

**Land Acquisition and Management  
Division of Wildlife  
Department of Natural Resources**

**Performance Audit  
July 2009**



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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of land acquisition and management practices at the Colorado Division of Wildlife. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Division of Wildlife, the Wildlife Commission, and the Department of Natural Resources.

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## *Glossary of Terms and Abbreviations*

**CAMS** - Capital Asset Management System. The primary electronic database for information on the Division of Wildlife's real estate holdings.

**COFRS** - Colorado Financial Reporting System. The financial information system that maintains the official accounting records for Colorado state government.

**Commission** - Wildlife Commission. An 11-member board that oversees the Division of Wildlife. Responsible for all wildlife management, licensing requirements, and the promulgation of rules, regulations, and orders concerning wildlife programs.

**Conservation Easement** - a "nonpossessory" interest in real property. Land remains the private property of the landowner; however, the conservation easement owner has the right to restrict the landowner from subdividing and building on the land or using the land in certain ways.

**Conservation Strategy** - Comprehensive Wildlife Conservation Strategy. A catalog of the current scientific knowledge and judgment about many wildlife species in Colorado, the threats to habitats that these species depend upon, and an articulation of strategies that can be employed to lessen these threats.

**Department** - Department of Natural Resources. A principal department in Colorado state government whose mission is to develop, preserve, and enhance the state's natural resources for the benefit and enjoyment of current and future citizens and visitors.

**Division** - Division of Wildlife. A division within the Department of Natural Resources whose mission is to perpetuate the wildlife resources of the state and provide people the opportunity to enjoy them.

**Fee Title** - the most complete ownership interest one can have in real property. The purchaser obtains the entire bundle of surface property rights, such as the right to harvest crops or timber, construct buildings, limit access, or subdivide the land. In Colorado, other rights associated with the property, such as water and mineral rights, are typically held separately.

**GOCO** - Great Outdoors Colorado. A political subdivision of the State created in Article XXVII of the Colorado Constitution and tasked with granting 50 percent of the annual net proceeds of every state-supervised lottery game up to a certain cap for the preservation, protection, enhancement, and management of the State's wildlife, park, river, trail, and open space heritage.

**Habitat Protection Program** - Colorado Wildlife Habitat Protection Program. A program designed to solicit the sale of lands by landowners to address one or more Division of Wildlife priorities.

**RFP** - Request for Proposal. Typically used as part of a procurement process to solicit bids from interested and qualified parties to provide a specific commodity or service.

**Third-Party Conservation Easement** - a conservation easement held by an entity other than the Division of Wildlife but acquired, at least partially, with Division funds.



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## **Purpose and Scope**

In this audit we reviewed the Division of Wildlife's land acquisition and management practices, with a specific focus on fee title and conservation easement acquisitions. We performed audit work from January through June 2009. We examined the Division's processes for selecting properties for acquisition, evaluated appraisal and review appraisal practices, reviewed accounting detail for a sample of land transactions, and assessed the adequacy of the Division's conservation easement monitoring efforts and the Division's controls over electronic real estate data. We acknowledge the assistance and cooperation extended by management and staff at the Division of Wildlife and the Department of Natural Resources, as well as by members of the Wildlife Commission and the Habitat Stamp Committee.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Overview**

According to Section 33-1-101, C.R.S., the wildlife and its environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the state's citizens and its visitors. Statute further specifies that there shall be a continuous operation of planning, acquisition, and development of wildlife habitats and facilities for wildlife-related opportunities.

The Division of Wildlife (Division) is within the Department of Natural Resources (Department) and is also overseen by the 11-member Wildlife Commission (Commission). The Commission has statutory authority to acquire land or interests in land it considers necessary or proper for wildlife purposes or for the preservation or conservation of wildlife. With Commission approval, the Division acquires land and land interests to conserve and protect habitat for threatened and endangered species or species of concern, secure critical winter range and migration corridors for big game species, and provide the public with hunting and fishing access and other wildlife-related recreational opportunities.

As of February 2009, the Division controlled just over 1.3 million acres of land in Colorado. The Division holds about 46 percent of its total acreage in fee title (about 380,700 acres) or as a conservation easement (about 216,400 acres). Between Fiscal Year 2004 and Fiscal Year 2008, the Division expended a total of about \$39.3 million, or 59 percent of its total capital expenditures, on land acquisitions. As of June 30, 2008, the Division's land assets totaled approximately \$124.9 million.

## Key Findings

### Land Acquisition

Land is fundamental to fulfilling the Division's mission. Overall, we found that the Division lacks adequate assurance that (1) the lands it acquires best accomplish the Division's goals, (2) are selected in accordance with applicable criteria, or (3) are properly valued and recorded in the State's financial system. We identified several concerns with the quality, fairness, and transparency of the Division's acquisition process as follows:

**Evaluation and Selection.** We found a disconnect between various evaluation benchmarks and the 10 properties the Division recommended for purchase as part of its 2008 acquisition cycle. Specifically, we analyzed the numeric scores the Division assigned to proposals and found that 6 of the 10 properties did not rank within the top 10 properties overall, and 4 of the 10 properties had relatively lower habitat-specific rankings. We also found that 3 of the 10 properties were not within or close to the Division's high-priority areas for land acquisition, and the Habitat Stamp Committee did not recommend 4 of the 10 properties. Finally, we found that the Division did not ensure that the same criteria were used to evaluate and score all landowner proposals, and that numeric scores were compiled accurately and appropriately.

**Conflicts of Interest.** We identified a situation where a sitting commissioner failed to sufficiently disclose a conflict of interest. Specifically, the commissioner was a party to both sides of a pending land transaction. Before his appointment to the Commission, this individual began negotiations as a private landowner to sell a conservation easement to the Division. However, upon his appointment to the Commission, this individual became a member of the entity statutorily empowered to purchase the conservation easement on his land. Public disclosure and discussion of this conflict did not occur until one year after the conflict was known. Although the transaction was never completed, the situation points to a need for the Commission to strengthen and clarify its conflict-of-interest disclosure requirements and processes.

**Accounting for Donated Land.** We found that the Division did not record at least \$8.2 million in donated land value in the State's financial system for 16 of the 32 fee title and conservation easement acquisitions the Division completed between July 2007 and February 2009. Generally accepted accounting principles, state fiscal rules, and state fiscal procedures require capital assets, including donated assets, to be properly valued and recorded in the State's financial system.

**Appraisal Practices.** We found that the Division lacks written policies and procedures governing the use of appraisers and review appraisers in three key areas. First, we identified three transactions where the Division paid a combined total of \$115,500 more than the properties' appraised values without providing the Commission with sufficient written justification for paying the higher purchase price. Second, we identified six transactions where the Division did not conduct a review appraisal, contrary to its unwritten practices. Finally, we found one appraisal report that was more than 12 months old, and 10 appraisals that were between 9 and 12 months old at the time of closing. Older appraisals may no longer represent a property's current, fair market value.

## **Land Management**

Once properties are acquired, effective land management provides ongoing accountability for the expenditure of public funds. Overall, we found that the Division lacks assurances that its conservation easements continue to serve the wildlife purposes for which they were acquired. We found problems with the Division's conservation easement stewardship in four key areas. First, we identified 107 conservation easements that had no monitoring report for the period under review, or where more than 12 months elapsed between monitoring visits. Conservation easements should be formally monitored at least annually. Second, the Division lacked mechanisms such as customized checklists and monitoring forms to ensure accurate, thorough, and consistent monitoring. Third, the Division lacked formal policies and procedures for addressing violations, potential violations, or other issues identified through monitoring. For example, we identified an instance where the Division's ineffective followup resulted in a cellular tower being built on the property in violation of the conservation easement terms. Finally, the Division did not routinely obtain and review monitoring information on conservation easements that are funded with Division funds but are held by outside organizations.

## **Evaluating Approaches**

Policymakers and administrators must carefully consider the advantages and disadvantages when evaluating different approaches available for acquiring land and land interests to further the Division's mission. The decision whether to purchase land as a fee title or conservation easement interest is shaped by several factors, including the need for flexibility in use of the land, desire for private versus public ownership, and cost. The decision whether the Division or an outside organization will hold the conservation easement must balance the benefit of increased leverage of available resources with the need to preserve accountability for the use of public funds.

Our recommendations and the responses of the Division of Wildlife, the Department of Natural Resources, and the Wildlife Commission can be found in the Recommendation Locator and in the body of the report.

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## RECOMMENDATION LOCATOR

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Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	24	Develop an acquisition strategy to meet the multiple objectives of the Colorado Wildlife Habitat Protection Program, including: (a) using existing or updated planning documents to articulate and prioritize short- and long-term land acquisition goals, and (b) establishing performance measures and performance data to track and report on progress toward meeting short- and long-term land acquisition goals.	Division of Wildlife	a. Agree b. Agree	a. May 2010 b. July 2011
2	27	(a) Identify all relevant criteria, including nonbiological attributes, used to evaluate and select projects; (b) restructure the scoring process to consistently and equitably apply selection criteria to all proposals; (c) include all relevant selection criteria and their associated weights in the Request for Proposals; and (d) clearly define the role of the Habitat Stamp Committee in the proposal evaluation and selection process.	Division of Wildlife	Agree	May 2010
3	30	Improve methods for compiling and calculating proposals' final numeric scores by: (a) averaging habitat scores for each property, (b) employing statistical techniques to normalize scores within and across habitat types to adjust for variances, (c) providing better definitions of the scoring criteria and standards and training staff on their application, and (d) automating all calculations in scoring spreadsheets to the extent possible and ensuring sufficient supervisory review of scoring spreadsheets.	Division of Wildlife	Agree	August 2009
4	33	Review and update written standards of conduct to include specific procedures addressing conflicts of interest, including: (a) requiring written disclosure of any financial, professional, or personal interests that may create a real or perceived conflict of interest; and (b) developing a process for reviewing and discussing disclosures at a public meeting and for maintaining the written disclosure statements.	Wildlife Commission	Agree	January 2010

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## RECOMMENDATION LOCATOR

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Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
5	35	Establish adequate internal controls over land acquisitions to ensure that all donated land interests are properly valued and recorded in the State's financial system. These controls should include maintenance of sufficient documentation to support the appropriate valuation of the asset and recording of its full value in the State's financial system.	Division of Wildlife	Agree	September 2009
			Department of Natural Resources	Agree	September 2009
6	36	Work together to review all fee title and conservation easement interests currently held by the Division of Wildlife to identify any unrecorded donated land values and make appropriate adjusting entries in the State's financial system.	Division of Wildlife	Agree	June 2010
			Department of Natural Resources	Agree	June 2010
7	40	Adopt and implement a formal policy addressing payment above appraised value for land and land interests. The policy should require that: (a) the Division of Wildlife provide the Wildlife Commission with justification indicating why paying more than the appraised value is reasonable and necessary, (b) the Division of Wildlife retain documentation of the justification in its real estate files, and (c) the Wildlife Commission consider and vote on such transactions separately rather than as part of its consent agenda.	Wildlife Commission	Agree	January 2010
8	40	Improve due diligence activities for land acquisitions by establishing and implementing written policies and procedures regarding the use of appraisals and review appraisals, including: (a) specifying a purchase price threshold and/or other conditions that will trigger a review appraisal, (b) establishing time frames for when an appraisal must be updated, and (c) requiring that deviations from standard operating procedures be clearly noted in the real estate files.	Division of Wildlife	Agree	February 2010

