

New Frontiers in Land Conservation: Conserve, Redevelop, Un-develop



Together with:
Sarah Parmar, Colorado Open Lands
Jim Petterson, Trust for Public Land
Claire Riegelman, Clear Creek Land Conservancy

Like the mantra of Reduce, Reuse, and Recycle, the new frontiers of land protection will be to Conserve, Redevelop, and Undevelop. This session focuses on land trusts as new social entrepreneurs shepherding the movement from large-scale, raw land protection to small-scale, interconnected repurposing of land and its uses. Presenters will share their experiences and examples of working within, and developing new, legal, practical, and functional frameworks for land trusts *conserving* creating, and interconnecting people and parcels of land for public parks, community gardens, cooperative farms, and public forests; *redeveloping*, reimagining, and reinventing the already-built environment for new public purposes such as affordable housing, recreation, and community places; and *undeveloping*, recovering, and restoring developed, degraded, or polluted lands to support revitalized ecological and human systems. Presenters also will use their examples to provide financial, legal, and regulatory guidance for land trusts endeavoring projects on the new frontiers.

- I. New Frontiers and Opportunities for Innovation: Why Conserve, Redevelop, Un-develop?**
- II. Innovation in Action: Conservation organizations at work**
 - A. Trust for Public Land
 - B. Colorado Open Lands
 - C. Clear Creek Land Conservancy
- III. Incentives for the New Frontiers: Existing and New**
 - A. Historic tax credits
 - B. Affordable housing tax credits
 - C. Brownfields tax credits: Federal and State
 - D. New market tax credits
 - E. Federal conservation easement tax deduction
 - F. State conservation easement tax credits
- IV. Discussion: Sharing Experiences, Questions, Answers, and Guidance**
- V. Conclusions and Take-Aways: (building blocks, road maps, lessons learned)**

I. New Frontiers and Opportunities for Innovation: Why Conserve, Redevelop, Un-develop?

II. Innovation in Action: Conservation organizations at work

- A. Trust for Public Land**
- B. Colorado Open Lands**
- C. Clear Creek Land Conservancy**

III. Incentives for the New Frontiers: Existing and New Opportunities

A. Existing incentives

1. Individual incentives

a. Historic tax credits

http://www.achp.gov/docs/BRAC/Federal_Historic_Preservation_Tax_Incentives_Program-June_06.pdf

The Federal Historic Preservation Tax Incentives program is one of the nation's most successful and cost-effective public/private revitalization programs. The program fosters private sector rehabilitation of historic buildings and promotes economic revitalization. It also provides a strong alternative to government ownership and management of such historic properties. The Federal

Historic Preservation Tax Incentives are available for buildings that are National Historic Landmarks, are listed in the National Register, and that contribute to National Register Historic Districts and certain state or local historic districts.

Properties must be income-producing and must be rehabilitated according to standards set by the Secretary of the Interior. Jointly managed by the National Park Service (NPS) and the Internal Revenue Service (IRS) in partnership with State Historic Preservation Offices (SHPOs), the Historic Preservation Tax Incentives program rewards private investment in rehabilitating historic buildings. Prior to the program, the U.S. tax code favored the demolition of older buildings over saving and using them.

Starting in 1976, the Federal tax code became aligned with national historic preservation policy to encourage voluntary, private sector investment in preserving historic buildings. Since that time, the tax incentives have leveraged over \$33 billion of private sector investment to preserve and rehabilitate over 32,000 historic properties, including the Over the life of the program, the historic rehabilitation tax credit (HTC) has: created nearly 2.5 million good paying, local jobs; leveraged more than \$117 billion in private investment in our communities; generated a significant return on investment for the federal government; preserved more than 40,000 buildings; and created nearly 185,000 housing units, of which over 75,000 are low and moderate-income units.

Utilizing the federal HTC is essentially a three-step process governed by regulations and procedures of the National Park Service (NPS) and the Internal Revenue Service (IRS):
QUALIFYING: The owner determines whether the project will qualify for the 10 percent or the 20 percent tax credit based on IRS and NPS

qualification criteria; EARNING: The owner follows the procedure established by the NPS to earn the credits; REDEEMING: The owner consults IRS regulations to determine his/her ability to redeem the credits earned as a credit against federal tax liability.

Current tax incentives for preservation, established by the Tax Reform Act of 1986 (PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g)]) include:

- a 20% tax credit for the certified rehabilitation of certified historic structures and
- a 10% tax credit for the rehabilitation of non-historic, non-residential buildings built before 1936.

For both credits, the rehabilitation must be substantial and must involve a depreciable building. The substantial rehabilitation test means that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building. Generally, this test must be met within two years or within five years for a project completed in multiple phases. A depreciable building is one that after rehabilitation must be used for an income-producing purpose for at least five years. Owner-occupied residential properties do not qualify for the federal rehabilitation tax credit.

b. Affordable housing tax credits

<https://www.hudexchange.info/programs/home/>

Created by the Tax Reform Act of 1986, the LIHTC program gives State and local LIHTC-allocating agencies the equivalent of nearly \$8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. The LIHTC is commonly referred to as section 42, the applicable section of the Internal Revenue Code (IRC). The LIHTC program provides tax incentives to encourage individual and corporate investors to invest in the development, acquisition, and rehabilitation of affordable rental housing. The LIHTC is an indirect federal subsidy that finances low-income housing. This allows investors to claim tax credits on their federal income tax returns. The tax credit is calculated as a percentage of costs incurred in developing the affordable housing property, and is claimed annually over a 10-year period. Some investors may garner additional tax benefits by making LIHTC investments.

The equity raised with LIHTCs can be used for newly constructed and substantially rehabilitated and affordable rental-housing properties for low-income households, and for the acquisition of such properties in acquisition/rehabilitation deals.

LIHTCs provide equity equal to the present value of either 30 percent (referred to in this report as the 4 percent credit) or 70 percent (referred to as the 9 percent credit) of the eligible costs of a low-income housing project, depending in part on whether tax-exempt bonds are used to finance the project. To qualify for the credit, a project must meet the requirements of a qualified low-income project. Project sponsors/developers (project sponsors) are required to set aside at least 40 percent of the units for renters earning no more than 60 percent of the area's median income (the 40/60 test) or 20 percent of the units for renters earning 50 percent or less of the area's median income (the 20/50 test).

These units are subject to rent restrictions such that the maximum permissible gross rent, including an allowance for utilities, must be less than 30 percent of Imputed income based on an area's median income. State selection procedures for tax credit allocations often encourage project sponsors to provide more than the minimum number of affordable units and greater than the minimum level of affordability. Because these credits are available only for affordable rental units, many applications designate 100 percent of units in properties as affordable and reserve some units for renters earning well below 50 percent of the area median income.

