



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

States' Unmanned Aerial Vehicle Laws: *Colorado*



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

States' Unmanned Aerial Vehicle Laws: Colorado

4 CCR 752-1:2.1

4 CCR 752-1:2.2

Current through November 5, 2022

4 CCR 752-1:2.1 Qualifications for Certification of Qualified Organizations That Intend to Accept and Hold New Conservation Easements

The Division may deny, refuse to renew, suspend or revoke the certification of a conservation easement holder who fails to meet the following minimum qualifications:

A. Organization

The conservation easement holder:

1. pursuant to sections 12-15-104(5) and (7)(a), C.R.S., is accredited by a national land conservation organization broadly accepted by the conservation industry; or
2. meets the requirements of a qualified organization under section 12-15-104, C.R.S. and the qualifications in section 38-30.5-104(2), C.R.S., to hold a conservation easement; and
3. has the capacity to accomplish the work of the holder including, but not limited to
 - a. a board of sufficient size, skills, backgrounds and experience,
 - b. a sufficient number of staff and/or volunteers; and
4. if a non-governmental entity, the holder must be in good standing with the Colorado Secretary of State.

B. Conservation Easement Selection, Review and Approval

1. The conservation easement holder has and follows reasonable written policies and procedures for selecting conservation easements. These must include, but are not limited to
 - a. establishing and following selection criteria to identify conservation easements with at least one conservation purpose as defined in section 12-15-106(1)(b), C.R.S.;
 - b. documenting the conservation purpose(s);
 - c. working with the conservation easement grantor on an individual basis to identify and design the permitted uses, reserved rights, and prohibited uses intended to be memorialized in the conservation easement;



- d. establishing and following a written policy for accepting phased conservation easements as defined at rule 1.3 such that each proposed conservation easement of a phased project has at least one conservation purpose;
 - e. advising potential conservation easement grantors in writing that
 - i. they should seek their own legal, financial and tax advice;
 - ii. the holder does not provide legal, financial or tax advice;
 - iii. there may be adverse legal and other consequences if grantor terminates a conservation easement; and
 - iv. the holder neither promises nor guarantees that the proposed conservation easement qualifies for state income tax credit purposes.
2. The conservation easement holder has and follows reasonable written policies and procedures for reviewing proposed conservation easements. These must include, but are not limited to:
- a. Declining projects that
 - i. do not have at least one conservation purpose, or
 - ii. do not appear to have the necessary donative intent, or
 - iii. are potentially fraudulent or abusive.
 - b. Prior to accepting the donation, having a title company or competent attorney investigate and report on the property's title and, when appropriate, engaging such professionals as may be necessary to evaluate the property's water and mineral rights;
 - c. Evaluating title exceptions and, prior to accepting the donation, documenting how grantee addressed severed minerals or other exceptions to title so that they will not result in extinguishment or undermining of the expressed conservation purpose(s);
 - d. Ensuring that, prior to accepting the donation, any liens or encumbrances are released, subordinated or addressed so that the conservation purpose(s) of the easement is protected in perpetuity;
 - e. Providing sufficient information to the board of the holder, a qualified committee or other designee for review before a conservation easement is approved.
 - f. Receiving, reviewing and acknowledging, prior to accepting the donation, a baseline documentation report for the conservation easement prepared pursuant to section 12-15-106(5)(c), C.R.S. The review shall assess, at a minimum, that:
 - i. The report documents the physical condition of the property at the time of the gift. Such documentation may include:
 - A. Appropriate survey maps from the USGS showing the property line and other contiguous or nearby protected area;
 - B. A scale map of the area showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations,



animal breeding an roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

C. An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and
D. On-site photographs taken at appropriate locations on the property

ii. The report documents accurately the conservation purposes of the easement; and

iii. The report, including the maps and photographs, must be accompanied by a statement, signed and dated by its author(s), the easement grantor and the easement grantee, in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the donation of the conservation easement."

g. If a prior baseline documentation report is updated for use in connection with the second or subsequent phase of a conservation project, the update shall be a separate document preserved in the conservation easement holder's records, along with the original report.

h. Receiving and reviewing, before the donor submits a tax credit application pursuant to sections 12-15-105 and 12-15-106, C.R.S., a paper or electronic copy of the signed qualified appraisal prepared by one or more qualified appraisers for all conservation easements. The holder's review shall assess, at a minimum, that:

i. The physical aspects and legal description of the property that was appraised are the same as those described in the conservation easement;

ii. The conservation easement that was appraised is like, in every material aspect, the conservation easement that was recorded;

iii. The ownership of the property that was appraised is identical to the grantor of the easement; and

iv. The appraisal appears to be a qualified appraisal prepared by a qualified appraiser in compliance with section 12-15-106(3)(b)(I)-(III), C.R.S.