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## RECOMMENDATION LOCATOR

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Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
9	49	Implement a formal, comprehensive conservation easement stewardship program by: (a) developing written policies and procedures detailing when and how conservation easements should be monitored, as well as how violations or potential violations identified during the monitoring visits should be addressed; (b) developing mechanisms such as checklists, field books, and customized monitoring forms to document monitoring activities and ensure the quality, consistency, and accuracy, of monitoring efforts; (c) improving the conservation easement monitoring database to provide managers and staff with more complete data capture and summary reporting capabilities; (d) setting minimum expected oversight responsibilities regarding third-party conservation easements funded with Division funds; (e) ensuring that the State's right of access on third-party conservation easements funded with Division funds is clearly detailed in the deeds of conservation easement, management plans, and funding agreements; and (f) continuing to train staff involved in monitoring conservation easements on established policies and procedures, monitoring and reporting tools, and electronic systems.	Division of Wildlife	a. Agree b. Agree c. Agree d. Agree e. Agree f. Agree	a. July 2010 b. July 2010 c. December 2011 d. September 2009 e. September 2009 f. Ongoing
10	52	Improve the accuracy, completeness, and consistency of electronic real estate data by: (a) assessing the business processes supported by the data and making necessary modifications to the database that will reduce ambiguity and allow staff to better capture and report on required information; (b) develop a current, written user manual and data dictionary that clearly define and standardize field values, naming conventions, and instructions for entering, maintaining, and deleting data; (c) using standard queries and reports to routinely report on programmatic data; and (d) reconciling electronic data on a routine basis against other external sources as appropriate.	Division of Wildlife	Agree	December 2009

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# Overview of the Division of Wildlife

## Chapter 1

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State statute establishes that the wildlife and its environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the state's citizens and its visitors [Section 33-1-101, C.R.S.]. The Colorado Division of Wildlife (Division) exists to fulfill these broad statutory goals. The Division's key activities include:

- managing the state's 960 wildlife species and more than 230 wildlife areas;
- regulating hunting and fishing activities by issuing licenses and enforcing wildlife laws;
- acquiring and leasing land and water, or interests in land and water, for the preservation and conservation of wildlife and wildlife habitat, and to provide public access for hunting, fishing, and recreation activities;
- providing technical assistance to private and other public landowners concerning wildlife and habitat management;
- conducting research to improve wildlife management activities;
- developing programs to protect and recover threatened and endangered species; and
- providing educational programs to the general public.

According to Section 33-1-101(2), C.R.S., all wildlife within Colorado that is not lawfully acquired and held by private ownership is the property of the State. Wildlife occupying federal lands is managed jointly by the State and the federal government. The federal government generally defers to the State when it comes to managing fish and game populations; however, both the State and the federal government retain control over the management of wildlife habitat, thereby affecting which species will thrive and where.

## Organization

Organizationally the Division is within the Department of Natural Resources (Department). The Division is a Type 2 Agency as defined by the Administrative Organization Act of 1968. Accordingly, the Division's statutory authority,

powers, duties, and functions fall under the Department's purview. The Division's headquarters are located in Denver. Additionally, the Division maintains regional service centers in Colorado Springs, Denver, Durango, Fort Collins, and Grand Junction, as well as area service centers in 16 other cities and towns across the state.

The Division is overseen by the 11-member Wildlife Commission (Commission). The Governor appoints nine voting members representing different stakeholder groups (i.e., livestock producers, agricultural or produce growers, outfitters, sportsmen or sportswomen, wildlife organizations, and boards of county commissioners) with consent of the Senate for four-year terms. The executive directors of the Departments of Agriculture and Natural Resources or their designees serve as the remaining two ex-officio nonvoting members.

The Commission is a Type 1 Agency as defined by the Administrative Organization Act of 1968. As a Type 1 Agency, the Commission is independent from the Department when exercising its prescribed statutory powers, duties, and functions, such as managing the state's wildlife, licensing people who hunt or fish, and promulgating rules, regulations, and orders concerning wildlife programs. The Commission makes decisions about buying or leasing land and water (or interests in land and water) and approves the Division's annual budget and long-range plans. Any powers, duties, and functions not specifically vested with the Commission in statute remain under the Department's control.

## **Revenues and Expenditures**

The Division is largely cash-funded and receives most of its revenue from hunting and fishing license sales. Since 2001 the Division and the Commission have been designated as an enterprise under Article X, Section 20 of the Colorado State Constitution, more commonly known as the Taxpayer Bill of Rights. As shown in the following table, in Fiscal Year 2008 Division revenues totaled about \$136 million, an increase of 30 percent since Fiscal Year 2004. In Fiscal Year 2008 approximately 59 percent of the Division's total revenue, or \$80.1 million, was from license sales.

<b>Division of Wildlife Revenues Fiscal Years 2004 Through 2008 (Dollars in Millions)</b>						
<b>Revenue Source</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Percentage Change: 2004 to 2008</b>
Hunting and Fishing Licenses <sup>1</sup>	\$66.1	\$63.7	\$73.1	\$81.0	\$80.1	21%
Federal Funds	16.0	13.4	14.3	15.3	20.3	27
GOCO Distributions	12.5	13.8	9.7	8.6	20.4	63
Other <sup>2</sup>	10.1	12.6	12.0	13.7	15.2	50
<b>Total</b>	<b>\$104.7</b>	<b>\$103.5</b>	<b>\$109.1</b>	<b>\$118.6</b>	<b>\$136.0</b>	<b>30%</b>

**Source:** Office of the State Auditor's analysis of data from the Colorado Financial Reporting System (COFRS).

<sup>1</sup> Includes revenue from habitat stamp sales. As of January 1, 2006, a habitat stamp is required when purchasing a hunting or fishing license.

<sup>2</sup> Includes interest income, donations, fees and service charges, fines and damage awards, rents and royalties, sales of products and property, state grants, transfers, and other non-routine sources.

The Division's license revenue also includes revenue from habitat stamp sales. First authorized by House Bill 05-1266, a habitat stamp is required when purchasing a hunting or fishing license. Habitat stamp funds are to be used for the benefit of wildlife habitat or to improve public access to wildlife habitat. An 11-member Habitat Stamp Committee, whose members are appointed by the Governor with consent of the Senate for four-year terms, reviews proposed projects for the expenditure of habitat stamp funds and makes recommendations to the Division Director and the Commission [Section 33-4-102.7(4)(a)(I), C.R.S.]. As of June 30, 2008, the Division had received about \$11.9 million in revenue from the stamps since the habitat stamp's inception on January 1, 2006.

In addition to revenue from license sales, the Division receives substantial federal funding and distributions of state lottery proceeds from the Great Outdoors Colorado (GOCO) Trust Fund. In Fiscal Year 2008 the Division's federal funds totaled about \$20.3 million, and its GOCO funds totaled about \$20.4 million. Finally, the Division receives revenue from various other sources, such as donations, fines and damage awards against individuals violating state wildlife laws and regulations, and the sale of wildlife-related merchandise (e.g., maps and other publications).

As shown in the following table, in Fiscal Year 2008 the Division expended about \$146 million, an increase of 39 percent since Fiscal Year 2004. Personal services account for the largest share of the Division's expenditures. In Fiscal Year 2008 the Division had approximately 650 appropriated full-time equivalent positions, which represents a decrease of about 100 positions from prior years.

<b>Division of Wildlife Expenditures Fiscal Years 2004 Through 2008 (Dollars in Millions)</b>						
<b>Expenditure Type</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Percentage Change: 2004 to 2008</b>
Personal Services	\$48.8	\$50.9	\$51.4	\$52.9	\$57.3	17%
Operating and Travel	32.4	33.6	34.4	37.1	41.7	29
Grants and Distributions <sup>1</sup>	4.5	4.4	5.0	3.5	11.3	151
Capitalized Property Purchases <sup>2</sup>	11.4	15.0	7.8	7.7	25.2	121
Other <sup>3</sup>	8.2	8.4	9.2	9.7	10.9	33
<b>Total</b>	<b>\$105.3</b>	<b>\$112.3</b>	<b>\$107.8</b>	<b>\$110.9</b>	<b>\$146.4</b>	<b>39%</b>

**Source:** Office of the State Auditor's analysis of data from the Colorado Financial Reporting System (COFRS).  
<sup>1</sup> Includes grant and nongrant payments and distributions to local governments, other state agencies, nongovernmental organizations, and individuals.  
<sup>2</sup> Includes purchases of land and land interests (e.g., fee title and conservation easement acquisitions).  
<sup>3</sup> Includes other expenditures, such as required fund transfers and indirect cost assessments.

In Fiscal Year 2008 the Division saw a large increase in its capital expenditures as well as its expenditures for grants and distributions. This trend was driven largely by increased funding available from GOCO for the acquisition of land and land interests. For example, in Fiscal Year 2008 about \$18.9 million of the Division's \$25.2 million in capital expenditures (75 percent) was for land purchases, whereas in Fiscal Year 2004 about \$6.3 million of the Division's \$11.4 million in capital expenditures (55 percent) was for land purchases. Additionally, in Fiscal Year 2008 the Division distributed approximately \$5.6 million in new funding to nongovernmental organizations to acquire land and land interests for wildlife purposes.

In addition to reporting its expenditures in accordance with standard budget and accounting categories, the Division also reports its expenditures according to strategic areas. In its annual reports, the Division reported the breakdown of total expenditures for Fiscal Years 2004 through 2008 as follows:

- 29 percent for wildlife habitat and species management;
- 34 percent for wildlife recreation;
- 10 percent for wildlife education and information; and
- 27 percent for management (e.g., vehicles, facilities, operating and maintenance, purchasing and accounting, legal services, and engineering services).

As of June 30, 2008, the Wildlife Cash Fund, which is the Division's primary fund, had an unobligated fund balance of about \$11.1 million. This amount is generally consistent with the Commission's policy that the Wildlife Cash Fund's unobligated annual reserve will not drop below 10 percent of annual revenues.

## **Division of Wildlife Lands**

As of June 30, 2008, the Division's land assets totaled approximately \$125 million. This represents all lands to which the Division holds title. The Division also expends funds for projects involving land and land interests through grants and distributions to nongovernmental organizations, local governments, and individuals. For example, as of February 2009, the Division had provided funding to acquire 49 conservation easements, totaling about 79,000 acres, where the deed of conservation easement is held by an outside organization, such as a private land trust or a local government. (We refer to these properties as third-party conservation easements throughout the audit report.) Since the Division does not hold title to these properties, they do not show up as an asset on the Division's balance sheet.

The following table shows that as of February 2009, the Division owned or controlled just over 1.3 million acres of land in Colorado. Approximately 94 percent of the Division's total acreage is within designated state wildlife areas or state habitat areas. The remaining 6 percent of total acreage comprises third-party conservation easements held by outside organizations. Less than 1 percent of the total acreage is associated with state fishing units, wildlife watching areas, wetlands reserves, administrative areas, and access roads.

Division of Wildlife Land Acreage (As of February 2009)					
Designation	Acres	Percent of Total	Type of Control	Acres	Percent of Total
Wildlife Area <sup>1</sup>	1,103,198	85%	Fee Title	380,664	29%
Habitat Area <sup>2</sup>	117,252	9	Perpetual Conservation Easement	216,379	17
Third-Party Easement <sup>3</sup>	78,657	6	Other Perpetual Easement <sup>6</sup>	20,551	1
Fishing Unit <sup>4</sup>	3,396	<1	Leases <sup>7</sup>	686,776	53
Administrative Area <sup>5</sup>	1,685		<b>Total</b>	<b>1,304,370</b>	<b>100%</b>
Access Road	123				
Wildlife Watching Area	54				
Wetlands Reserve	5				
<b>Total</b>	<b>1,304,370</b>	<b>100%</b>			

**Source:** Office of the State Auditor's analysis of data from the Division of Wildlife's Capital Asset Management System (CAMS).

<sup>1</sup> Properties acquired for many reasons but whose distinguishing feature is that public use is part of the acquired rights.

<sup>2</sup> Properties primarily acquired for habitat protection and that do not have public use as part of the acquired rights.

<sup>3</sup> Perpetual conservation easements funded with Division moneys, but the deed of conservation easement is held by an outside organization, such as a private land trust or a local government.

<sup>4</sup> Properties and associated lands used as a fish hatchery or rearing unit.

<sup>5</sup> Properties used for the Division's headquarters office, regional and area offices, and storage facilities.

<sup>6</sup> Public access or right-of-way easements.

