REPORT HIGHLIGHTS

CONSERVATION EASEMENT TAX CREDIT PROGRAM, AFTER CHANGES IN 2014

PERFORMANCE AUDIT, NOVEMBER 2016

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE

KEY CONCERNS

The Division of Real Estate (Division) should improve its administration of the Conservation Easement Tax Credit Program (Program) by reviewing tax credit applications faster, improving its management of Program fees and resources, and implementing strategies to help reduce the incidence of problems in conservation easement appraisals.

KEY FINDINGS

- The Division spent an average of 133 days on its initial reviews of conservation easement tax credit applications from January 2015 to June 2016, which exceeded the statutory 120-day average timeframe. Lengthy reviews are an inefficient use of Division resources and increase costs for some landowners.
- In an effort to increase cash flow in 2014, the Division created a placeholder process to encourage landowners and non-landowners to prepay fees for preliminary advisory opinions in exchange for discounted fees on future tax credit applications. The Division improperly recorded 63 such prepayments and spent the money before receiving applications for the preliminary advisory opinions, resulting in unfunded liabilities through 2016. As of September 2016, about $48,000 in liabilities remained.
- The Division has not collected sufficient revenue from application fees to cover its expenses associated with reviewing applications, partly due to flaws in its fee-setting methodology. Consequently, the Division has had difficulty funding Program staff positions and has a backlog of applications waiting to be reviewed.
- The Division identified problems with most conservation easement appraisals from January 2014 to June 2016, indicating the Division could improve its communication to help appraisers understand how to meet applicable standards.
- Currently, no state agency reports on the types of lands, wildlife, or habitats being conserved by the Program, making it difficult for the public and policymakers to determine the benefits that the State has received from the Program in return for forgone tax revenue.
- The Conservation Easement Oversight Commission may need authority from the General Assembly or legal guidance to set Program policies or direct outcomes, which would help ensure the Program addresses the State's conservation needs effectively.

BACKGROUND

- Colorado landowners are eligible for a state income tax credit when they donate a conservation easement on their land to a qualified organization, such as a land trust or local government.
- In 2014, following the passage of Senate Bill 13-221, some Program administration shifted from the Department of Revenue to the Division. The Division instituted processes for reviewing applications for the conservation easement tax credit and for providing preliminary advisory opinions on whether proposed easement donations would qualify for the tax credit.
- Since 2000 when the Program began, the State has issued almost $1 billion in tax credits for over 4,200 conservation easement donations on more than 1.7 million acres.

KEY RECOMMENDATIONS

The Division of Real Estate, within the Department of Regulatory Agencies, should:

- Implement timeliness goals and strategies to reduce the time it takes to review applications and issue decisions.
- Address the problems created by its placeholder process by either issuing refunds or continuing to track usage.
- Improve its fee-setting methods to ensure revenues are sufficient to cover the Program's administrative costs.
- Better communicate review standards to appraisers and give landowners information on finding competent appraisers.
- Expand its public reporting on the specific conservation benefits the State receives from the Program.

The Division of Real Estate agreed with these recommendations.