The Low-Income Housing Tax Credit (LIHTC) is the most important resource for creating affordable housing in the United States today. The LIHTC database shows 40,502 projects and 2.6 million housing units placed in service between 1987 and 2013. The LIHTC program leverages private capital and investor equity to support the development of new and rehabilitated affordable rental housing. The credits are competitively priced. In general, state governments can adapt the LIHTC program to meet their housing needs under broad federal guidelines. In addition, the private sector carries all development and marketing risk and enforces strong oversight and accountability.

The LIHTC program uses a pay-for-performance policy with ongoing risk to the investors. Investors only get to claim and keep the tax credits if their units are built, leased and maintained as affordable housing throughout a 15-year compliance period. Many states enforce a 15 year extended-use period to require that properties stay affordable beyond the first 15 years. Developers provide guaranties throughout the 15-year compliance period, including operating deficit and tax credit guaranties. States use a competitive process to award developers with credits.

HOME Investment Partnerships Program. The HOME Investment Partnerships Program (HOME) provides formula grants to states and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. It is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.

c. Brownfields tax credits: Federal and State

<http://www.epa.gov/brownfields/>

Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off greenspaces and working lands.

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub .L.No. 107-118, 115 stat. 2356, "the

Brownfields Law"). The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean up brownfields; clarified CERCLA liability protections; and provided funds to enhance state and tribal response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements: Small Business Liability Relief and Brownfields Revitalization Act; Public Law 107-118 (H.R. 2869): "Small Business Liability Relief and Brownfields Revitalization Act"; Executive Order: Further Amendment to Executive Order 12580, as Amended, Superfund Implementation; Other Brownfields - Related Laws: Includes CERCLA, Resource Conservation and Recovery Act (RCRA), Community Reinvestment Act (CRA), Superfund Amendments and Reauthorization Act (SARA).

Brownfields Tax Incentive

The Federal Brownfields Tax Incentive sunset on December 31, 2011. Congress has not renewed the Brownfields Tax Incentive. Therefore, the tax incentive cannot be claimed for tax years beyond 2011. Originally signed into law in 1997 and extended through December 31, 2011, the Brownfields Tax Incentive encourages the cleanup and reuse of brownfields. Under the Brownfields Tax Incentive, environmental cleanup costs are fully deductible in the year incurred, rather than capitalized and spread over time. Improvements in 2006 expanded the tax incentive to include petroleum cleanup. The success of many brownfields cleanup and redevelopment projects depends on the ability of developers and investors to craft a financing package that leverages numerous sources of funding available from a variety of sources. Taking advantage of federal, state and local tax incentives and credits allows a brownfield developer to use resources normally spent to pay taxes for other purposes. This can help site redevelopers save the cash needed to address contamination issues. The extra cash flow resulting from a tax break also can improve a project's appeal to lenders. Federal tax credits and incentives often are an important part of the mix.

State Brownfield Incentives supplement the Federal tax credit program to focus with the federal program on the following programs and State and tribal response programs continue to be at the forefront of brownfields cleanup and redevelopment, as both the public and private markets recognize the responsibilities and opportunities of these response programs in ensuring protective and sustainable cleanups. The increasing number of properties entering into voluntary response programs emphasizes the states' and tribes' growing role in brownfields cleanup.

EG, Colorado just passed a \$1.5 million dollar tax credit for brownfield property clean-ups.

Sector-Based Initiatives: Auto Sector Property Revitalization; Sustainable Reuse of Brownfields: Resources for Communities; Portfields; Mine-Scarred Lands; Mill Revitalization; Railfields; Petroleum Brownfields; RCRA Brownfields Prevention Initiative

Urban Agriculture at Contaminated Sites: Before a property can be redeveloped, contaminants must be removed, capped or contained in ways that limit exposure risks. Urban agriculture projects can help bind contaminants while providing further benefits to the property and surrounding community. An urban farm or community garden can improve the environment, reduce greenhouse emissions, and improve access to healthy, locally grown food. Other possible benefits include promoting health and physical activity, increasing community connections, and attracting economic activity.

Community Initiatives:

Methfields: Clandestine drug labs are an increasing problem in the United States. Once seen as only a rural issue in western states, drug labs—specifically methamphetamine labs (or meth labs)—are multiplying throughout the nation and becoming a major social, economic, and public health concern. Due to this growing national concern, Congress made properties contaminated by controlled substances, such as methamphetamine, eligible for Brownfields funding. Although Brownfields redevelopment is not the primary solution to the emerging drug lab issue, the Brownfields Program can provide funding and technical assistance to assist in addressing the growing problem.

Housing/Residential Reuse: In addition to restoring former commercial and industrial sites into similar facilities, the EPA Brownfields Program facilitates brownfields redevelopment for residential uses. Residential developments range from high-end new housing to affordable housing involving partners such as the Department of Housing and Urban Development (HUD) and the Federal Home Loan Bank.

Typically, the property developer works with the state, often as part of a state Voluntary Cleanup Program, to ensure that contamination at the property being redeveloped does not exceed state residential contamination levels, which are more stringent than commercial or industrial contamination levels. Redeveloping brownfields into new residential space complements the recent nationwide shift from rural to urban relocation – reducing urban sprawl and protecting greenspace. **Smart Growth:** The occurrence of urban sprawl and non-sustainable development has become a growing concern for communities across the nation. The concept of smart growth recognizes the connections between development and quality of life, leveraging new growth that complements the area while revitalizing underutilized and abandoned brownfields in established communities. Smart growth helps to protect open space and prime agricultural lands. The features that define smart growth vary from place to place and community to community. In general, smart growth invests time, attention, and resources in restoring vitality to center cities and older suburbs. Successful communities tend to have one common thread – a vision of the future and an understanding of what is important to their communities.

Smart growth is development that serves the economy, the community, and the environment. It changes the terms of the development debate away from the traditional growth/no growth question to "how and where should new development be accommodated."

Brownfields redevelopment is an integral component to smart growth. By redeveloping a brownfield in an older city or suburban neighborhood, a community

can remove blight and environmental contamination, create a catalyst for neighborhood revitalization, lessen development pressure at the urban edge, and use existing infrastructure.