<sup>7</sup> Land and land interests acquired through leases, term easements, memoranda of understanding, special use permits, exchanges of use, or other agreements for a specific time period and/or use.

The Commission's policy is to acquire the lowest level of interest or control required to achieve its objective for a property. As shown in the previous table, more than half of the Division's 1.3 million acres is controlled through lease agreements. For example, the Division has a long-term lease with the State Land Board for access to about 549,500 acres of state trust lands. The Division holds about 46 percent of its total acreage in fee title (about 380,700 acres) or as a conservation easement (about 216,400 acres):

- **Fee title**, or fee simple estate, is the most complete ownership interest one can have in real property. Generally, a fee title acquisition means that the purchaser obtains the entire bundle of surface property rights, such as the right to harvest crops or timber, construct buildings, limit access, or subdivide the land. In Colorado, other rights associated with the property, such as water and mineral rights, are typically held separately.
- **Conservation easement** is a "nonpossessory" interest in real property. The land remains the private property of the landowner; however, the owner of the conservation easement has the right to restrict the landowner from subdividing and building on the land or using the land in certain ways. The conservation values being protected and any restrictions are spelled out in a legal document, called a deed of conservation easement, that is recorded in the local property records and becomes part of the chain

of title for the property. Conservation easements are generally perpetual in nature, and the restrictions of the easement are binding on all future owners of the property. Desirable lands for conservation easements include agricultural land, timber resources, and other valuable natural resources, such as wildlife habitat, clean water, clean air, or scenic open space. State law [Section 38-30.5-104(2), C.R.S.] requires the owner or holder of a conservation easement to be a governmental entity or a charitable organization exempt under 501(c)(3) of the federal Internal Revenue Code of 1986, as amended.

At the direction of the Commission, conservation easements are the preferred method for acquiring Division lands. Fee title acquisitions are typically only considered under certain conditions, such as when the land is highly desirable to meet Division objectives and the landowner is not amenable to a conservation easement.

## **Audit Scope and Methodology**

During this audit we reviewed the Division's land acquisition and management policies, practices, and processes, with a specific focus on fee title and conservation easement acquisitions. We examined processes for soliciting, evaluating, and selecting properties for acquisition. We evaluated appraisal and review appraisal practices and reviewed accounting detail for a sample of land transactions. Finally, we assessed the timeliness of the Division's conservation easement monitoring efforts, as well as the adequacy of processes to identify and resolve any problems. Our audit work involved data analysis, document review, and interviews with Division management and staff. We surveyed members of the Wildlife Commission and interviewed members of the Habitat Stamp Committee. We also interviewed representatives and reviewed documentation from a sample of outside organizations that hold conservation easements funded with Division moneys.

Our audit did not include Division processes for completing the land transaction (e.g., processing and recording); compliance with record retention requirements; use of lease agreements, exchange of use agreements, right-of-way and access easements, or other types of land control mechanisms; water or mineral rights holdings; land disposition processes; wildlife and habitat management activities; licensing processes and activities; law enforcement activities; or any other Division programs and operations.

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# Land Acquisition

## Chapter 2

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According to Section 33-1-101(1), C.R.S., “there shall be a continuous operation of planning, *acquisition*, and development of wildlife habitats and facilities for wildlife-related opportunities” (emphasis added). The Commission has statutory authority to acquire land or interest in land it considers necessary, suitable, or proper for wildlife purposes or for the preservation or conservation of wildlife. Acquiring land and land interests enables the Division to conserve and protect important habitat for threatened and endangered species or other species of concern, provide hunters and anglers access to hunting and fishing grounds, and secure critical winter range and migration corridors for big game species. In recent years both the Commission and the Division have placed greater emphasis on acquiring land and land interests and have actively worked to increase the amount of funding devoted to this purpose.

We reviewed the Division’s land acquisition practices and found there are several improvements the Division needs to make to ensure that (1) acquired lands best accomplish the Division’s goals; (2) proposals are evaluated in a fair, consistent, and transparent manner; (3) conflicts of interest are sufficiently disclosed; (4) donated land interests are properly valued and recorded in the State’s financial system; and (5) appraisal practices provide a consistent and credible process for valuing the properties acquired. We discuss these issues in the remainder of this chapter.

### Evaluation and Selection

Land is fundamental to fulfilling the Division’s mission. Thus, the Division’s evaluation and selection process must provide a reasonable basis for decisionmaking, thereby ensuring that the Division acquires those properties that will best accomplish its goals given the financial resources available. Historically, the Division acquired land interests through a number of programs that were established around specific funding streams (e.g., GOCO funding). Starting in 2006 the Division consolidated its land acquisition activities and pooled funds from several funding streams into a single program known as the Colorado Wildlife Habitat Protection Program (Habitat Protection Program), which serves as the Division’s primary means for fee title and conservation easement acquisitions. Through the Habitat Protection Program, the Division solicits opportunities for land acquisition by issuing a formal request for proposals (RFP) on an annual basis. The RFP provides information to interested landowners on the Division’s acquisition goals (e.g., certain types of habitat) and

references a map of high-priority areas for acquisition, as well as instructions on how to submit a proposal.

The Division dedicates considerable staff resources to evaluating proposals received in response to the RFP. The evaluation process is complex, and it involves structured, numeric scoring and a deliberative process designed to provide review and input from a number of different individuals and perspectives:

- **Numeric scoring.** Division staff evaluate proposals and assign numeric scores in accordance with different biological and nonbiological criteria. Biological criteria are intended to gauge the wildlife values present on the land and whether the acquisition will establish or improve habitat. For example, proposals involving grassland habitat are evaluated based on factors such as whether the current condition of the property meets the needs of endangered or declining grassland species. Proposals involving wetlands habitat are evaluated based on factors such as the property's contribution to breeding, migration, and/or winter habitat for waterfowl in the area. Nonbiological criteria include various additional factors, such as public access opportunities for hunting, fishing, and wildlife watching on the property; the likelihood that the land will be developed if not acquired; and the property's proximity to other protected lands. The Division compiles a numeric score for each habitat type, as well as combines the numeric scores for each habitat type into a total score for each proposal.
- **Deliberative process.** After the numeric scoring is completed, the Division employs a deliberative process for evaluating proposals and making the final selections. Through a series of meetings and email exchanges spanning several weeks, Division managers review and discuss the numeric scores and consider properties' biological and nonbiological attributes. Proposals are ranked regionally and on a statewide basis. Eventually, the field is narrowed to a list of properties that the Division Director recommends to the Commission as best suited for acquisition. In addition to the Division's review process, members of the Habitat Stamp Committee review and make recommendations to the Division Director and the Commission regarding proposed acquisitions involving the use of habitat stamp funds.

Through its 2008 RFP, the Division made approximately \$15 million available under the Habitat Protection Program for land acquisitions. The Division evaluated a total of 74 proposals from landowners. The Division recommended and the Commission selected a total of 10 properties for acquisition.

During our review of the Division's 2008 acquisition cycle, we identified three observable benchmarks that we believe provide a reasonable, appropriate, and measurable basis for assessing the Division's final selections. We compared the

selected properties according to their overall and habitat-specific rankings based on the Division's numeric scoring, whether the properties were located within or in close proximity to a Division-identified high-priority area for land acquisition, and whether the properties were recommended by the Habitat Stamp Committee. Overall, we found a disconnect between the benchmarks we identified and the Division's final list of selected properties. As shown in the following table and discussed in the bullet points below the table, we identified properties selected for acquisition that (1) had relatively low rankings based on numeric scores, (2) were not located in high-priority areas, and (3) were not recommended by the Habitat Stamp Committee.

<b>Division of Wildlife Colorado Wildlife Habitat Protection Program 2008 Request for Proposals Properties Selected for Acquisition</b>				
<b>Property</b>	<b>Overall Rank Based On Numeric Score<sup>1</sup></b>	<b>Habitat-Specific Rank Based on Numeric Score<sup>2</sup></b>	<b>Within A High-Priority Area?</b>	<b>Recommended By The Habitat Stamp Committee?</b>
A	1	1	No	Yes
B	9	1	Yes	No
C	10	1	Yes	No
D	17	2	No	No
E	18	10	Yes	Yes
F	31	7	Yes	Yes
G	40	1	Yes	No
H	46	7	Yes	Yes
I	65	7	Yes	Yes
J	Not Scored	Not Scored	No	Yes
<b>Source:</b> Office of the State Auditor's analysis of Division of Wildlife data.				
<sup>1</sup> The Division evaluated a total of 74 proposals from landowners.				
<sup>2</sup> Ranking reflects the best rank the proposal received in any one of the five possible habitat types that were scored.				

- Numeric scores.** Using the Division's total numeric scores, we sorted and rank-ordered all 74 proposals. We found that only 3 of the 10 properties the Division selected (Properties A, B, and C) ranked within the top 10 properties based on numeric score. In fact, one selected property (Property I) ranked 65 out of 74 total properties. Another selected property (Property J) was not scored because Division staff had not developed a scoring matrix to evaluate the specific fishing access attributes the property possessed.

Division staff reported they gave more consideration to the rankings proposals achieved in relation to those sharing the same habitat type than to the rankings proposals achieved overall. Therefore, we also sorted and

rank-ordered proposals' numeric scores within each habitat type. The results were similar to those for the overall ranking. Although 5 of the 10 properties the Division selected (Properties A, B, C, D, and G) ranked high within their habitat types, we found that 4 of the 10 properties the Division selected (Properties E, F, H, and I) had a relatively lower habitat-specific rank. Additionally, as discussed previously, one selected property (Property J) was not scored and could not be rank-ordered for comparison.

- **High-priority areas.** As part of the 2008 RFP, the Division included a map of high-priority areas for its land acquisitions, which generally encompass those areas with critical habitat for threatened and endangered species or migration corridors and winter range for big game species. We found that 3 of the 10 properties the Division selected (Properties A, D, and J) did not fall within a high-priority area for land acquisitions. (See Appendix A for a map of the Division's high-priority areas and proposed and selected property locations.)
- **Habitat Stamp Committee recommendations.** State statute [Section 33-4-102.7(4)(a)(I), C.R.S.] requires the Habitat Stamp Committee to review and make recommendations to the Division Director and the Commission regarding proposed acquisitions involving the use of habitat stamp funds. Since 2006 the Division Director has used the Habitat Stamp Committee to review all proposals through the Habitat Protection Program, not just those involving habitat stamp funds. We found that 4 of the 10 properties the Division selected (Properties B, C, D, and G) were not recommended by the Habitat Stamp Committee. The Habitat Stamp Committee recommended a total of 14 properties, many more projects than the Division had funding to support.

Collectively, the results of our analysis raise questions about whether the Division's evaluation and selection process effectively provides a basis for decisionmaking and ensures that the best properties are recommended for acquisition. First, the numeric scoring, which factors in many different criteria and consumes significant Division resources to complete, did not appear to bear strong relationship with the Division's final selections. Second, the map depicting high-priority areas for land acquisitions, which the Division uses to solicit proposals, did not always align with the selected properties. Finally, the Division chose not to follow some recommendations of the Habitat Stamp Committee, which is an additional source of expertise and stakeholder input involving a source of significant funds for the Division's acquisitions.

We recognize that the Division's evaluation and selection process is complex and that the Division must consider a number of qualitative factors when deciding which properties to acquire. We also recognize the need to preserve a degree of flexibility. However, the lack of correspondence between key benchmarks and

the Division's final selections is problematic because it undermines the confidence that landowners and other stakeholders may have in the fairness, transparency, and quality of the Division's selections.

As we discuss in the following sections, the Division needs to ensure that its evaluation and selection process has a reasonable basis that aligns with the evaluation criteria communicated to landowners and that clearly supports its acquisition decisions. Specifically, we discuss three different but interrelated areas for improvement. First, the Division needs an acquisition strategy to guide it in achieving the multiple objectives of the Habitat Protection Program. Second, the Division needs to change its operational processes for soliciting and reviewing proposals to ensure that each proposal is consistently evaluated against the same set of criteria. Finally, the Division needs to adjust its methodology for calculating total scores to avoid problems that can skew the results.

