credit passes to the decedent's estate. If the decedent is the donor of the easement, the estate may use the credit to offset income tax owed by the estate or may transfer some or all of the credit according to the transfer rules. If the decedent is a transferee of the credit, the estate may use the credit to offset income tax owed by the estate but can not transfer the credit.
- j) Tax Matters Representative. The tax matters representative (TMR) is the person who donates the conservation easement and/or transfers the credit. A pass-through entity that donates the easement and passes the credit to, or sells the credit on behalf of, its partners, shareholders or members, is the TMR, unless the entity's status as the TMR is otherwise revoked or changed in accordance with paragraphs iv), v), and vi) below.
 - i) Representation. The value and validity of a gross conservation easement credit held by a transferee is derived from, and dependent on, the credit generated and/or transferred by the TMR. Therefore, an adjustment of a credit, to the extent such adjustment is based on a Gross Conservation Easement Credit Transfer Item ("Transfer Item Adjustment"), made by the Department against the TMR shall also be binding on the credit held by a transferee. Final resolution of disputes between the Department of Revenue and the TMR determines the Transfer Item Adjustments and such resolution is binding on transferees of the credit.
 - ii) Gross Conservation Easement Credit Transfer Items ("Transfer Items"). Transfer items include, but are not limited to:
 - (1) the conservation easement appraisal and credit valuation,
 - (2) validity of the donation under article 30.5 of title 38, C.R.S.,
 - (3) compliance of the donation to the requirements of §170(h) IRC, and
 - (4) other such matters of the donation and/or credit that affect both the donor and the transferees of the credit.
 - iii) Effective Date. The rights and responsibilities of the TMR and transferee, including the right to a hearing, appeal, notification, and limitations of action set forth in 39-22-522(7)(i) and (j), C.R.S. apply to Transfer Item Adjustments initiated by the Department on or after June 7, 2005.

- iv) Changing the TMR Designation. Any person who has claimed a credit or who may be eligible to claim a credit in relation to a TMR's conservation easement donation may petition the Department to change the TMR's designation if the TMR:
 - (1) is incarcerated;
 - (2) is residing outside the United States, its possessions, or territories;
 - is deceased or, if the representative is an entity, is liquidated or dissolved;
 - (4) is under eighteen years of age at the time the Transfer Item Adjustment is initiated by the Department, or a court determines the person to be legally incompetent; or
 - (5) cannot be located;
 - (6) does not make an election to waive a hearing pursuant to § 39-22-522.5(2), C.R.S., or file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., provided that the petition to change the TMR's designation is filed on or before November 1, 2011;
 - (7) does not request a hearing for the Transfer Item Adjustment pursuant to §§ 39-21-103 or 104, C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for requesting a hearing;
 - (8) does not appear at hearing or fails to adequately participate in such hearing, including by failing to file a required pleading or to appear at a scheduled conference; or
 - (9) does not file an appeal of a final determination pursuant to §§ 39-21-105 and 39-22-522.5(6), C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for filing an appeal.
- v) Petition to Change TMR's Designation.
 - (1) The petition to change the TMR's designation must be in writing and filed with the Department.
 - (2) The petition must contain at least the following information:
 - (a) the petitioner's name, address, and tax account number;
 - (b) a statement that the petitioner is a person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's conservation easement donation, including the taxable period(s) and amount of tax in dispute;
 - (c) a summary statement of the grounds upon which the petitioner relies for changing the TMR's designation; and

- (d) a proposed replacement TMR, including the replacement TMR's qualifications to serve as TMR in accordance with the criteria for representation listed in paragraph vi) below.
- (3) The Department may provide the TMR and transferees with notice of the petition and an opportunity to respond.
- (4) The Executive Director will issue an order regarding the petition as soon as practicably possible.
- vi) Criteria for Representation. The Department of Revenue will determine the appropriate person to serve as TMR and whether a TMR is unavailable or unwilling to act such that a petition to change the TMR's designation should be granted. Criteria to be considered when determining who will serve as the TMR includes:
 - (1) The general knowledge of the donor or transferor and any proposed replacement TMR regarding the gross conservation easement credit transfer items at issue.
 - (2) The donor's or transferor's and any proposed replacement TMR's access to the records of the conservation easement.
 - (3) The views of the transferees involved in the transaction.
- vii) Statute of Limitations. The statute of limitations of the transferor and any extension to the statute of limitations agreed to by the TMR will also apply to the transferees of the credit, but only to the extent that it applies to Transfer Item Adjustments.