Groundwork Trusts: The Groundwork Trusts are independent, not-for-profit, environmental businesses that work with communities to improve their environment, economy, and quality of life through local action. Groundwork USA helps people reuse brownfields for community benefit. Because the goal of most publicly funded programs is to reuse brownfields for economic development, many brownfields sites are being left behind because they are too small, surrounded by blight, or located in areas with other constraints, such as flood plains or dense residential neighborhoods. Groundwork Trusts are working to fill the gap.

Environmental Justice: Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment. No group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. Brownfields revitalization presents an opportunity for environmental justice to be achieved through community involvement in cleanup and reuse decisions and activities and through the leveraging of new investment and jobs in distressed communities.

Sustainable Redevelopment of Brownfields:

Climate Adaptation and Brownfields. Our climate is changing and we need to adapt to make sure our cleanups are still protective of human health and the environment now and into the future. To ensure that cleanups remain effective as the climate changes, EPA created a checklist to help cleanup and revolving loan fund recipients address changing climate concerns in an analysis of brownfield cleanup alternatives.

Environmental Impacts of Brownfields Redevelopment. Case studies indicate that brownfield redevelopment can offer significant environmental benefits when compared with alternative development scenarios. Estimates of air and water quality impacts of brownfields reuse for multiple revitalization projects in five municipal areas indicate that daily vehicle miles traveled per capita are 32 -57% lower and stormwater runoff is 43 - 60% lower for brownfields than conventional alternative or greenfield sites.

Green Buildings on Brownfields Initiative. The Green Buildings on Brownfields Initiative is an EPA effort designed to promote the use of green building techniques at brownfield properties in conjunction with assessment and cleanup. Through several pilot projects, EPA is providing communities with technical assistance to facilitate the development of green buildings on their brownfields. Building environmentally-friendly buildings on what was once contaminated (or perceived to be contaminated) land can be symbolic of a new, environmentally-sound direction for communities, as well as tangible growth for their economies.

What Is Smart Growth? Smart growth is development that serves the economy, the community, and the environment. It changes the terms of the development debate away from the traditional growth/no growth question to "how and where should new development be accommodated." Brownfields redevelopment is an integral component to smart growth. By redeveloping a brownfield in an older city or suburban neighborhood, a community can remove blight and environmental contamination, create a catalyst for neighborhood revitalization, lessen development pressure at the urban edge, and use existing infrastructure.

d. New market tax credits

http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5

New Markets Tax Credit (NMTC) Program was established in 2000 as part of the Community Renewal Tax Relief Act of 2000. The goal of the program was to spur revitalization efforts of low-income and impoverished communities across the United States and Territories. The New Markets Tax Credit (NMTC) was designed to increase the flow of capital to businesses and low income communities by providing a modest tax incentive to private investors. The NMTC Program provided tax credit incentives to investors for equity investments in certified Community Development Entities, which invest in low-income communities. A Community Development Entity must have a primary mission of investing in low-income communities and persons. Individual and corporate investors to receive a tax credit against their Federal income tax return in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs). The credit totals 39 percent of the original investment amount and is claimed over a period of seven years (five percent for each of the first three years, and six percent for each of the remaining four years). The investment in the CDE cannot be redeemed before the end of the seven-year period.

A "low-income community" is defined as any population census tract where the poverty rate for such tract is at least 20% or in the case of a tract not located within a metropolitan area, median family income for such tract does not exceed 80 of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.

Since the NMTC Program's inception, the CDFI Fund has made 912 awards allocating a total of \$43.5 billion in tax credit authority to CDEs through a competitive application process. This \$43.5 billion includes \$3 billion in Recovery Act Awards and \$1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone. The NMTC expired at the end of 2014, but it can still be extended. The New Markets Tax Credit Extension Act of 2015 (HR 855), introduced by Reps. Tiberi (R-OH), Neal (D-MA), and Reed (R-NY), would extend the NMTC indefinitely. Senators Blunt (R-MO), Schumer (D-NY), Daines (R-MT), and Cardin (D-MD) introduced S. 591, which is nearly identical to its House counterpart.

e. Federal conservation easement tax deduction:

26 USC 170(h)

The Internal Revenue Code rewards landowners who donate valuable real property rights in the form of conservation easements by recognizing a reduction in the encumbered land's value as a charitable contribution. The gift of real property rights is akin to a cash gift made to a charity, or a valuable painting donated to a museum. Under the traditional tax structure, without taking into account extension of the Pension Protection Act of 2006 benefits, discussed below, a landowner is allowed to deduct an amount equal to 30 percent of his or her adjusted gross income each year, including the year of the gift, for a total of six years or until the value of the gift has been depleted, whichever comes first. The tax benefits associated with a voluntary perpetual easement donation are addressed in more detail in chapter 3, but in general, the donation of a conservation easement or the bargain sale of an easement for less than the easement's fair market value may create a tax-deductible charitable gift, provided that the easement meets certain requirements. The easement must be perpetual and it must be donated or bargain-sold to a qualified conservation organization or public agency "exclusively for conservation purposes." Internal Revenue Code Section 170(h) defines conservation purposes as:

- the preservation of land areas for outdoor recreation by, or the education of, the general public; the protection of relatively natural habitat of fish, wildlife, or plants, or similar ecosystems;
- the preservation of open space (including farmland and forest land) where such preservation is
 - o for the scenic enjoyment of the general public, or
 - o pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit; and
- the preservation of a historically important land area or a certified historic structure.

The Code defines a "qualified conservation contribution" as a contribution that is a "qualified real property interest" granted to a "qualified organization" that is exclusively for conservation purposes. A "qualified real property interest" includes the entire interest of the donor in real property, other than a qualified mineral interest. A "qualified organization" includes the following entities: the United States; a state; a political subdivision of the United States or a state; a state or federally chartered corporation, trust, community chest, fund, or foundation that is organized and operated for a specified conservation purpose; and certain §501(c)(3) organizations, including land trusts.

Conservation easements may open or close a property to physical access by the public. Some easements grant public access rights, such as to allow fishing or hiking in specified locations or to permit periodic guided tours or outfitting, while other easements expressly prohibit public access. A conservation easement will require public access when the primary conservation value of the property is public recreational or educational use. The Treasury Regulations Section 1.170A-14(d)

specifies how much public access (“substantial and regular”) is necessary for an easement to meet tax-deductibility requirements. By contrast, a scenic easement requires that the scenic qualities of the land be visible to the public for its visual access, without physical access. Access generally is not required for easements that protect wildlife or plant habitats, open space, or agricultural lands.