## **Acquisition Strategy**

State statute requires proposals solicited through the RFP to be evaluated on the basis of whether the acquisition enhances the Division's ability to attain the goals in its long-range plan [Section 33-1-105.5(5)(a), C.R.S.]. Commission policy further states that "any acquisitions of land or water interests will be directed toward . . . statewide wildlife goals in the Division's strategic plan and/or other planning documents." However, we found that a key problem affecting the Division's evaluation and selection process is that the Division lacks an acquisition strategy for achieving the multiple objectives of the Habitat Protection Program. Specifically, we found that the Division has not used existing planning documents to articulate or prioritize short- and long-term land acquisition goals and guide its decisionmaking. The Division also has not established suitable performance measures, such as acreage targets for specific habitats, to assess progress toward meeting its acquisition goals. Consequently, the Division cannot ensure that the properties it acquires best accomplish desired outcomes, such as conserving and protecting specific types of habitat or securing wildlife-related recreational opportunities.

As we discussed previously, the Habitat Protection Program is the product of several combined programs and funding streams. The Division uses the Habitat Protection Program as its primary vehicle for acquiring land for a variety of purposes and goals, including:

- critical winter range for big game
- critical migration corridors for big game
- access for hunting and fishing

- habitat for sage-dependent species of concern
- habitat for grassland-dependent species of concern
- protection for other threatened or endangered species or species of concern
- wetlands and riparian corridors

The Division states in the RFP that each of these goals is a priority. However, the Division has not prioritized these goals or specified which will be given greater weight in the evaluation process. This lack of prioritization is problematic because it is unlikely that any one project could possess all of the desired qualities. For example, we found that many of the proposals from the 2008 RFP addressed two or three goals, but none of the proposals addressed all goals.

Moreover, lack of prioritization among these goals leaves the Division with little effective or transparent means of evaluating different proposals. For example, one landowner submitted a proposal for a nine-acre property that provided high-quality fishing access on a major river. The Division considered the proposal worthy of selection due to the property's quality, popularity, and support from local funding partners. By selecting this project, the Division demonstrated that, in this instance, it considered fishing access to be of higher priority than other possible options. However, the Division selected this proposal over another that offered a 3,800-acre property of roughly equal monetary value located within one of the Division's high-priority areas with qualities such as native grasslands, forests, riparian areas, protection for big game, and protection of two grassland-dependent species identified as "species of greatest conservation need." Absent some degree of prioritization among its goals, the Division cannot justify to the public that selecting certain properties while bypassing others is the most appropriate decision.

The Division needs an acquisition strategy that articulates and prioritizes specific short- and long-term land acquisition goals to guide its decisionmaking. The Division has already laid much of the necessary groundwork. In particular, two planning documents contain the results of extensive scientific research and could serve as the basis for such an acquisition strategy:

- **Comprehensive Wildlife Conservation Strategy.** Finalized in 2006 with input from many scientists and stakeholders statewide, the Comprehensive Wildlife Conservation Strategy (Conservation Strategy) identifies 210 species in greatest need of conservation, as well as the condition of the 41 habitat types that exist in Colorado. This document contains summaries describing each species and identifies primary habitats, threats, and necessary conservation actions. The Conservation Strategy recommends acquiring fee title land and conservation easements for the following high-

priority habitats: ponderosa pine, shortgrass prairie, Western Slope streams, Western Slope rivers, and sagebrush.

- **Real Estate Plan.** Developed in 2000, the Real Estate Plan summarizes the species-dependent and programmatic needs from all of the Division's sections and programs and translates these needs into possible real estate actions. The Real Estate Plan includes estimates of the total acres needed in each region of the state to satisfy certain goals. The Real Estate Plan identifies 13 areas of the state that have the highest priority for land acquisition and were the precursor to the map in Appendix A.

Although the Division has these two planning documents in place, the link between these planning documents and the Habitat Protection Program, the RFP, and the Division's land acquisition decisions is unclear. For example, the map of high-priority land acquisition areas referenced in the RFP was developed out of the Division's Real Estate Plan; however, Division staff reported that they do not necessarily use the map as a selection criterion. As discussed previously, we found that the Division chose three proposals in 2008 that were located outside of high-priority areas. Thus, it is unclear what benefit the Real Estate Plan provides to the acquisition process, or whether the related map accurately reflects the Division's current high-priority areas. As another example, the RFP states that the Division seeks to protect important wildlife habitats and specifically references the Conservation Strategy; however, the RFP does not list ponderosa pine habitat, which is one of the high-priority habitats listed in the Conservation Strategy as needing protection through land acquisitions. Accordingly, the RFP may not be effective at garnering proposals that include ponderosa pine habitat.

In addition to specifying short- and long-term land acquisition goals, the Division needs to develop suitable performance measures and performance data. For example, the Division currently tracks and reports to the General Assembly and other stakeholders on the total number of acres it has acquired through the Habitat Protection Program. The Division provided us with the following figures during our audit:

<b>Habitats and Recreational Lands Protected Through The Colorado Wildlife Habitat Protection Program July 2006 Through December 2008</b>	
Big Game Winter Range and Migration Corridors	36,092 acres
Public Access for Recreation	15,251 acres
Habitat for Greater and Sharp-Tail Sage-Grouse	13,416 acres
Shortgrass Prairie Habitat	13,078 acres
Habitat for Gunnison Sage-Grouse	4,823 acres
Fishing Access	11.35 miles
<b>Source:</b> Division of Wildlife.	

Although these figures provide information on what has been acquired, there is no benchmark against which to evaluate these statistics. Thus, the Division is unable to assess its progress toward meeting its land acquisition goals. The Division reported that establishing specific acreage targets may not yet be possible since scientists are still working to establish habitat needs for many species. However, even if specific acreage targets cannot yet be established for individual species, broad acreage targets would still provide some basis for evaluation. The Division could also focus on developing other performance measures to gauge progress. For example, the Division could establish performance measures pertaining to the number of populations of species protected or points of access acquired for fishing and hunting.

The Division's acquisition of land and land interests consumes significant public moneys and is critical to fulfilling the Division's mission. By using planning documents already developed and articulating and prioritizing short- and long-term land acquisition goals, the Division can produce a more precise RFP solicitation and provide a solid foundation for its decisionmaking. Additionally, this will provide important guidance to landowners, thereby increasing the Division's chances of receiving proposals that align with its goals. Finally, by developing suitable performance measures and performance data, the Division will be able to demonstrate its progress toward meeting its land acquisition goals to the public.

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### **Recommendation No. 1:**

The Division of Wildlife should develop an acquisition strategy to meet the multiple objectives of the Colorado Wildlife Habitat Protection Program. Specifically, the Division should:

- a. Use existing or updated planning documents to articulate and prioritize specific short- and long-term land acquisition goals. Once established, these goals and priorities should be incorporated into the Request for Proposals and applied during the evaluation and selection process.
- b. Establish performance measures and performance data to track and report on progress toward meeting short- and long-term land acquisition goals. Results should be used to revise and adjust acquisition goals and priorities over time, as appropriate.

## **Division of Wildlife Response:**

- a. Agree. Implementation date: May 2010.

The Division agrees to incorporate short- and long-term land acquisition goals and priorities that are compatible with the Colorado Wildlife Action Plan, the Division's Real Estate Plan, and any other planning documents when developing its next Request for Proposals (RFP) for the Colorado Wildlife Habitat Protection Program. The RFP announcement will be more explicit in articulating the planning objectives and priorities of these documents that will be applied during the evaluation and selection process. Changes will be made with the announcement of the next RFP for the Colorado Wildlife Habitat Protection Program, which is anticipated to be released in May 2010.

- b. Agree. Implementation date: July 2011.

The Division agrees to develop and use performance measures to guide its acquisition strategy. Performance measures will not be based solely on a total acreage of land to protect, but, rather on species' needs and other factors that affect the vitality of habitats that species depend upon. We are building a decision support tool to assess and predict threats to habitat and thereby assist in setting objectives for habitat protection.

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## **Scoring Criteria**

Once the Division has clearly defined and communicated its short- and long-term acquisition goals, the next step is to strengthen operational processes for evaluating proposals so that funds can be allocated for acquisitions that will further these priorities. This requires that the Division clearly define and communicate its scoring criteria to landowners, thereby increasing the likelihood that the proposals will match the Division's needs. Moreover, landowners who submit proposals in response to the RFP expect that the Division will give their proposals due consideration and equitable treatment throughout the evaluation and selection process.

We reviewed the Division's process for scoring proposals and found that the Division lacks a systematic method to ensure that all landowner proposals are evaluated and scored using the same set of criteria. Specifically, the Division's scoring process does not (1) include all criteria that influence the final selections, (2) apply criteria consistently, or (3) assign sufficient weight to certain criteria. Additionally, it is unclear what role the Habitat Stamp Committee plays in the

scoring process. Consequently, the Division cannot ensure that landowner proposals receive consistent and equitable treatment or that the Division's goals are communicated effectively to landowners and applied appropriately in the scoring process.

First, we found that the Division's scoring process does not explicitly include all the criteria used to evaluate and select proposals. As discussed previously, Division staff evaluate and score proposals against several different biological and nonbiological criteria. However, we found that some nonbiological factors are scored, whereas others are not. Specifically, the Division's scores did not reflect an evaluation of price, cost per acre, or potential for future acquisition opportunities. Yet our inquiries with Division staff revealed that, in some cases, one or more of these unscored factors heavily influenced a proposal's selection.

Second, we found that when nonbiological criteria were scored, the Division applied the criteria inconsistently depending on the type of habitat being evaluated. For example:

- *Recreational opportunity* (i.e., hunting and/or fishing access) was scored for properties that had big game or wetlands habitats, but not for the properties with sage-grouse or grassland habitats.
- *Size of the property* was a factor for scoring wetlands habitat, but not for big game, sage-grouse, or grassland habitats.
- *Connectivity* of the property to other protected lands was a factor for scoring wetlands, sage-grouse, and grassland habitats, but not for big game habitat.
- *Urgency or threat of development* (i.e., the likelihood that the land will be developed if not acquired by the Division) was scored for all habitats except big game.
- *Cost of future maintenance* was scored only for wetlands habitat.
- *Landowner willingness* to enter into and abide by agreements with the Division was a factor for scoring wetlands and grassland habitats, but not for big game or sage-grouse habitats.

Third, we found that in many cases the nonbiological criteria applied in the evaluation process had far greater influence on a proposal's selection than indicated by the criteria's actual contribution to the numeric score. Our analysis showed that, with the exception of hunting and fishing access, each of the nonbiological criteria contributed no more than 4 percent to the total numeric score for most proposals. However, this weight does not reflect the relative

influence that some of these nonbiological criteria appear to have had in the Division's final selections.

Finally, we found that the role of the Habitat Stamp Committee in evaluating and scoring proposals needs clearer definition. As discussed previously, since 2006 the Division Director has called upon the Habitat Stamp Committee to review all proposals obtained through the RFP, not just those that involve habitat stamp funds. The Habitat Stamp Committee has developed its own selection criteria and scoring process that in many ways captures or complements some of the same factors considered by the Division in its own evaluations. It is reasonable that the Division should use the Habitat Stamp Committee as an additional source of expertise and stakeholder input. However, to ensure value-added recommendations, the Division needs to clarify how the Habitat Stamp Committee's review criteria and scoring of proposals will be integrated with the Division's.

The Division has an obligation to ensure that the selection process is equitable, consistent, and transparent. The Division needs to identify all criteria used to evaluate and select projects, including nonbiological attributes, and restructure the scoring process to consistently and equitably apply these criteria. Additionally, any weighting of scores should reflect the actual influence that the various factors have in the selection process. The Division also should clearly specify all relevant evaluation criteria and their associated weights in the RFP. Finally, the Division should clarify the role of the Habitat Stamp Committee in the evaluation and selection process. By taking these steps the Division can ensure that the scoring process adds value to and supports its acquisition decisions.