4) Refundable credit

- a) Taxpayers, but not transferees of such credits, can claim a refund of the conservation easement credit if State revenues are in excess of the limitation on state fiscal year spending imposed by section 20(7)(a) of article X of the state constitution. See Regulation 39-22-120 for years in which the subtraction is available.
- b) For credits arising from donations made during tax years beginning on or after January 1, 2000, but before January 1, 2003, the maximum credit that can be utilized if a portion is being refunded is \$20,000 per year. This limit increases to \$50,000 for credits arising from donations made in tax years beginning on or after January 1, 2003. The maximum credit includes the aggregate credits utilized by both donors and transferees generated by the conservation easement donation.
- c) The credit a married couple can utilize each tax year, regardless of whether they file jointly or separately, is \$20,000 (\$50,000 for donations made in 2003 and after) if either or both of them request a refund created by this credit. Similarly, the total of all credits utilized in any given tax year by members of a pass-through entity, tenants in common, joint tenancy, or similar ownership group which makes a donation, is \$20,000 (\$50,000 for donations 2003 and after) if one or more such partners, shareholders, members or owners request a refund based on this credit.

5) Qualifying Donation.

To qualify for the gross conservation easement credit, a donation must:

- a) be a donation of a perpetual conservation easement in gross on real property located in Colorado.
- b) be made to a governmental entity or a charitable organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1954, as amended,
- qualify as a charitable contribution for federal income tax purposes under the Internal Revenue Code.

6) Credit Carry Forward

- a) Once a credit is claimed by a Colorado resident, any excess credit not utilized or transferred may be carried forward by that taxpayer for up to twenty years from the year the perpetual conservation easement in gross that generated the credit was originally donated. A credit must be utilized in the earliest tax year possible.
- b) A taxpayer who later moves to another state remains eligible to utilize this carry forward credit during the carry forward period despite being a nonresident of Colorado.
- c) A taxpayer may elect to abandon and not carryover a credit and, thereby, avoid the prohibition in subparagraphs 2)a)iv), 2)b)iv) and 2)c)iv), above, against claiming a new credit. The abandonment of a credit should be stated on the income tax return, original or amended, in lieu of the statement of the amount of credit carryforward to the following tax year.

7) Documentation

- a) Every taxpayer who claims or utilizes a conservation easement credit on a tax return must attach a Colorado Gross Conservation Easement Credit Schedule to the return. This requirement applies to, among other returns, returns that claim a credit that has been transferred to another taxpayer, returns that report that the credit cannot be utilized during the tax year and will be carried forward to the following year, and returns that report that the balance of a carryforward credit has been transferred during the year.
- b) Every taxpayer who claims a conservation easement credit on a tax return for a donation made during that tax year must attach a Colorado Conservation Easement Donor Schedule to the return. This requirement applies without regard to whether the credit has been transferred to another taxpayer. This requirement also applies to returns filed by pass through entities that donated a conservation easement, and the partners, shareholders or members of such entities.
 - i) A summary of the appraisal, copies of the appraisal and the appraiser's affidavit submitted to the Division of Real Estate, the recorded deed including reception number and federal form 8283 must be attached to the Schedule.
 - ii) If the tax return is electronically filed, the Schedule and attachments must be submitted in paper format separately at the time the tax return is filed.
- c) Every taxpayer who claims a conservation easement credit on a tax return for a donation made during that tax year must submit a Colorado Gross Conservation Easement Public Information Schedule to the Department of Revenue separate from the tax return. This requirement applies without regard to whether the credit has been transferred to another taxpayer and applies to pass through entities that donated a conservation easement, and the partners, shareholders or members of such entities.