3. Having the board of the holder approve all conservation easement donations, or establishing policies delegating the authority to approve transactions to a qualified committee or other designee;

i. Such review and approval must be documented; and

ii. If an entity other than the holder performs the due diligence and analysis described in parts 2., b., c., and d. of this section B., the holder must review the transaction and document that the project is consistent with its policies and procedures.

C. Stewardship and Enforcement: Practices and Capacity



1. The conservation easement holder has the following written practices, policies and procedures to ensure the fulfillment of the perpetual stewardship responsibilities of each of its conservation easements including, but not limited to:
 - a. Monitoring all conservation easements no less than annually, using at least one of the following methods:
 - i. On-the-ground physical inspection of the property; or
 - ii. aerial inspection of the property using manned or unmanned aircraft, or other methods in general use by other holders that monitor easements encumbering similar properties; and
 - iii. if aerial or other methods are used, conducting on-the-ground monitoring at least every five years.
 - b. Monitoring is documented in writing, and the documentation is reviewed by either the board of the holder, a qualified committee, or other designee;
 - c. Enforcing every conservation easement deed, including violations;
 - d. Reviewing proposed amendments to conservation easement deeds to confirm they
 - i. do not result in a net loss of conservation value, and
 - ii. do not create any non-incidental benefits serving the interests of grantor (impermissible private benefit).
 - e. Preserving important records, such as but not limited to, deeds, baseline documentation reports, monitoring reports and appraisals, in a safe and secure manner.
2. The conservation easement holder has the capacity to maintain, monitor and defend the purposes of its easements. If a non-governmental entity, these written policies must include, but not be limited to:
 - a. The holder maintains dedicated funds for the stewardship and legal defense of every conservation easement held. The funds must be managed in conformance with a financial plan, which may consider the value of insurance policies. The plan shall:
 - i. Ensure the longevity of the dedicated stewardship and enforcement funds;
 - ii. Determine the amount of stewardship and legal defense funds that will be needed. Minimum requirements are:
 - A. For stewardship, maintain a minimum fund balance of \$3,500 per conservation easement, and
 - B. For legal defense, maintain a minimum fund balance of \$100,000, or
 - C. For holders lacking sufficient money, provide a detailed plan with specific funding targets and timelines to achieve the minimum requirements in no more than two years.
 - b. Ensure that the dedicated funds for stewardship- and enforcement-related purposes are used only for these purposes or, as established through written policies, other allowable uses.



- c. If a government entity, sufficient funds must be allocated in the budget to steward and enforce conservation easements. Funds are not required to be held in a dedicated stewardship fund.

D. Finance

The conservation easement holder has and follows reasonable written fiscal policies and procedures to ensure the transparent and responsible management of its assets. These must include, but are not limited to:

1. Having the board of the holder review and/or regularly assess the holder's financial status, including the annual budget and any financial changes that have occurred; and
2. Having a financial evaluation conducted on an annual basis by an independent qualified accountant who has no financial or other interest in the holder. The level of evaluation is determined by the holder's total annual operating revenue, not including the cost or value of conservation easements or fee-owned properties:
 - a. Less than \$100,000 requires an annual compilation;
 - b. \$100,000-\$500,000 requires an annual financial review; and
 - c. More than \$500,000 requires an annual financial audit.

E. Governance

The conservation easement holder has and follows reasonable written policies and procedures to ensure responsible management. These must include, but are not limited to:

1. The holder has board meetings;
2. The holder has a written conflict of interest policy; and
3. Conservation easements and financial transactions with insiders must be documented and must demonstrate that there is no private inurement.