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## **Recommendation No. 2:**

The Division of Wildlife should ensure that the evaluation and selection process for land acquisitions is equitable, consistent, and transparent and adds value to decisionmaking by:

- a. Identifying all relevant criteria, including nonbiological attributes, used to evaluate and select projects.
- b. Restructuring the scoring process to consistently and equitably apply these criteria to all proposals. Any weighting of scores should reflect the actual influence that the factors are intended to have in the selection process.
- c. Including all relevant selection criteria and their associated weights in the Request for Proposals.

- d. Clearly defining the role of the Habitat Stamp Committee in the proposal evaluation and selection process, including how the Committee's review criteria and scoring of proposals will be integrated with the Division's.

### **Division of Wildlife Response:**

Agree. Implementation date: May 2010.

The Division agrees that the relevant criteria used to evaluate projects should be listed at the time of the RFP announcement, to include nonbiological as well as biological factors. With broad-based input from Division staff, the scoring matrices for biological and some nonbiological factors have been extensively reviewed and improved in 2009. Points assigned to scoring criteria have been based on each factor's relative importance.

The Division agrees that the scoring process should be consistent and equitable. The scoring criteria for biological factors pertinent to RFP projects has been reviewed extensively and updated. All biological attributes are now assigned point values. Other nonbiological attributes, which will be considered when ranking properties, will be identified and assigned a point value at the appropriate level within the agency and/or by the Habitat Stamp Committee.

The Division agrees to clarify the role of the Habitat Stamp Committee. To that end, there will be additional communication with the Committee about which of their recommendations were accepted, which recommendations were not accepted, projects that were accepted but were not on their recommendation list, and why each of these decisions was made.

Changes will be made with the announcement of the next RFP for the Colorado Wildlife Habitat Protection Program, which is anticipated to be released in May 2010.

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## **Calculation of Total Scores**

During the scoring process, Division staff combine and aggregate proposals' numeric scores into a master scoring spreadsheet. We reviewed the Division's scoring spreadsheet for the 2008 RFP and found a number of problems that introduced irregularities into the total scores. As a result, the total scores may not reflect proposals' true rank and value. Specifically, we found problems in the following areas:

- **Additive versus average scores.** The Division calculated the total score for each proposal by simply adding the numeric scores given to each habitat type, rather than averaging them. Thus, a proposal scored for three different habitats would likely receive a total score that is three times greater than a proposal scored on just one habitat. This is problematic because Division staff reported that they value not only those proposals that possess multiple habitat types, but also proposals that score particularly well for a single habitat type. Division staff reported that they selected two low-scoring proposals in 2008 for just this reason. Averaging the scores more appropriately takes into account the fact that not every proposal will be scored for the same number of habitat types.
- **Normalization of scores.** When the Division calculates the total numeric score for each proposal, it combines raw scores for several different habitat types (e.g., big game, grassland, wetland), each of which is scored on a different scale and has a different distribution of raw scores (e.g., average and range). Because of these underlying differences in the raw scores, it is difficult to combine scores across habitat types in a meaningful way. For example, a raw score of 20 for big game habitat cannot be compared or combined with a raw score of 65 for grassland habitat without knowing how many total points were possible for each habitat type, whether the scores were above or below the average score for each habitat type, and how much each score deviated from the average (either above or below). Normalizing or standardizing raw scores would allow data on different scales and with different distributions to be combined by bringing them to a common scale and equalizing the effect that any single factor has on the resulting total score. We found that the Division did not utilize an appropriate normalizing technique when calculating the total scores. Consequently, the resulting total score may not be a meaningful combination of the underlying raw scores for each habitat type. In particular, we found that certain habitat types inadvertently exerted a stronger influence over the total score than other habitat types.
- **Variations in scores.** Most proposals the Division receives through the RFP process are scored by many different Division staff. However, we found that Division staff tended to score the same habitat differently. For example, we noted a wide variation between the wetlands habitat scores given by wetlands conservation specialists and those given by field operations staff and other conservation biologists. Division staff further acknowledged that biologists from two different regions interpreted and scored sage-grouse habitat differently. For several proposals we found that habitat scores varied so significantly that the average score did not closely reflect any actual score that was given. Minor variations in scores

are to be expected. However, significant variations in scores can indicate an inconsistent application of scoring criteria and standards.

- **Calculation errors.** During our review of the Division’s master scoring spreadsheet we identified a number of simple calculation errors. In each case, the calculation was performed manually by the staff person who tabulated the data, rather than being performed automatically by the spreadsheet’s built-in math functions. These mathematical errors affected the total scores for some proposals but did not change significantly the relative ranking for the 10 properties the Division selected.

Overall, the Division needs to make several improvements to the methodology it uses to combine and aggregate scores for each proposal. First, the Division should average multiple habitat scores for each property, rather than adding them together. The Division could still adjust the average total score, if warranted, to give additional weight to properties with multiple habitats.

Second, the Division should apply statistical normalization techniques to the raw scores to adjust for variances in scores across habitat types. One commonly used technique is to convert raw scores into standardized scores, or “T-scores.” This statistical technique would allow for more appropriate compilation of scores across habitat types and equalize the influence that each different habitat type exerts on the total numeric score prior to weighting. We recalculated the proposals’ total scores using T-scores for each habitat type, which we then averaged for each proposal. By using this approach, we found that the final project rankings more closely reflected the Division’s actual selections from the 2008 RFP. Specifically, three of the selected projects ranked within the top five proposals, whereas before only one selected project ranked within the top five proposals.

Third, the Division can ensure consistency in scoring by providing better definitions of the scoring criteria and by training staff responsible for conducting the scoring on these standards.

Finally, the Division should avoid simple calculation errors by automating the calculations within its scoring spreadsheets wherever possible. Additionally, there should be sufficient supervisory review of scoring spreadsheets.

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### **Recommendation No. 3:**

The Division of Wildlife should improve methods for compiling and calculating proposals’ final scores. This should include:

- a. Averaging habitat scores for each property.
- b. Employing statistical techniques to normalize scores within and across habitat types to adjust for variances.
- c. Providing better definitions of the scoring criteria and standards and training staff on their application.
- d. Automating all calculations in scoring spreadsheets to the extent possible and ensuring sufficient supervisory review of scoring spreadsheets.

### **Division of Wildlife Response:**

Agree. Implementation date: August 2009.

The Division began implementing these recommendations in the 2009 RFP process of compiling and calculating proposals' final scores. Staff is receiving assistance with the methods of calculating averages, and in employing statistical techniques to normalize scores within and across habitat types to adjust for variation. To the extent possible, calculations in the scoring spreadsheets will be automated and reviewed.

The scoring criteria have clarified definitions and standards for scoring; the process of developing the revised criteria began last year. Guidelines for scoring have been provided by email to the supervisors of those involved in scoring. The Division's coordinator for the RFP process has communicated with supervisors to discuss the scoring standards and process, and has emphasized the importance of supervisors overseeing the scoring process. During upcoming Regional and Area meetings, time will be spent discussing all scores and how they were derived.

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## **Conflicts of Interest**

A body of statutes, rules, constitutional amendments, and other directives exists related to conflicts of interest among public officials, members of state boards and commissions, and state employees. Generally, these mandates are intended to instill confidence and preserve the public's trust that state government is run in an ethical and transparent manner. Since the Commission's statutory composition includes representation from a variety of interests (e.g., sportsmen, sportswomen, and outfitters; wildlife organizations; livestock and agricultural producers), it is to be expected that matters will come before the Commission that could benefit the interests of one or more members. These situations may create a real or perceived conflict of interest and should be handled in accordance with appropriate

procedures. Members of state boards and commissions must avoid conduct that violates the public trust or creates a justifiable impression among the public that such trust is being violated.

During our audit we found that the Commission lacks adequate procedures to ensure that real and perceived conflicts of interest are properly disclosed and handled. Specifically, we identified a situation where a sitting commissioner failed to sufficiently disclose a conflict of interest. In August 2004, prior to his appointment to the Commission, this individual responded to the Division's RFP, offering to sell a conservation easement to the Division. By February 2005 the Division had evaluated and selected the project to move forward in the acquisition process. One month later, in March 2005, this individual was appointed to the Commission. Although selection of the project occurred prior to his appointment, a conflict of interest was created at the moment this individual joined the Commission because he became a party to both sides of a pending land transaction. He was acting as a private citizen negotiating to sell a conservation easement on his land and simultaneously sitting as a member of the entity statutorily empowered to purchase the conservation easement. Despite this apparent conflict of interest, public disclosure and discussion of this situation did not occur until February 2006, nearly one year after this individual's appointment to the Commission. Moreover, the disclosure appears only to have occurred as a result of media scrutiny.

According to Division staff, the conflict of interest was discussed internally at the time of the individual's appointment to the Commission. The Division was advised that the transaction could move forward, but the commissioner would be required to recuse himself from any Commission vote involving the purchase of his land. Recusal is required by state statute [Section 24-18-108.5, C.R.S.], which prevents members of boards and commissions from performing an official act that may have a direct economic benefit on a business or other undertaking, such as the sale of land, in which the member has a direct or substantial financial interest. However, the transaction never progressed far enough to require a Commission vote, so the statutory requirement for recusal was not triggered. The commissioner withdrew from negotiations with the Division in June 2006 due to a disagreement over the purchase price.

In December 1996 the Commission adopted a document outlining general standards of conduct and expectations for commissioners, such as setting a good example of high standards in personal behavior and keeping the Commission's governance role foremost in mind. The Division provides this document to all new commissioners as part of their orientation packet. However, this document lacks any specific procedures to address conflicts of interest. For example, no standards exist requiring commissioners to complete written disclosures of financial, professional, or personal interests that may create real or perceived conflicts of interest or to update such disclosures as new interests arise.

Additionally, there is no process for reviewing and discussing the disclosures in a public meeting or for maintaining the written disclosure forms so that commissioners, Division staff, and members of the public have access to them. The Commission also has not updated its written standards of conduct since 1996.

It is imperative that the Commission establish and follow procedures for identifying, disclosing, reviewing, and addressing any real or perceived conflicts of interest. Additionally, written standards of conduct should be reviewed and updated on a routine basis. These steps will help ensure that the Commission operates in a manner that is accountable and transparent to the public it serves.

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### **Recommendation No. 4:**

The Wildlife Commission should review and update its written standards of conduct to include specific procedures addressing conflicts of interest. At a minimum, the Commission should:

- a. Require members to complete written disclosures of any financial, professional, or personal interests that may create a real or perceived conflict of interest. Written disclosures should occur when members join the Commission and be updated annually and as new interests arise.
- b. Develop a process for reviewing and discussing members' disclosures at a public meeting and for maintaining the written disclosure statements to ensure they are accessible to the Commission, the Division, and the public.

### **Wildlife Commission Response:**

Agree. Implementation date: January 2010.

The Wildlife Commission concurs with the recommendation and will review and update its written standards of conduct to: (a) require members to complete and annually update written disclosures regarding real or perceived conflicts of interest; and (b) develop a process to publicly review and discuss such disclosures and to maintain and make such disclosures available for public review.

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## **Donated Land Values**

Land and land interests, such as fee title properties and conservation easements, owned by the State must be recorded in the State's financial system as capital assets. The Division's fee title properties and conservation easements result from

(1) expenditures made by the Division and (2) donations by private landowners. Additionally, for some of the Division's conservation easements, the acquisition involves both a purchased and a donated component. Generally accepted accounting principles, state fiscal rules, and state fiscal procedures require that all capital assets be properly accounted for when acquired. Specifically, purchased capital assets should be recorded at historical cost (i.e., the amount of the expenditure). Donated capital assets should be recorded at the estimated fair value of the asset at the time of donation. When the acquisition involves a purchased and a donated component, both aspects of the transaction must be recorded in the Colorado Financial Reporting System (COFRS) to properly report the asset's value on the State's financial statements.