8) Appraisals

- a) The appraiser who prepares the appraisal must hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.
- b) The appraiser who prepares the appraisal must also meet all applicable education and experience requirements established by the Board of Real Estate Appraisers in accordance with Section 12-61-719(7), C.R.S.
- c) A qualified appraisal for computing the gross conservation easement credit must meet requirements for claiming a federal charitable deduction for the donation of the easement.
- d) The Department of Revenue can require a taxpayer to submit a copy of the complete appraisal upon request.
- e) In the event that the donated property is held by the taxpayer making the donation for less than one year prior to the date of donation, the value of the conservation easement will be reduced by the gain the taxpayer would have realized had the easement been sold on the date of donation for the fair market value of the easement as established in the appraisal.
- f) The Department of Revenue may require the taxpayer to provide a second appraisal at the taxpayer's expense if the executive director:
 - reasonably believes that the appraisal represents a gross valuation misstatement,
 - ii) receives notice of such a valuation misstatement from the Division of Real Estate, or
 - iii) receives notice from the Division of Real Estate that an enforcement action has been taken by the Board of Real Estate Appraisers against the appraiser.
- g) Any second appraisal required pursuant to the above provision and Section 39-22-522(3.5), C.R.S. must be prepared by a certified general appraiser who is not affiliated with the appraiser who prepared the first appraisal, is in good standing and has met qualifications established by the Division of Real Estate.
- h) If, upon final determination, it is determined that an appraisal submitted in connection with a gross conservation easement credit claim is a substantial or gross valuation misstatement, the Department must submit a complaint to the Board of Real Estate Appraisers and may pursue any other penalties or remedies authorized by law.

9) Requests for Documents

a) If a TMR has not provided a document related to the gross conservation easement credit that was required to be provided as part of the taxpayer's return, including the return itself, or, if requested by the Department, a copy of the complete appraisal obtained at the time of donation, the Department may send a written request to the taxpayer for such document. Such request may be sent by certified mail. Failure to provide the requested document to the Department within 60 days of the mailing of the Department's request shall constitute grounds for the Executive Director to issue a final determination denying the credit.

b) Documents that may be requested by the Department include, but are not limited to, all or any part of the taxpayer's return, the Colorado Gross Conservation Easement Credit Schedule, the Colorado Conservation Easement Donor Schedule, the federal Form 8283, a summary of the appraisal, a copy of the complete appraisal, a copy of the appraiser's affidavit submitted to the Division of Real Estate, and the recorded deed of conservation easement.

10) Disallowance of Conservation Easement Tax Credits

- a) Notice to TMR and Transferee. The Department shall initiate a Transfer Item Adjustment to a credit by issuing to the TMR a notice, which shall set forth the proposed adjustment, regardless of whether the state tax liability of the TMR is affected by the proposed adjustment. The Department shall also send to the transferee a notice of the Department's proposed Transfer Item Adjustment of the transferee's credit.
- b) Multiple Transferees. If there is more than one transferee of a credit, the Department will generally allocate proportionally the Transfer Item Adjustment based on the percentage of the overall credit originally transferred to the transferees. However, the Department may allocate the adjustment among and between the transferees in any manner appropriate to the circumstances.
- c) TMR Election Pursuant to § 39-22-522.5, C.R.S. For any credit for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the Department as of May 1, 2011, but for which a final determination was not issued before May 19, 2011, the TMR may elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., or request a hearing and final determination on or before July 1, 2014 pursuant to § 39-22-522.5(3), C.R.S. The TMR may make such election or request on or before October 1, 2011 without regard to the TMR's failure to timely protest the Department's notice in accordance with § 39-21-103, C.R.S., or the prior payment by a taxpayer of some or all of the amount of tax, penalties, or interest in dispute.
 - i) Election to Waive Administrative Process. An election pursuant to § 39-22-522.5(2), C.R.S., to waive the administrative process and appeal the notice directly to district court can be made only by the TMR. The TMR shall provide notice of its election to waive the administrative process to the transferees at the time of the mailing of the TMR's written notice of appeal and shall provide the Department with a list of all transferees so noticed. If the TMR does not elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., or file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., a transferee may petition the Department on or before November 1, 2011 to change the TMR's designation in accordance with § 39-22-522.5(4), C.R.S., and paragraphs 3)j)v), 3)j)v), and 3)j)vi) above.
 - ii) Request for Hearing and Final Determination on or before July 1, 2014. A request pursuant to § 39-22-522.5(3), C.R.S., for hearing and final determination on or before July 1, 2014 can be made only by the TMR. The TMR shall provide notice of its request for hearing and final determination to the transferees at the time of the mailing of the TMR's written request and shall provide the Department with a list of all transferees so noticed. If the TMR does not file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., or elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., a transferee may petition the Department on or before November 1, 2011 to change the TMR's designation in accordance with § 39-22-522.5(4), C.R.S., and paragraphs 3)j)iv), 3)j)v), and 3)j)vi) above.