To determine the value of an easement donation pursuant Treasury Regulations Sections 1.170A-13 and A-14, a landowner must have his or her land appraised both at its fair market value before the conservation easement is applied and at its fair market value after the easement is applied (known as “before and after valuation”). The difference between these two appraised values is the easement’s value for charitable donation purposes. If an easement removes value from the land, that value is reflected in the after valuation of the land’s fair market value with the conservation easement in place.

f. State conservation easement tax credits: Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Iowa, Idaho, Maryland, Minnesota, Mississippi, New Mexico, Oregon, South Carolina, and Virginia

State tax credit programs vary widely from state to state with variations on the percentage of the easement’s value that can be taken as a tax credit, the tax credit limit or cap, and the time that the taxpayer has to use that credit (the “carry forward period”). States with income tax credit programs for conservation gifts or conservation activities are Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Iowa, Idaho, Maryland, Minnesota, Mississippi, New Mexico, Oregon, South Carolina, and Virginia.

While many landowners focus on federal income tax benefits as the primary incentive for charitable gifts, state income tax benefits can be a powerful additional incentive. Some states provide state income tax deductions for conservation easement donations, and some provide income tax credits. A tax deduction is a reduction in taxable income, whereas a tax credit offsets the landowner’s tax liability on a dollar-for-dollar basis, up to whatever limits are established by the statute. Because state tax rates are relatively modest and state income tax deductions do not generate large tax savings for landowners, more and more states are using state tax credits, and some of them make credits transferrable, such as Colorado, New Mexico, South Carolina, and Virginia.

Colorado’s transferrable income tax credit, created in 2000, allows 50 percent of a maximum cap of \$3,000,000 of the donated value of a conservation easement to be treated as a transferrable income tax credit (\$1,500,000). Any portion of the credit not used in the year of the gift may be carried forward for up to 20 years. Colorado law also permits taxpayers to request a refund of up to \$50,000 in years of state revenue surplus and to transfer their tax credits to other taxpayers. New York credits state income tax liability for land protected by a conservation easement for up to twenty-five percent of property taxes paid on land protected by a conservation easement. Mississippi credits state income taxes for a landowner’s expenses for a conservation transaction. Florida provides a 50-100% property tax exemption for

conservation easement-protected land, and Arkansas, Idaho, and Oregon credit expenses of managing conservation land against state income tax liability.

Colorado Brownfield Credits

On May 15, 2014, Governor Hickenlooper signed Senate Bill 14-073, reinstating the Colorado Brownfields Tax Credit, for properties which qualify under the Voluntary Cleanup Program. This Tax Credit is available for taxpayers and/or qualifying entities who perform environmental remediation associated with a new capital improvement or redevelopment projects. In order to qualify for the tax credit, applicants must submit a Voluntary Cleanup Plan (VCUP) to the Colorado Department of Public Health and Environment (CDPHE). VCUP applications submitted to CDPHE after January 01, 2014 may be eligible for the credit.

Qualifying environmental remediation costs are eligible for a 40% credit on the first \$750,000, and 30% on the amount between \$750,000 and \$1,500,000. The maximum credit available is \$525,000.

Applications must take the following steps to be eligible for state Brownfield Tax Credits:

1. Applicants must meet in advance of applying for a Voluntary Cleanup Plan with the CDPHE Voluntary Cleanup Program.
2. Applicant must identify declare the owner of the property who will be performing the voluntary cleanup and receiving the tax credit.
3. Applicant must provide an environmental cost estimate for the project including the following:
 - A. Project design costs for environmental remediation.
 - B. Materials management cost (disposal fees, trucking, moving contaminated soils etc.).
 - C. Vapor Mitigation costs (if applicable).
 - D. Project certification and closure costs (analytical costs for confirmation of groundwater or soils etc.)
 - E. Year project will be completed and applying for tax credit
 - F. Total Project Redevelopment Cost (Environmental and Capital Improvement Costs)
 - G. Estimate of post redevelopment property value.

Because there is a \$3,000,000 fiscal note that limits the total amount of credit available per year, tax credits will be allocated on a first-come, first served basis. Applicants will be required to receive a “No Action Determination” from the VCUP Program in order to receive a tax credit certification from CDPHE. To enable certification of eligible credits, CDPHE will require applicants to submit documentation of project environmental remediation costs, including invoices, cancelled checks (front and back), and other appropriate documentation. Once project costs are verified, CDPHE will issue a “No Action Determination” for the project, and a Tax Credit Certification Letter to the applicant and the Colorado Department of Revenue.

Environmental Remediation (Brownfield) credits are available for qualified expenses in cleaning up contaminated properties in the state of Colorado. This

generous credit provides up to \$525,000 in credits depending on how expensive the cleanup project is. In order to be eligible for a Brownfield tax credit, the following steps need to be completed:

1. Projects must meet CDPHE (Colorado Department of Public Health and Environment) Voluntary Cleanup Program (VCUP) eligibility requirements and applicants must schedule a pre-application meeting with CDPHE staff prior to applying.
2. Complete and submit a VCUP or No Action Determination (NAD) application to CDPHE. Applicants to the program can apply for either a Voluntary Cleanup Plan or a No Action Determination. Voluntary Cleanup Plans are required when remediation is necessary to address on-site contamination. NADs can be applied for if a property owner has previously completed a VCUP or if a property is clean but being impacted by an off-site source of contamination.

Both VCUP and NAD applications must be prepared by a qualified environmental professional and require the following information:

- General Information – Identification of property owner and contact information; property description; current land use; and proposed land use
- Program Eligibility Information – Describe if property is subject to other regulatory authority as described in the VCUP Roadmap.
- Environmental Assessment – Site Characterization information can be provided in the form of an ASTM 1527-13 compliance Phase I and/or Phase II environmental site assessment with additional information as outlined in CDPHE's VCUP Road Map
- Risk Determination – Applications must include a risk based analysis of contaminants and all exposure pathways which details how proposed remediation will obtain acceptable risk levels

3. Cleanup applications also require the following additional information:

- Cleanup Proposal – The proposal will provide a detailed description of methods to remove, stabilize, or otherwise address sources of contamination.
- Cleanup Completion Report/Certification – A qualified environmental professional shall submit a report which demonstrates and certifies that remediation was completed according the application.

4. Applicants intending to take advantage of the tax credit must provide notification to CDPHE in the form of a letter submitted concurrently with the VCUP application. The Tax Credit Notification letter must contain the following information:

- Identify the owner of the property who will be performing the voluntary cleanup and receiving the tax credit
- An environmental cost estimate for the project including: a. Project design costs for environmental remediation.
- Materials management cost (disposal fees, trucking, moving contaminated soils etc.).

- Vapor Mitigation costs (if applicable).