During our audit we reviewed the 32 fee title and conservation easement acquisitions the Division completed between July 2007 and February 2009 to determine whether the acquisitions were properly recorded in COFRS. We found that the Division did not record at least \$8.2 million in donated land interests. Specifically, we identified:

- Six fully donated property interests (two fee title and four conservation easements) that the Division did not record in COFRS. One property was appraised at \$968,000. For the remaining five properties, the Division's real estate files contained no appraisal or other documentation estimating the donated value. Therefore, we could not quantify the amount that should have been recorded in COFRS for these property interests.
- Ten Division-held conservation easements for which the Division failed to record a combined total of approximately \$7.3 million in donated value in COFRS. Documentation in the Division's real estate files substantiated that all of these transactions involved an expenditure of Division funds and a landowner donation. In all 10 cases, the landowner donation was not recorded in COFRS. In general, the value of the landowner donation was the difference between the appraised value for the conservation easement and the amount the Division paid.

Internal controls over financial reporting should ensure that all land assets, including donated assets, are properly valued and recorded in the State's financial system. However, we found that internal controls to ensure proper valuation and recording of donated assets broke down at both the Division and Department levels.

At the Division level, the Division did not comply with the Department's capital asset policy and procedures. These procedures require unit supervisors who receive a capital asset donation to prepare a memorandum describing the asset, including its value, and transmit this memorandum to accounting staff to ensure proper accounting treatment for the asset in COFRS and in the Department's

capital asset inventory. Fundamentally, the problems were caused by inadequate communication between the Division's real estate unit, which negotiates and manages the land acquisition, and the Division's financial services section, which makes the accounting entries in COFRS. The financial services section was unaware that many of the Division's conservation easement acquisitions involved a landowner donation or that the Division had accepted fully donated properties. The real estate unit was not aware of the steps and documentation required to properly value and record donated land assets in the State's financial system.

At the Department level, we found that there was inadequate oversight of the Division's accounting treatment for land acquisitions. Specifically, the Department did not obtain and review sufficient supporting documentation either before or after closing the real estate transaction. Key documents, such as a copy of the purchase agreement and the method of valuation for any donations, provide a basis for the Department's review of the Division's acquisitions prior to approving the transaction for final payment. However, we found that the Department's accounting records did not include a copy of the actual purchase agreement for 22 of the 32 acquisitions we reviewed. As discussed previously, donated values were not documented at all. Often the only supporting documentation the Department maintained with the official accounting entry was a one-page memorandum and accompanying email prepared by the Division listing the purchase price and wire transfer instructions. Additionally, according to the Department, the Division should provide a closing statement subsequent to the transaction closing. However, we did not find a closing statement in the Department's accounting records for 28 of the 32 acquisitions we reviewed. The Department did not follow up with the Division to ensure that the closing statements were provided.

This is the second performance audit in as many years at the Department where we have identified problems with one of its division's accounting procedures for land transactions and a lack of adequate review by the Department. Our June 2008 *Division of Parks and Outdoor Recreation Performance Audit* reported that the Division of Parks and Outdoor Recreation had failed to record the value of certain properties acquired with GOCO funds. Although we did not find problems with the recording of properties purchased with GOCO funds at the Division of Wildlife, both the Division and the Department have a responsibility to ensure that all assets are properly valued, adequately supported, and recorded in COFRS.

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### **Recommendation No. 5:**

The Division of Wildlife and the Department of Natural Resources should establish adequate internal controls over land acquisitions to ensure that all donated land interests are properly valued and recorded in the State's financial

system. These controls should include maintenance of sufficient documentation (such as the purchase agreement, closing statement, and method of valuation for the donation) to support the appropriate valuation of the asset and recording of its full value in the State's financial system.

### **Division of Wildlife Response:**

Agree. Implementation date: September 2009.

The Division will establish internal controls for fee title and conservation easement acquisitions that will comply with the Department of Natural Resources Accounting Section's Capital Asset Policy and Procedures.

### **Department of Natural Resources Response:**

Agree. Implementation date: September 2009.

The Department will work with the Division to establish internal controls over fee title and conservation easement acquisitions to ensure all donated fee title and conservation easement interests are properly valued and recorded in the State's financial system. These controls will require the Division to provide the Department appropriate documentation, such as a copy of the purchase agreement and closing statement for purchases, the transfer document, and method of valuation for donations and for fee title and conservation easement acquisitions.

### **Recommendation No. 6:**

The Division of Wildlife and the Department of Natural Resources should work together to review all fee title and conservation easement interests currently held by the Division to identify any unrecorded donated land values and make appropriate adjusting entries in the State's financial system.

### **Division of Wildlife Response:**

Agree. Implementation date: June 2010.

The Division will review its real estate files pertaining to fully donated fee title and conservation easement interests, which date back to 1881. Any information found in the real estate files, concerning the value of the real estate interest at the time of the donated transfer, will be reported to the Department to make appropriate adjusting entries in the State's financial system.

As for entries into the State's financial system pertaining to those real estate files that do not contain the value of the real estate interest at the time of the donation, the Division will supply the Department with an estimation of value for each donated real estate interest by utilizing the following methodology: The value of those donations will be estimated by establishing a general per-acre value for the donated real estate interest. This general per-acre value will be established by utilizing the existing data in the real estate files as it pertains to the per-acre purchase price of a small sampling of real estate interests which were purchased by the Division in the same general time period as each donated real estate interest was acquired. The small sampling will be averaged, and this average will be multiplied by the number of acres donated, to obtain the estimated value of each donation.

### **Department of Natural Resources Response:**

Agree. Implementation date: June 2010.

The Department will work with the Division to review any fully donated fee title and conservation easement interests for which a value is available in the real estate files, and will make appropriate adjusting entries in the State's financial system. Due to the short amount of time available for this review, as many records as possible will be reviewed and entries will be made prior to the closing of the books for Fiscal Year 2009. Additional entries may need to be made post closing, or in Fiscal Year 2010 when documentation can be found and the value ascertained.

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## **Appraisal Practices**

An appraisal is commonly used to determine a property's fair market value. By paying fair market value for the properties it acquires, the State protects (1) the public interest by ensuring that public funds are spent wisely, and (2) the private interest by ensuring that each landowner is treated equitably.

We reviewed the real estate files for the 54 fee title and conservation easement interests the Division acquired or provided funding for between July 2005 and February 2009. Overall, we found that the Division lacks written policies and procedures governing the use of appraisers and review appraisers to ensure a consistent and credible process for valuing the properties it acquires. We identified the following three areas of concern:

- **Payment over appraised value.** Appraisals are commonly used as an objective method to establish a property's fair value. Therefore, when the Division decides to pay a landowner more than the appraised value, this

decision must be justified and documented to ensure that no impermissible private benefit resulted. We identified four transactions where the Division paid a combined total of \$119,900 more than the appraised value, and we found problems with the written justification provided to the Commission for three of the four transactions. In two cases, the Division paid a combined total of \$111,500 more than the appraised value; however, the written documentation provided to the Commission only discussed why purchasing the land was important, not why paying more than the appraised value was necessary. In the third case, the Division paid \$4,000 more than the appraised value. However, the Division did not provide the Commission with the appraised value, which was lower than the purchase price; rather, the Division provided the Commission with the county assessor's value, which was higher than the purchase price. Thus, it was not clear that Commission members knew the Division was paying more than the appraised value to acquire the property. In the fourth case, the Division provided adequate written justification for paying \$4,400 more than the appraised value. The justification included that the Division had attempted to acquire the property for several years and that the higher cost of purchasing the property would be less than anticipated legal expenses incurred from fighting claims for vehicular access to the property and the potential negative effects on bighorn sheep habitat should the property be developed. The Commission approved all four transactions as part of its consent agenda.

Division staff indicated that, in some cases, it may be necessary to pay an additional premium above the appraised value to acquire certain higher-priority land interests. For example, certain critical wildlife habitat may only be located in specific areas. However, since the appraisal provides an impartial valuation of the property, in these cases the Division needs to justify why paying above the appraised value is reasonable and necessary. Documentation of this assessment should be provided to the Commission and retained in the Division's real estate files. Additionally, as the entity statutorily empowered to purchase land for the Division, the Commission should ensure that such transactions receive individual consideration and approval separate from its consent agenda.

- **Use of review appraisers.** Organizations often use a review appraiser to verify that the original appraiser's value estimate is reliable, unbiased, thorough, and in compliance with appraisal standards. The Division is required to use review appraisers when the acquisition involves federal funding or when GOCO requires it. For all other transactions, we found that the Division does not have written standards or criteria to determine when a review appraisal should be conducted. Staff in the Division's real estate unit reported various unwritten practices for conducting review appraisals, such as when the purchase price exceeds \$500,000 or when the

landowner donates less than 30 percent of the appraised value. However, during our file review we identified six transactions since July 2007 where the Division did not conduct a review appraisal, yet the landowner donated less than 30 percent of the appraised value or the Division paid over \$500,000 for the property interest, or both.

Review appraisals are a tool the Division can use to ensure a fair market value for its land acquisitions. Therefore, the Division should adopt and implement consistently a written policy specifying a purchase price threshold and/or other conditions that will trigger a review appraisal as part of the Division's due diligence activities. An internal evaluation of the Division's real estate process completed in May 2006 made the same recommendation and, although the Division agreed to the recommendation, the recommendation has not been implemented.

- **Appraisal effective dates.** Appraisal reports contain a date of valuation or effective date for the appraisal. If the time between the effective date and the closing date for the transaction is too lengthy, the value estimate may no longer represent current, fair market value. As a consequence, either the buyer or the seller may not receive a fair exchange. Staff in the Division's real estate unit reported that they discuss the need for an updated valuation when an appraisal's effective date is between 6 and 12 months old, but generally do not consider an updated valuation to be necessary until an appraisal's effective date is 16 to 18 months old. However, this is an unwritten practice, and in addition we believe this practice allows too long of a period to elapse between the date of valuation and the closing date for the transaction. Of the 54 files we reviewed, 43 contained an appraisal report. (The remaining 11 cases were fully donated properties for which the Division did not obtain an appraisal. As discussed previously in Recommendation No. 5, the Division should have a method for valuing donated assets.) Although none of the 43 appraisal reports we reviewed were more than 16 months old at closing, we did find one appraisal that was more than 12 months old. Further, we found that 10 of the appraisal reports (about 23 percent) were between 9 and 12 months old at the time of closing.

Many land transactions are complex and can extend for long periods for many reasons. The real estate professionals and other organizations we interviewed generally considered appraisals to be effective for up to one year. However, the Division needs to do its own analysis to determine the appropriate time that can elapse for an appraisal to remain effective based on the types of land interests it acquires. The Division then needs to formalize this standard in a written policy.

Consistent and appropriate use of appraisers and review appraisers is an important part of establishing a property's fair market value and ensuring the appropriate use of public funds. Since the Division lacks written standards and policies for using appraisals and review appraisals, the Division currently evaluates each transaction on a case-by-case basis. While each transaction may have unique characteristics, this case-by-case approach results in an inconsistent application and subjects similar transactions to different standards.

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### **Recommendation No. 7:**

The Wildlife Commission should adopt and implement a formal policy addressing cases in which it considers payment above appraised value for land and land interests. At a minimum, the policy should require that:

- a. The Division of Wildlife provide the Commission with justification indicating why paying more than the appraised value is reasonable and necessary.
- b. The Division retain documentation of the justification in its real estate files.
- c. The Commission consider and vote on such transactions separately rather than as part of its consent agenda.

### **Wildlife Commission Response:**

Agree. Implementation date: January 2010.

The Wildlife Commission concurs with the recommendation and will adopt and implement a formal policy concerning the purchase of real property for more than appraised value to: (a) require that the Division of Wildlife provide a written justification to the Wildlife Commission regarding the proposed purchase of real property for more than appraised value; (b) require that such written justification be retained in the files of the Division of Wildlife's Real Estate Unit; and (c) require that such purchases of real property for more than appraised value be acted on as a separate agenda item and not as part of the Wildlife Commission's consent agenda.