- d) Request for Hearing. A request pursuant to §§ 39-21-103 or 104, C.R.S. for hearing on a Transfer Item Adjustment, including a Transfer Item Adjustment that results in the denial or modification of the transferee's credit, can be made only by the TMR. A transferee does not have a right to protest the Notice of Deficiency or refund change issued to the transferee (including the allocation of the adjustment between or among transferees) to the extent the adjustment is based on a Transfer Item Adjustment. If the TMR does not timely request a hearing pursuant to §§ 39-21-103 or 104, C.R.S., a transferee may petition the Department to change the TMR's designation within 10 business days after the final date for requesting a hearing in accordance with paragraphs 3)j)v), 3)j)v), and 3)j)vi) above. If the Department grants the petition, the new TMR may request a hearing pursuant to §§ 39-21-103 or 104, C.R.S., within 30 days of the Department's order regarding the petition.
- e) Notification and Request to be Admitted as Party. The Department will issue a notice of the hearing to the TMR and transferee of the credit. Such notice shall advise the transferee of the right to be admitted as a party to the hearing upon the filing of a written request setting forth a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided. The Executive Director may admit parties for limited purposes.
- f) Transfer of Jurisdiction. If the Executive Director issues a final order pursuant to § 39-22-522.5(5)(b), C.R.S., finding that a case cannot reasonably be resolved through the administrative process and transferring jurisdiction of the case to the district court, the Department will not oppose waiver of surety bond or other deposit in connection with the case.

11) Hearing Process.

To expedite the equitable resolution of requests for administrative hearings regarding conservation easement tax credits, avoid inconsistent determinations, and allow the Executive Director to consider the full scope of applicable issues of law and fact, such hearings will be conducted in accordance with the following provisions:

- a) The Executive Director may invite the participation in the hearing of any person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's conservation easement donation. Such participation shall include the right to be admitted as a party to the hearing upon the filing of a written request in accordance with paragraph 10)e) above.
- b) The Executive Director may resolve the issues raised by the parties in phases:
 - i) the first phase will address issues regarding the validity of the credit and any other claims or defenses touching the regulatory of the proceedings;
 - ii) the second phase will address the value of the easement; and
 - the third phase will address determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the TMR's conservation easement donation.
- c) Any request by a taxpayer to continue, stay, or otherwise postpone the hearing, including but not limited to a request for continuance to pursue mediation, shall be deemed consent by the taxpayer to enter into a written agreement with the Executive Director to extend the time for the Executive Director to issue a final determination by a period of days equal to the requested period of postponement.

d) Nothing in this section shall be construed to abrogate or diminish the ability of the taxpayer to assert any facts, make any arguments, and file any briefs and affidavits the taxpayer believes pertinent to the case.

12) Final Determination and Appeal.

The Department will issue, pursuant to § 39-21-103, C.R.S., a notice of final determination regarding the Transfer Item Adjustment(s) to the TMR and transferee of the credit. The TMR, not the transferee, may appeal the determination in accordance with §§ 39-21-105 and 39-22-522.5(6), C.R.S. If the TMR does not file an appeal pursuant to §§ 39-21-105 and 39-22-522.5(6), C.R.S., a transferee may petition the Department to change the TMR's designation within 10 business days after the final date for filing an appeal, in accordance with § 39-22-522(6), C.R.S., and paragraphs 3)j)v), 3)j)v), and 3)j)vi) above.