- Project certification and closure costs (analytical costs for groundwater/soils, etc.)
- Year project will be completed and applying for tax credit.
- Total Project Redevelopment Cost (Environmental and Capital Improvement Costs).
- Estimate of post redevelopment property value.

5. Applicants will be required to provide a final report and certify completion of an approved VCUP application or receive a “No Action Determination” from the VCUP program following completion of cleanup activities in order to receive a tax credit certification letter from CDPHE.

6. CDPHE requires applicants to submit documentation of project environmental remediation costs to include invoices, cancelled checks (front and back) and other appropriate documents.

7. Project costs will be verified and then CDPHE will issue a tax credit certification letter to the applicant and the Department of Revenue.

8. Credits given at the rate of 40% of the first \$750,000 in qualified costs and 30% of any costs between \$750,000 and \$1.5M up to a maximum credit of \$525,000 per project. There is a statewide cap of \$3M on a first come, first served basis.

2. Programmatic conservation, local, land use, guided, cooperative, collaborative, community-based incentives

a. Tax Increment Financing: State and Local

Tax increment financing (TIF) is the most popular financial tool for financing local redevelopment activities. It has been widely used for revitalizing blighted areas, redeveloping new housing units, and cleaning up environmentally contaminated and polluted sites. Currently, TIF is authorized in 49 states and the District of Columbia. Simply defined, TIF is a financial mechanism to capture the new or incremental taxes that are created when underutilized and vacant properties are redeveloped and use the captured revenues to finance the costs of redevelopment. TIF is generally thought of as a self-financing district.

-In concept, local governments do not lose anything during the TIF period because the projects would not have occurred “but for” the TIF. At the end of the TIF period, the local governments receive higher tax revenues. TIF has several benefits. First, it provides incentive for private developers to build in economically depressed areas; second, it increases property values and creates a stronger tax base; third, it does not require a general tax increase.

-Local Revitalization Financing districts authorized by state to allow districts to receive state tax revenues as long as matched by new local tax revenue through TIF future property tax revenue

Tax Increment Financing: Tweaking TIF for the 21st Century By [Sarah Jo Peterson](#), June 9, 2014

<http://urbanland.uli.org/economy-markets-trends/tax-increment-financing-tweaking-tif-21st-century/>



A concert in the park at the restored Mission Creek waterfront in San Francisco, part of more than \$700 million in public infrastructure financed through special assessments and TIF for the Mission Bay redevelopment project. (San Francisco Office of Community Investment and Infrastructure)

Tax increment financing (TIF) can be a powerful economic development tool. Under the right circumstances, TIF can generate enough funding to make a real difference. And with the right safeguards in place, TIF encourages government and the private sector to form a partnership based on each other's strengths.

“Without TIF or other government programs, the only redevelopment will be for the rich, by the rich,” says Stephen B. Friedman, a consultant with decades of TIF experience in Illinois and Wisconsin and a member of ULI's Public/Private Partnership Council. For neighborhoods in need, he continues, “TIF works because government looks the private sector in the eye and puts the public money where the private sector is also willing to put the private money. You have to have a meeting of the minds about what works for the community and for the developers.”

Related: [Register for Public/Private Partnerships: Best Practices and Opportunities](#)

Built on a foundation of growing tax revenues, TIF is vulnerable to both national and local economic downturns. Indeed, as the Great Recession spread throughout the United States, TIF districts became weak at just the time they were needed most. Moreover, as local governments cut budgets to the bone, the revenue generated in TIF districts came under close examination. In states where both TIF and education spending depend heavily on revenue from property taxes, TIF's impact on education became a frequent flashpoint for controversy.

“The recession caused the whole development finance industry to take a hard look at what they are doing,” says Toby Rittner, chief executive officer of the Council for Development Finance Agencies (CDFA). At one extreme,

California Governor Jerry Brown in 2011 ended TIF for redevelopment and ordered the special authorities that managed TIF revenues to close. But most cities and states shared the view of TIF held by Minnesota’s legislature, which expanded a diminished TIF program as part of a 2010 jobs bill.

The hard look produced changes. “We discovered that TIF has a lot of depth,” says Rittner. “Coupled with a comprehensive approach to economic development, it can be used for more than just infrastructure and traditional redevelopment activities, and it can leverage other financing tools.”

TIF originated in an act of policy creativity in California in 1952: federal dollars flowing to remedy what was then called urban blight required a local match. In the subsequent decades, every state in the United States except Arizona has experimented with TIF in one form or another—and then in another and another. As the federal dollars dried up in the 1970s and 1980s, TIF nourished redevelopment. TIF has been exported: pilot projects are underway in Scotland and England, with versions tailored to their tax regimes.

From the developer’s perspective, TIF is just one of many ways to partner with government to share the costs of development. From the government’s perspective, TIF’s distinctive feature is that it provides a means to access new tax revenues to support the creation of these same new revenues, and more. Public investment increases private property values, which increases property tax revenues. Those new revenues can be leveraged to pay for the improvements that attract the private investment, setting up a virtuous cycle of increasing development that pays for itself and increases the tax base.

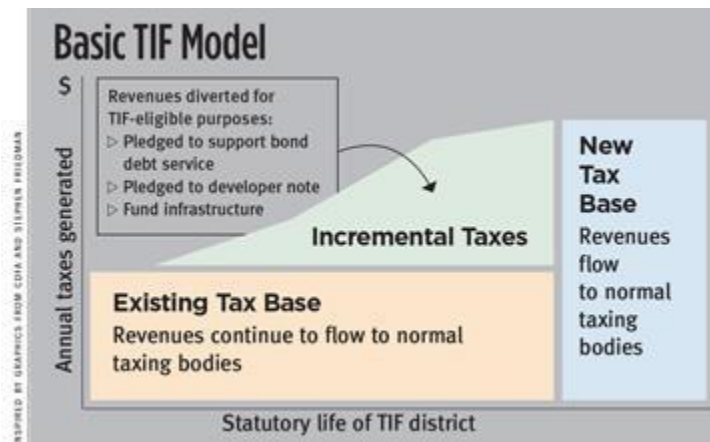
In the United States, TIF is governed by state law, but implemented by municipal governments. Although this discussion refers to cities, TIF can also be implemented by county governments, economic development authorities, or other municipal governments.

The following hypothetical example illustrates the components of TIF.

River City’s economic development plan aims to transform the city’s vacant industrial waterfront into a mixed-use district of offices, retail space, and housing lining a linear waterfront park. River City designates a TIF district on the waterfront, with a duration of no more than 15 years. The property tax revenue generated by the district at the time of designation becomes the frozen base revenue. The base revenue continues to flow to government coffers as usual.