### **Recommendation No. 8:**

The Division of Wildlife should improve its due diligence activities for land acquisitions by establishing and implementing written policies and procedures

regarding the use of appraisals and review appraisals. At a minimum, these policies and procedures should:

- a. Specify a purchase price threshold and/or other conditions that will trigger a review appraisal.
- b. Establish time frames for when an appraisal must be updated.
- c. Require that deviations from standard operating procedures be clearly noted in the real estate files.

### **Division of Wildlife Response:**

Agree. Implementation date: February 2010.

The Division will establish and implement written policies and procedures which identify a time frame for when an appraisal must be updated. The Division will also establish and implement written policies and procedures which specify a threshold of an amount to be paid for a property by the Division, at which threshold a review appraisal will be required. All policies and procedures will require that deviations from standard operating procedures be clearly noted in the real estate files.

Changes will be made beginning with the processing of projects selected through the Colorado Wildlife Habitat Protection Program's 2009 RFP.

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# Land Management

## Chapter 3

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Once properties are acquired, the Division's responsibility must shift to managing and maintaining its land assets. As of June 30, 2008, the Division's land assets totaled approximately \$125 million. Of the 1.3 million acres controlled by the Division as of February 2009, about 597,000 acres (46 percent) was held in fee title or as a conservation easement.

Land management is an important part of providing ongoing accountability for the expenditure of public funds and ensuring that the Division's lands continue to serve the wildlife purposes for which they were acquired. Conservation easements in particular require active management, because the Division does not occupy the land and instead relies on the private landowner to maintain the property. Effective land management further requires electronic data systems that facilitate accurate tracking and reporting of information about real estate assets to Division managers and staff, the General Assembly, the federal government, funding partners, stakeholder groups, and the public at large.

During our audit we examined the Division's management of conservation easements, as well as its electronic data system for all real estate holdings. We found that the Division lacks a comprehensive and coordinated conservation easement stewardship program. Additionally, we found problems with the Division's electronic database that compromise its ability to report accurate and useful information on its real estate holdings. We discuss these issues in the remainder of this chapter.

### Conservation Easement Stewardship

As we discussed in Chapter 1, under a conservation easement the land remains the private property of the landowner. However, conservation easement holders (i.e., owners such as the Division) have the right to permanently restrict the landowner's use or development of the land in order to protect certain conservation values, such as wildlife and habitat. These rights are outlined in a legal document, called a deed of conservation easement, which is entered into at the time the easement is purchased. There is also often an associated management plan for the property. Since conservation easement holders do not occupy the land, they must have programs in place to ensure that landowners abide by easement terms and restrictions. Enforcing the conservation easement terms and conditions can involve the easement holder's taking legal action against the landowner.

Conservation easement stewardship broadly refers to all aspects of managing a conservation easement after its acquisition, including monitoring, landowner relations, recordkeeping, and enforcement of the easement terms and conditions. Stewardship efforts must be timely, accurate, thorough, consistent, and efficient to ensure that all aspects of the easement are being monitored, any violations are identified and remedied, the conservation values are protected, and human and financial resources are used efficiently.

In 2008 the General Assembly passed and the Governor signed House Bill 08-1353, which significantly revised the statutes governing the oversight of conservation easements. One major provision of this legislation was the creation of a certification program for conservation easement holders at the Division of Real Estate within the Department of Regulatory Agencies. This certification program requires governmental and nonprofit entities that hold conservation easements to meet minimum qualifications, such as having reasonable policies and procedures and adequate financial capacity to ensure the short- and long-term management of conservation easements. The certification program created as a result of House Bill 08-1353 codified many of the broad principles and best practices established within the nonprofit land trust community concerning effective conservation easement stewardship, such as conducting annual monitoring, documenting monitoring activities, establishing procedures for followup on identified issues, and enforcing the easement terms and conditions.

Although government entities are not required to be certified under House Bill 08-1353 until January 2010, the Division has a responsibility to ensure that its more than 120 conservation easements acquired with public funds continue to serve the purposes and protect the wildlife values for which they were acquired. Additionally, if the Division is placed in the position of having to enforce the terms of a conservation easement in court, one of the items likely to be scrutinized will be the integrity of its stewardship program.

We reviewed the Division's policies and practices for ensuring that its conservation easements continue to meet the wildlife purposes for which they were acquired and that potential or actual violations are identified and corrected. The Division's conservation easement stewardship needs improvement in four key areas: timely monitoring, controls to ensure monitoring quality, followup procedures, and oversight of third-party conservation easements.

## **Monitoring Timeliness**

Regular monitoring ensures that landowners abide by the restrictions imposed by conservation easements. Rules for the Division of Real Estate's conservation easement certification program and best practices commonly used in the nonprofit land trust community require that the easement holder conduct monitoring visits at least annually.

We analyzed data from the Division's conservation easement monitoring database for monitoring activities conducted between January 2005 and February 2009. As of February 2009, the Division had held 113 conservation easements for more than one year and, therefore, should have conducted at least one monitoring visit for each of the 113 easements. However, we identified 33 conservation easements (29 percent) with no monitoring reports during the period under review. Additionally, we identified 74 conservation easements (65 percent) with more than 12 months of elapsed time between monitoring visits. Overall, for those monitoring reports contained in the Division's database, the time between monitoring visits ranged from 8 to 47 months, with an average of 19 months. Currently regional managers receive a quarterly report listing the date of last inspection for conservation easements in their regions. However, this report lacks useful information such as the actual time frame between monitoring visits or conservation easements that are past due for annual monitoring.

The Division has identified instances where the landowner has violated the terms of the conservation easement (e.g., construction of a cellular tower) or conditions that require the landowner's attention to remedy (e.g., presence of noxious weeds or overgrazing by livestock). Failure to monitor conservation easements in a timely manner could allow these types of issues to go unidentified, continue to occur, and worsen over time.

## **Monitoring Quality**

One of the advantages of conservation easements is that terms and conditions can be tailored to suit the specific needs and goals for each property. As a result, the deed of conservation easement and any associated management plan typically contain detailed language outlining the specific values protected by each easement, as well as those restrictions and property characteristics that must be evaluated. Mechanisms such as customized checklists, monitoring forms, and field books are controls that ensure quality by promoting accuracy, thoroughness, and consistency in monitoring activities. Additionally, these mechanisms help create a historical record for each property that is easily transferrable to the next generation of monitors. This record is important since perpetual conservation easements will, by definition, outlast any of the Division's current staff.

We reviewed documentation of the Division's 2008 monitoring visits for a sample of five conservation easements. We found that the Division's current processes and protocols are not designed to guide monitors through the specific restrictions, limitations, and values contained in the deed of conservation easement and associated management plan. Specifically, the Division's conservation easement monitoring report form is the same regardless of the specific wildlife values the conservation easement protects. For example, the form used to monitor a conservation pool of 520 acre-feet of water in Totten Reservoir is identical to that used to monitor a 13,000-acre conservation easement with three different habitat

types on the Red Top Ranch. Some of the Division staff responsible for monitoring reported that they are often on a property several times per week as part of their other job duties; therefore, they know the properties. However, generalized and informal monitoring and trust in personal knowledge of a property provides no record of monitoring activity and little assurance that monitoring activities are being completed appropriately and consistently.

## **Followup Process**

An effective stewardship program requires adequate processes to follow up on and address problems identified during monitoring visits. For example, the presence of noxious weeds, overgrazing by livestock, or diminishing water volume due to drought conditions may require attention by the landowner and/or the Division to restore the conservation values of the easement. Even minor issues or potential violations left unaddressed can eventually escalate to full violations and require a greater expense of time and money to remedy. Failure to follow up on issues and enforce the easement terms and conditions nullifies even the best monitoring program and undermines the purpose of the easement, ultimately wasting public resources.

We found that the Division lacks formal policies and procedures for responding to violations, potential violations, or other issues identified through its conservation easement monitoring efforts. Moreover, documentation and tracking of followup efforts is lacking. For example, the quarterly reports provided to regional managers from the conservation easement monitoring database do not flag conservation easements with followup issues. During our audit we identified an instance where the Division's ineffective followup with a landowner resulted in a violation of the conservation easement terms. Specifically, a January 2007 monitoring report noted the construction of a cellular tower on a Division-held conservation easement, which violated the easement terms prohibiting any structures except fences and power lines. Division staff did not note any violations during the previous year's monitoring visit; however, the January 2006 monitoring report noted that the landowner had inquired with the Division regarding possible construction of the tower. The monitoring report only states that "CDOW staff said 'No.'" There was no further written communication with the landowner or documentation of the Division's followup efforts until after the tower was built. Email communications documented in the Division's real estate file for this property noted some initial concern that the tower could provide raptors with a hunting perch within the sharp-tailed and greater sage-grouse habitats covered by the easement. Ultimately, the Division determined not to seek remedial action because construction of the cellular tower did not have a significant impact on the wildlife. Nonetheless, the Division may have avoided this situation with more proactive and effective followup efforts with the landowner.

## Third-Party Easements

In addition to the conservation easements that it holds, the Division is a primary funding source for third-party conservation easements, which are conservation easements held by an outside organization, such as a private land trust or a local government. In Fiscal Year 2008 the Division distributed approximately \$5.6 million to nongovernmental organizations for third-party conservation easements to further its wildlife and habitat protection goals. As of February 2009, the Division had provided funding to about 21 different organizations to acquire 49 third-party conservation easements totaling approximately 79,000 acres. These outside organizations typically use Division funds to cover acquisition costs. However, as the easement holder, the organizations generally bear the cost of ongoing monitoring efforts once the conservation easements are acquired. Although these conservation easements are held by another entity, the Division has a responsibility to oversee its investment of significant public moneys in third-party conservation easements.

During our audit we reviewed monitoring documentation and stewardship policies and procedures for a sample of 10 third-party conservation easements held by six outside organizations. Overall, we found that the third-party conservation easements we sampled had been monitored routinely by the organizations. We also found that the organizations generally had well-specified monitoring forms and policies and procedures for their stewardship programs. However, despite what appeared to be active monitoring, we are concerned that relatively little, if any, of the monitoring results are known to the Division. Interviews with Division management and staff, as well as with representatives from the outside organizations we sampled, confirmed that the Division does not routinely obtain and review monitoring information on third-party conservation easements.

Additionally, according to Division staff, the Division does not have right of access to either the property or to the monitoring documentation maintained by the outside organization for some of its older third-party conservation easements. Division staff reported that more recent conservation easements preserve the State's right of access. However, our receipt of monitoring information on a recent 2007 third-party conservation easement was delayed for eight weeks because the organization holding the easement sought landowner approval prior to the information's release. Based on our review of language in the deed of conservation easement, the management plan for the property, and the funding agreement between the Division and the outside organization, the State's right of access was clear and we do not believe that landowner approval was required. We eventually received the requested information; however, our exchange with this organization suggests that the Division may have encountered similar delay obtaining the monitoring reports. Preserving the State's right of access to third-party conservation easements is critical for ensuring accountability for a significant expenditure of public funds. The Division needs to ensure it routinely

obtains and reviews monitoring information on third-party conservation easements.

## **Improvements**

The Division needs to take a number of steps to institute a formalized and comprehensive easement stewardship program. We found that many of these efforts were already underway during our audit. First, the Division needs to adopt written policies and procedures defining all aspects of its stewardship program. For example, policies and procedures should outline how often conservation easements should be monitored, how timeliness will be measured, and how issues identified during monitoring visits should be addressed. Followup procedures should clearly establish protocols for communicating with landowners and define steps of escalation toward legal action if necessary. Roles and responsibilities with respect to conservation easement stewardship activities should be clearly defined for management and staff across the Division's different operating units.