4 CCR 752-1:2.2 Qualifications for Certification of Qualified Holders That Do Not Intend to Accept New Conservation Easements

Pursuant to 12-15-104(7)(b), the Division shall offer a streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements.

The Division may deny, refuse to renew, suspend or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:

A. Organization

The conservation easement holder:

1. pursuant to sections 12-15-104(5) and (7)(a), C.R.S., is accredited by a national land conservation organization broadly accepted by the conservation industry; or
2. meets the requirements of a qualified organization under section 12-15-104, C.R.S. and the qualifications in section 38-30.5-104(2), C.R.S., to hold a conservation easement; and



3. has the capacity to accomplish the work of the holder including, but not limited to
 - a. a board of sufficient size, skills, backgrounds and experience,
 - b. a sufficient number of staff and/or volunteers; and
 4. if a non-governmental entity, the holder must be in good standing with the Colorado Secretary of State.
- B. Stewardship and Enforcement: Practices and Capacity
1. The conservation easement holder has the following written practices, policies and procedures to ensure the fulfillment of the perpetual stewardship responsibilities of each of its conservation easements including, but not limited to:
 - a. Monitoring all conservation easements no less than annually, using at least one of the following methods:
 - i. On-the-ground physical inspection of the property; or
 - ii. aerial inspection of the property using manned or unmanned aircraft, or other methods in general use by other holders that monitor easements encumbering similar properties; and
 - iii. if aerial or other methods are used, conducting on-the-ground monitoring at least every five years.
 - b. Monitoring is documented in writing, and the documentation is reviewed by either the board of the holder, a qualified committee, or other designee;
 - c. Enforcing every conservation easement deed, including violations;
 - d. Reviewing proposed amendments to conservation easement deeds to confirm they
 - i. do not result in a net loss of conservation value,
 - ii. do not create any non-incidental benefits serving the interests of grantor (impermissible private benefit).
 - e. Preserving original and duplicate copies of necessary and important records, such as deeds, baseline documentation reports, monitoring reports and appraisals, in a safe and secure manner.
 2. The conservation easement holder has the capacity to maintain, monitor and defend the purposes of its easements. If a non-governmental entity, these written policies must include, but not be limited to:
 - a. The holder maintains dedicated funds for the stewardship and legal defense of every conservation easement held. The funds must be managed in conformance with a financial plan, which may consider the value of insurance policies. The plan shall:
 - i. Ensure the longevity of the dedicated stewardship and enforcement funds;
 - ii. Determine the amount of stewardship and legal defense funds that will be needed. Minimum requirements are:
 - A. For stewardship, maintain a minimum fund balance of \$3,500 per conservation easement, and



B. For legal defense, maintain a minimum fund balance of \$100,000, or

C. For holders lacking sufficient money, provide a detailed plan with specific funding targets and timelines to achieve the minimum requirements in no more than two years.

b. Ensure that the dedicated funds for stewardship- and enforcement-related purposes are used only for these purposes or, as established through written policies, other allowable uses.

c. If a government entity, sufficient funds must be allocated in the budget to steward and enforce conservation easements. Funds are not required to be held in a dedicated stewardship fund.

C. Finance

The conservation easement holder has and follows reasonable written fiscal policies and procedures to ensure the transparent and responsible management of its assets. These must include, but are not limited to:

1. Having the board review and/or regularly assess the holder's financial status, including the annual budget and any financial changes that have occurred; and
2. Having a financial evaluation conducted on an annual basis by an independent qualified accountant who has no financial or other interest in the holder. The level of evaluation is determined by the holder's total annual operating revenue, not including the cost or value of conservation easements or fee-owned properties:
 - a. Less than \$100,000 requires an annual compilation;
 - b. \$100,000-\$500,000 requires an annual financial review; and
 - c. More than \$500,000 requires an annual financial audit.

D. Governance

The conservation easement holder has and follows reasonable written policies and procedures to ensure responsible management. These must include, but are not limited to:

1. The holder has board meetings;
2. The holder has a written conflict of interest policy;
3. Conservation easements and financial transactions with insiders must be documented to show that there is no private inurement; and
4. The holder advises grantors of amended conservation easements that the holder is not certified to hold conservation easements where grantor intends to apply for a state income tax credit.