The “increment” is any property tax revenue generated above the frozen base. Provided there is a spark to stimulate it, the increment grows over time, generating funding to pay—directly or through borrowing—for public investments in the district. River City can create a spark by

working with a private developer on a development proposal. The city issues bonds secured by the forecast increment—the increase in property tax revenue expected from the developer’s proposal—to pay for upfront development costs, whether borne by the developer, the government, or both. At the end of 15 years, the TIF district is dissolved and the increment returns to general tax revenues.



(Inspired by graphics from CDFA and Stephen Friedman.)

Diversity and Complexity

TIF interacts with tax regimes that differ by state. For revenue generation, TIF is most powerful in places with high property taxes. Because states with high property taxes often dedicate those revenues to education, TIF laws that allow access to the school district’s portion of the property tax increment can produce significant revenue. Although many states allow TIF to access retail sales taxes at a district level, sales taxes are relatively weak revenue generators.

Either the public or private sector can take the first step in initiating a TIF district. A community-driven TIF district “means the city is taking a proactive role and making policy decisions about priorities,” says Amanda Rhein, senior director for transit-oriented development at the Metropolitan Atlanta Rapid Transit Authority and a member of ULI’s Public/Private Partnership Council. A developer-driven TIF district, however, relieves the city of the need to court developers with an untested plan. A city’s policy culture may favor one approach, but many cities do both. Developers should expect development negotiations to be more intense if they are the ones initiating TIF discussions.

Today, depending on the state, TIF supports everything from expanding affordable housing to attracting manufacturers to industrial zones, including provisions for job training. In some states, TIF must be used solely for public projects, such as infrastructure; other states allow, and even encourage, TIF in support of private development costs, such as those for rehabilitating existing buildings or subsidizing the interest on loans for new construction.

TIF laws include what is known as a “but for” clause—a way of saying that private sector projects that would happen anyway, without support from the increment, are ineligible for the financing. Though a too-literal interpretation of the “but for” clause can unnecessarily restrict TIF’s economic development uses, “there has to be some way of assuring the public that the city is not just giving money away,” says Rachel Weber, TIF expert and associate professor of urban planning and policy at the University of Illinois at Chicago. “A city should be able to distinguish between ‘what is needed’ versus ‘what would be nice’ to fulfill its economic development

goals.”

Cities have options on bearing investment risk. They may use the increment to secure bonds—especially useful for large, upfront development costs. They may also use what is called “pay-as-you-go” financing and expect the developer to secure the credit: the city participates by promising the developer a portion of the increment. Cities may also choose to fund, rather than finance, the endeavor, spending the accrued increment directly on the project. Developers should not expect 100 percent of the increment to be available. Rittner advises cities to reserve some of the increment to pay administration expenses. Moreover, the amount of need—the financing gap for each project—typically dictates the portion of the increment awarded. In times of scarce private financing, the financing gap may be bigger than the city is able or willing to fill with TIF. Indeed, Rhein notes, “developers often cannot depend on TIF alone; they need to be creative about layering public sector programs—drawing on TIF, but also other tax credit and grant programs.”

Chicago

Shortly after Chicago Mayor Rahm Emanuel took office in 2011, he fulfilled a campaign promise by convening a TIF Reform Task Force. Advising on a program generating \$500 million a year from 163 TIF districts comprising about 10 percent of the city’s property tax base and covering 30 percent of its land area, the task force focused on increasing transparency and accountability. Under Illinois law, over the 23-year life of a TIF district, as long as money is flowing into a district, the city can continue to initiate new projects, increasing the importance of an ongoing process for accountability. In addition to recommending aligning TIF with a multiyear economic development plan and capital budget, the task force advocated establishing metrics to monitor performance of the city’s TIF program.

Among the reforms, the city has inaugurated strategic reviews every five years and in July 2013 unveiled the public TIF Portal, a web mapping tool linked to each district and its associated projects. “The city is becoming smarter in how they give their money away and stricter in terms of financial audits and holding recipients accountable to their promises,” says Weber, a member of the task force. “The city has taken more of an investment mind-set to ensure they are not providing a huge windfall to the developer at the public’s expense.”

Political debate continues in Chicago, especially regarding education spending and whether TIF is still appropriate in the city’s central area, now in its second decade of strong development. “The city is a lot more reticent to do downtown projects,” Friedman observes. “The focus now is on the outer neighborhoods.” In addition, Emanuel in November 2013 issued an executive order requiring annual calculation of the “TIF surplus” that can be returned to the original taxing bodies, including Chicago Public Schools.

Atlanta

Atlanta’s TIF program, known as TAD (for tax allocation district) and run by Invest Atlanta, the city’s economic development authority, has also undergone changes. “The lull during the recession allowed us to reevaluate our program, use it to create jobs, and better align it with citywide economic development efforts,” says Rhein, who participated in Invest Atlanta’s strategic review in 2011.

Historically, Atlanta used TAD for gap financing, funding developers through grants that covered 5 to 15 percent of project costs via bonds backed by the increment. After the strategic review, Invest Atlanta expanded its project evaluation criteria to include job creation and

business attraction. New types of projects include building retrofits, facade improvements, and streetscape enhancements. An energy efficiency grant program rewards participants in the federal government's Better Buildings Challenge.

In Georgia, school districts and county governments join a city TAD at their discretion. School districts have opted to join half of Atlanta's ten TADs. When school districts join, Rhein explains, "they negotiate something such as payments in lieu of taxes or a lump sum out of the bond issuance."

In recent years, Atlanta has also begun using TAD funding for major infrastructure projects, such as the Atlanta BeltLine transit and economic development plan, and a downtown streetcar.

California

By terminating redevelopment authorities and their TIF powers, Brown sent a signal that the goal of compact, walkable development at infill locations—and needs such as affordable housing—will have to be met in new ways. Ongoing discussions throughout the state focus on how to replace what was lost with a comprehensive tool kit. ULI's five district councils in California worked together on potential next steps, and in November 2013 released the report *After Redevelopment: New Tools and Strategies to Promote Economic Development and Build Sustainable Communities*.

"If California is going to continue to lead on sustainable development and meet the state's growing needs for affordable housing and infrastructure investment, cities and counties require the authority, legal powers, and financing tools to encourage infill development," explains Libby Seifel, head of the Seifel Consulting and a member of the ULI report's working group. Although the governor recently announced support for expanding eligible projects in infrastructure financing districts (IFDs), which can use TIF, Seifel fears "that IFDs alone are too narrow and will not generate enough public investment unless leveraged with other funds. As the ULI report states, California needs a comprehensive set of tools to achieve the state's environmental, housing, and economic goals."

Best Practices

To get started on considering TIF, developers should learn the state's TIF law and the city's policy culture, and "understand the terms of the city's boilerplate development agreement before initiating a request for participation," advises Rhein.

B. New Incentives and New Benefits

1. New Incentives:

a. Natural Capital Investment:

- i. TNC wants to transform managing, investing and sustaining natural capital – the soil, clean air and water, and other valuable resources that nature provides. The Nature Conservancy and JPMorgan Chase & Co. launched a finance initiative for conservation projects around the world. NatureVest will invest \$5 million over three years to protect communities affected by climate change and other environmental threats.
- ii. According to Global Canopy Programme, worldwide conservation efforts require an annual investment of \$290 billion, but the public and private sectors spend \$51 billion combined. Private companies underwrite just \$10 billion in natural capital investments each year, the group found in a 2012 study, leaving a wide gap for financial services firms like JPMorgan Chase that are interested in sustainability ventures.
- iii. Rachel Kyte, a vice president and special envoy for climate change at the World Bank, said initiatives like NatureVest could urge other financial firms and environmental groups to form similar partnerships. But land trusts need to be ready to take advantage of these innovations. The essence of land trust work is to care for future generations and that includes looking as far into the future as science has something to say that is relevant to conservation transactions.
- iv. Some land trusts are undertaking climate vulnerability assessments; but is not yet standard procedure. Assessments need periodic reviews to reflect what is actually happening, and also to reflect the latest science, but it also may leverage new ventures such as NatureVest.

b. Urban Alleys:

- i. Conservation reaches to greening up urban alleys, streets and yards in a program called Love Your Block, which last year attracted nearly 5,200 volunteers. Their efforts served 11,000 city residents with debris removal, painting and other neighborhood-revitalization. Mayors across the nation put volunteers to work on specific challenges, such as fighting obesity or beautifying neighborhoods.
- ii. Since former mayor Bloomberg started a series of related urban programs with 16 other mayors in 2009, 170 mayors joined the bipartisan coalition. Conservation organizations working in urban areas might explore partnership and leverage opportunities with this entrepreneurial and well-financed effort.

c. Hidden Gems:

- i. Twelve wonderful, slightly off the beaten path gems along North Carolina's Eno River lure many visitors to the land trust land. Eno River Association is the first land trust to receive a Glaxo Smith Kline Impact award for helping people live healthier lives using clever ideas such as the Hidden Gems. The award, historically given to health-based organizations, recognizes the land trust for its leadership in creating public parks, water quality protection and environmental education.
- ii. The land trust offers information on how to find the gems, maps to print out and additional stories about what make these places special for each location and a new

gem for every month. Visitors can click on the links for maps to each of the hidden gems and enter a Flickr photo stream contest.

2. New Benefits

a. Health and Access to Parks

- i. When District of Columbia Dr. Robert Zarr wanted a young patient to get more exercise, he gave her an unusual prescription: Walk four blocks. The young patient did, reducing her weight from obese to just overweight. About 40 percent of Zarr's young patients are overweight or obese, so he gives them very specific exercise recommendations resulting in maps of 380 parks in the District of Columbia so far.
- ii. Boston area pediatricians are writing prescriptions to spend time outside too, particularly during the summer months, when the weather is good and the lack of structured activity can lead to weight gain. "Weight is just a symptom of the problem," said Dr. Christina Scirica, medical director of the Outdoors Rx program run jointly by MassGeneral Hospital for Children and the Appalachian Mountain Club.
- iii. If you live in the Urban Ring of Baltimore County, a good safe walk can be a challenge there too in the motor driven unwalkable communities. NeighborSpace is trying to change that and has taken the first steps to complete a portion of the Star Spangled Banner National Historic (SSBNH) Trail. Seventy-five breakfasters turned out including developers, contractors, members of the architectural and engineering community, and concerned citizens to focus on the critical issues surrounding redevelopment and the creation of quality open space and walkable areas within the Urban Ring

b. Health and Climate:

- i. Half of all Americans now face mounting climate change threats including health risks. The Obama administration released the updated climate change report showing that every region of the country experiences adverse impacts now, from oyster growers in Washington State to maple syrup producers in Vermont, ocean resorts in the southeast and ranchers in the southwest. The site has numerous mitigation strategies and other solutions for individuals, groups and states to use.
- ii. The advisory committee behind the report was established by the U.S. Department of Commerce to integrate federal research. Thirteen departments and agencies, from the Agriculture Department to NASA, are part of the committee, which also includes academics, businesses, non-profit organizations and others. More than 240 scientists contributed. View the report »
- iii. Climate change produces a variety of stresses on society, affecting human health, natural ecosystems, built environments, and existing social, institutional and legal agreements. These stresses interact with each other and with other non-climate stresses, such as habitat fragmentation, pollution, increased consumption patterns and biodiversity loss.
- iv. Edible portions of many key crops have decreased nutrition compared with the same plants grown under identical conditions but at present ambient carbon dioxide levels
- v. Climate change already influences human health in many ways: The results could have grave implications where climate change, land development or invasive species contribute to the elimination of larger mammals. "When you lose big animals, one of

the ecological consequences is that little animals, which are not so susceptible to changes, increase all over the world," said Rodolfo Dirzo, a biology professor at Stanford University who participated in a National Academy of Sciences study.

- vi. The threat of extinctions from global climate change far outweighs the risks to local bird and bat species from new wind farms, according to a new paper by scientists from a wind energy coalition. Environmental groups must be willing to accept "substantial risk" from the build-out of wind farms in order to curb the pace of climate change and associated loss in biodiversity, said the paper, published in the journal *Climatic Change*.

c. Ecocities; Sustainable Urban Ecosystems (www.ecocitybuilders.org)

- i. An ecologically healthy human settlement modeled on the self-sustaining resilient structure and function of natural ecosystems and living organisms.
- ii. An entity that includes its inhabitants and their ecological impacts.
- iii. A subsystem of the ecosystems of which it is part — of its watershed, bioregion, and ultimately, of the planet.
- iv. A subsystem of the regional, national and world economic system.
- v. Ecocities as ecosystems: An ecosystem is a biological environment consisting of all the organisms living in a particular area, as well as all the nonliving, physical components of the environment with which the organisms interact, such as air, soil, water, and sunlight. Urban entities (cities, towns and villages) are urban ecosystems. They are also part of larger systems that provide essential services that are often undervalued, as many of them are without market value. Broad examples include: regulating (climate, floods, nutrient balance, water filtration), provisioning (food, medicine), cultural (science, spiritual, ceremonial, recreation, aesthetic) and supporting (nutrient cycling, photosynthesis, soil formation).
- vi. Ecocities as analogous to living organisms: Like living organisms, cities (including their inhabitants) exhibit and require systems for movement (transport), respiration (processes to obtain energy), sensitivity (responding to its environment), growth (evolving/changing over time), reproduction (including education and training, construction, planning and development, etc.), excretion (outputs and wastes), and nutrition (need for air, water, soil, food for inhabitants, materials, etc.).
- vii. An Ecocity is a human settlement modeled on the self-sustaining resilient structure and function of natural ecosystems. The ecocity provides healthy abundance to its inhabitants without consuming more (renewable) resources than it produces, without producing more waste than it can assimilate, and without being toxic to itself or neighboring ecosystems. Its inhabitants' ecological impact reflect planetary supportive lifestyles; its social order reflects fundamental principles of fairness, justice and reasonable equity.
- viii. Working definition adopted by Ecocity Builders and the International Ecocity Standards advisory team, 2/20/10, Vancouver, Canada.
- ix. *Cities as Sustainable Ecosystems*: How cities and their residents can begin to reintegrate into their bioregional environment, and how cities themselves can be planned with nature's organizing principles in mind. Taking cues from living systems for sustainability strategies, Newman and Jennings reassess urban design by exploring flows of energy, materials, and information, along with the interactions between human and non-human parts of the system.

IRC 170(h) Qualified conservation contribution

(1) In general.

For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution--

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

(2) Qualified real property interest.

For purposes of this subsection, the term “qualified real property interest” means **any** of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term “qualified organization” means an organization which--

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501(c)(3) and--
 - (i) meets the requirements of section 509(a)(2), or
 - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term “conservation purpose” means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is--
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure. [portions of the statute on historic preservation intentionally omitted here] . . .

(5) Exclusively for conservation

purposes, For purposes of this subsection--

(A) Conservation purpose must be protected.

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted.—

(i) In general. Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule. With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest. For purposes of this subsection, the term “qualified mineral interest” means—

- (A) subsurface oil, gas, or other minerals, and
- (B) the right to access to such minerals.

Colorado Revised Statutes

*** This document reflects changes current through all laws passed at the First Regular Session of the Seventieth General Assembly of the State of Colorado (2015) ***

TITLE 39. TAXATION SPECIFIC TAXES ARTICLE 22. INCOME TAXPART 5. SPECIAL RULES

C.R.S. 39-22-522 (2015)

39-22-522. Credit against tax - conservation easements

(1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.

(2) (a) For income tax years commencing on or after January 1, 2000, but prior to January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(b) For income tax years commencing on or after January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(2.5) Notwithstanding any other provision of this section and the requirements of section 12-61-727, C.R.S., for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of section 12-61-727, C.R.S., submit a claim for the credit to the division of real estate in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5); except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year. The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter. No claim for a credit is allowed for any income tax year commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under section 12-61-727, C.R.S., and this section are met, the right to claim the credit is vested in the taxpayer at the time a credit certificate is issued.

(2.7) Notwithstanding any other provision, for income tax years commencing on or after January 1, 2014, no claim for a credit shall be allowed unless a tax credit certificate is issued by the division of real estate in accordance with sections 12-61-726 and 12-61-727, C.R.S., and the taxpayer files the tax credit certificate with the income tax return filed with the department of revenue.

(3) For conservation easements donated prior to January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

- (a) A statement indicating whether a deduction was claimed on the taxpayer's federal income tax return for a conservation easement in gross;
- (b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;
- (c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170 (h) of the internal revenue code that are protected by the easement; the county, township, and range where the easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;
- (d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;
- (e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the provisions of section 12-61-719, C.R.S., as said section existed prior to its repeal on July 1, 2013;
- (f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-724, C.R.S., applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:
 - (I) An acknowledgment that the holder has filed the information with the department of revenue and the division of real estate in accordance with section 24-33-112, C.R.S.;
 - (II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and
 - (III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.

(3.3) The appraisal for a conservation easement in gross donated prior to January 1, 2014, and for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f) (11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall 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. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1) (k), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

(3.5) (a) For conservation easements donated prior to January 1, 2014:

- (I) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-725 (1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation misstatement from the division of real estate, or 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, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer.

The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

(II) In consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-725 (1), C.R.S., the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this subparagraph (II).

(b) For conservation easements donated on or after January 1, 2014, and subject to the restrictions of section 12-61-727 (4), C.R.S., the executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the amount of the credit and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, the executive director shall have the authority, for good cause shown, to review and accept or reject, in whole or in part, the amount of the credit and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation, except those requirements for which authority is granted to the division of real estate, the director of the division of real estate, or the conservation easement oversight commission pursuant to section 12-61-727, C.R.S.

(3.6) For conservation easements donated on or after January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer must submit the following in a form, approved by the executive director, to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) (I) A tax credit certificate issued under section 12-61-727, C.R.S.; and (II) The information required in subsections (3) (a), (3) (b), (3) (d), and (3) (f) (II) of this section.

(b) Notwithstanding any other provisions of law, the executive director retains the authority to administer all issues related to the claim or use of a tax credit for the donation of a conservation easement that are not granted to the director of the division of real estate or the conservation easement oversight commission under section 12-61-727, C.R.S.

(c) The information required in paragraph (f) of subsection (3) of this section will no longer be required from the holder of the conservation easement.

(3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170 (e) and 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.

(4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.

(II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, and prior to January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that, in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.

(II.5) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104

(2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to seventy-five percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and fifty percent of all amounts of the donation in excess of one hundred thousand dollars; except that, in no case shall the credit exceed one million five hundred thousand dollars per donation.

(III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers who may legally file a joint federal return but actually file separate federal returns, exceed the dollar limitations of this paragraph (a).

(b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

(5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.

(b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.

(II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

(III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.

(6) (a) For conservation easements donated prior to January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses

such transferred credit.(b) For conservation easements donated on or after January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;

(b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;

(c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;

(d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.

(e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee;

(f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.

(g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return. A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.

(h) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.

(i) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.

(8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.

(10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report. This report shall not be required for conservation easements donated on or after January 1, 2014.

(11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section

as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000. This report shall not be required for conservation easements donated on or after January 1, 2014.