Second, the Division needs to develop mechanisms such as customized monitoring forms, checklists, and field books to ensure consistent, thorough, and accurate monitoring; complete documentation; and detailed reporting on the present conditions of each property. Developing these forms and checklists will require a dedication of resources; however, over the long term these should improve the efficiency and the quality of the Division's monitoring. To expedite the development of monitoring tools, the Division could adapt tools already in use by the Division's partners in the land trust community.

Third, the Division needs to modify its electronic systems to ensure efficient and effective compilation and reporting of monitoring information. The current system does not facilitate effective reporting on monitoring efforts. As discussed previously, the existing quarterly report sent to regional managers lacks useful statistical and historical information such as actual monitoring time frames, conservation easements that are past due for monitoring, or conservation easements with issues for followup. This type of summary data would increase the Division's ability to manage monitoring resources and evaluate the results of its monitoring efforts. The Division's system also has limited data capture capabilities. For example, monitors are only able to upload one monitoring report per calendar year.

Fourth, the Division needs to collect and review monitoring information for third-party conservation easements funded with Division funds. To accomplish this, the Division should determine the State's right of access to monitoring information for existing third-party conservation easements and seek such access whenever possible and practicable. Going forward, the Division should ensure that the language in its deeds of conservation easement, management plans, and funding agreements preserves the State's right of access to third-party

conservation easements, such as the ability to obtain monitoring information from the outside organization holding the easement and to conduct its own monitoring visits when necessary.

Finally, the Division should further develop its training program for staff responsible for monitoring conservation easements. Division staff only began receiving formal training on conservation easement monitoring practices in 2008. Additional training sessions have been scheduled for 2009. Staff will need ongoing training as new conservation easement stewardship policies and procedures, monitoring and reporting tools, and electronic data systems are developed and implemented.

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## **Recommendation No. 9:**

The Division of Wildlife should implement a formal, comprehensive conservation easement stewardship program by:

- a. Developing written policies and procedures detailing when and how conservation easements should be monitored, as well as how violations or potential violations identified during the monitoring visits should be addressed. This should include specifying the roles and responsibilities of the Division's various work units with respect to conservation easement stewardship activities.
- b. Developing mechanisms such as customized checklists, field books, and monitoring forms to document monitoring activities and ensure the quality, consistency, and accuracy of monitoring efforts.
- c. Improving the conservation easement monitoring database to provide managers and staff with more complete data capture and summary reporting capabilities, thereby facilitating tracking and reporting on stewardship activities by region, statewide, and over time.
- d. Setting minimum expected oversight responsibilities regarding third-party conservation easements funded with Division funds, including obtaining and reviewing monitoring data and reports on a routine basis from organizations that hold third-party conservation easements.
- e. Ensuring that the State's right of access, such as the ability to obtain monitoring information and to conduct its own monitoring visits, on third-party conservation easements funded with Division funds is clearly detailed in the deeds of conservation easement, management plans, and funding agreements, as appropriate.

- f. Continuing to train staff involved in monitoring conservation easements on established policies and procedures, monitoring and reporting tools, and electronic systems.

### **Division of Wildlife Response:**

- a. Agree. Implementation date: July 2010.

The Division is in the process of finalizing draft written policies and procedures pertaining to stewardship of conservation easements that include when and how easements should be monitored and how violations will be addressed. The written policies and procedures will be in place during 2010, and prior to applying to the Department of Regulatory Agencies for certification to hold conservation easements.

- b. Agree. Implementation date: July 2010.

The Division will continue to improve upon its current monitoring forms and tools. The Division will develop customized monitoring forms applicable to easements that protect a similar interest (such as those conservation easements protecting sage-grouse habitat) and create monitoring forms for categories of conservation easements. The Division will also educate and train staff to ensure proper utilization of the appropriate monitoring form.

- c. Agree. Implementation date: December 2011.

Efforts began in 2008 and are currently ongoing to acquire a greatly improved monitoring database, facilitating data capture, tracking and reporting.

- d. and e. Agree. Implementation date: September 2009.

The Division agrees to establish minimum oversight responsibilities regarding third-party conservation easements funded by the Division. The Division will ensure that the State's right of access to obtain monitoring information both in writing and through onsite inspections for third-party conservation easements is established for easements acquired in the future.

- f. Agree. Implementation date: Ongoing.

Training began on July 14, 2008 regarding the Division's existing monitoring practices. The training curriculum focuses on monitoring conservation easements, identifies available tools for monitoring, and

emphasizes the use of electronic systems to report data and run reports. As new policies, procedures, tools, and databases become available, they will be incorporated into the training.

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## Data Controls

Electronic information systems that allow agencies to capture, track, and report on key data are integral to the effective and efficient management and oversight of programs and operations. The Division tracks data on its land interests in an electronic database known as the Capital Asset Management System (CAMS), which is separate from the conservation easement monitoring database discussed in the previous recommendation. CAMS serves as the repository for information on all of the Division's real estate holdings. For example, CAMS contains property-specific detail on the type of property interest (e.g., fee title, conservation easement, lease, right-of-way), acreage, location, acquisition and termination dates, and funding. The Division relies on CAMS data to make programmatic decisions, as well as to report on its land interests to the General Assembly, other state agencies, the federal government, funding partners, and the public. As of February 2009, CAMS contained records for more than 2,200 separate transactions involving about 800 properties.

During our audit we examined the CAMS database and found a number of problems that compromise the Division's ability to report accurate and useful information on its real estate holdings. First, we identified errors in the CAMS data, including incorrect information on whether properties were under the Division's control, incorrect acquisition and termination dates, and incorrect designation types. For example, we identified three third-party conservation easements that the Division incorrectly designated as Division-held land within a state habitat area, and one perpetual conservation easement that should have been designated as a perpetual access easement. Second, we found that poor management of the underlying data tables resulted in fragmentation for some records, which could reduce the accuracy of aggregate reports. For example, we identified two cases where the Division's inconsistent use of property names resulted in the improper linking of data across records. We also identified 99 data fragments that resulted from incomplete record deletions; one data fragment was related to a record that was deleted in error. The Division does not currently reconcile the CAMS data tables with one another or with other external sources, such as the Division's real estate files. Finally, we found that there is useful information that could be tracked in CAMS but is not. For example, CAMS does not contain fields to track donated values, acreage for third-party conservation easements, appraisal dates, and appraised values. CAMS has a field that tracks the participants on a transaction, but this field does not distinguish between sellers, funding partners, or legal representatives.

A May 2006 internal evaluation identified similar issues with the Division's CAMS data. Our audit demonstrated that many of these problems continue to exist. CAMS was developed in the mid-1990s; however, its role has evolved and expanded over time. The Division reported that CAMS no longer effectively supports the Division's business needs, and it is seeking to replace this electronic data system. Going forward, there are two key approaches that the Division needs to take to ensure the accuracy and completeness of its electronic real estate data. First, the Division should identify the business processes supported by the data and make necessary modifications to its electronic database, such as adding data fields and values, that will reduce ambiguity and allow Division staff to better capture and report on required information.

Second, the Division should implement basic controls to ensure data validity and integrity. For example, the Division lacks a current written user manual and data dictionary that adequately defines data standards, protocols, or naming conventions. A current written user manual and fully defined data dictionary will decrease the risk of data misuse, misreporting, and misunderstanding. The Division also does not use standardized reports or queries to routinely report on programmatic data to management or stakeholders. Most queries are currently generated on an ad hoc basis. Additionally, given the current structure of the database and the numerous data problems we found, generating accurate queries and reports largely depends on the expertise and knowledge of one Division staff person. Using standardized queries and reports would ensure that key information is reported accurately, consistently, and routinely to Division management and other parties, and that more than one person has the ability to pull needed information. The Division also needs to reconcile its electronic data on a routine basis against other external data sources, such as the Division's physical real estate files, the Department's capital asset inventory, or COFRS, to ensure ongoing accuracy of the information.

The Division's real estate data are dynamic, and adjustments occur for multiple properties on a daily basis. The Division has a responsibility to ensure that its critical electronic real estate data are current, accurate, and complete. By doing so, the Division can facilitate more effective and efficient reporting on and management of its real estate holdings.

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### **Recommendation No. 10:**

The Division of Wildlife should improve the accuracy, completeness, and consistency of its electronic real estate data by:

- a. Assessing the business processes supported by the data and making necessary modifications to the database, such as adding data fields and

values, that will reduce ambiguity and allow staff to better capture and report on required information.

- b. Developing a current, written user manual and data dictionary that clearly define and standardize field values, naming conventions, and instructions for entering, maintaining, and deleting data.
- c. Using standard queries and reports to routinely report on programmatic data to management or stakeholders.
- d. Reconciling electronic data on a routine basis against other external sources as appropriate.

### **Division of Wildlife Response:**

Agree. Implementation date: December 2009.

The Division agrees with the recommendations to improve its electronic real estate data systems and associated business practices. The Division has budgeted for and will continue to work on an implementation plan to replace the old system to improve the accuracy, completeness, and consistency of electronic real estate data. An estimated completion date will be available once planning and analysis are complete, Governor's Office of Information Technology approvals are in place, and project resources are assigned. The Division expects to have a project schedule (with an estimated completion date) by the end of December 2009 for the long-term replacement of electronic real estate data systems.

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# Evaluating Approaches for Land Acquisitions

## Chapter 4

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The Commission and the Division are charged with achieving broad statutory goals of protecting, preserving, enhancing, and managing the state's wildlife and its environment, as well as offering the greatest possible variety of wildlife-related recreational opportunities to the public. Land acquisition is critical to achieving these goals. In Chapters 2 and 3 of this report we discussed our findings related to various aspects of the Division's land acquisition and management practices and made recommendations for improvements. These issues, however, do not address broader questions about the different approaches available for acquiring land and land interests and how these different approaches might affect the Division's ability to accomplish its long-term wildlife management goals.

In this chapter, we discuss some of the advantages and disadvantages, as well as landowner motivations, that must be carefully considered when evaluating different approaches to land acquisition. Specifically, we compare the advantages and disadvantages of fee title and conservation easement acquisitions and, for conservation easement acquisitions, the benefits and risks of third-party conservation easements. The information comes from our review of available literature, as well as from interviews with Division managers and staff, Commission members, and representatives from a sample of organizations that hold conservation easements funded with Division moneys. This chapter contains no recommendations and is intended solely to provide information for policymakers' consideration in developing land acquisition policies over the long term.

### Fee Title Versus Conservation Easements

A key decision in the Division's land acquisitions is whether to purchase land as a fee title or conservation easement interest. This decision is shaped by several policy preferences. The Commission's policy is to use conservation easements as the preferred method for acquiring Division lands. Typically, fee title acquisitions are only considered under certain conditions, such as when it is the only method acceptable to the landowner; when the cost for the conservation easement or fee title interest are substantially equal; when the level of wildlife management, habitat protection, or access needed can only be met by the level of control afforded by fee title; or when enforcement of the easement provisions is expected to be difficult or unrealistic.

The Commission's policy is supported by the requirements of some of the Division's primary funding sources. For example, Section 33-4-102.7(4)(c), C.R.S., specifies that when the Commission uses habitat stamp funds for real property interest acquisitions, it shall emphasize the acquisition of conservation easements and ensure that it pursues all other avenues prior to fee title acquisition. Additionally, the GOCO Board prefers use of conservation easements, which according to the GOCO Board, allows GOCO funds to go farther than with fee title acquisitions.

Even within these broad policy preferences, however, the decision to acquire a fee title interest versus a conservation easement is not necessarily straightforward. The Division must use public resources effectively and efficiently to balance a number of often-competing goals. In some cases, the Division's motivation for acquiring a specific land interest may be at odds with the landowner's motivation. For example, the Division acquires land to preserve and protect critical wildlife habitat and to provide public access for hunting and fishing activities. Landowners may be motivated to provide critical wildlife habitat but may not want to provide public access. Thus, in this situation, the Division's only option may be a fee title acquisition. As we describe in the following bullet points, many different factors are operating simultaneously:

- **Flexibility.** Since fee title is the most complete ownership interest one can have in real property, it is generally thought that fee title acquisitions afford the greatest flexibility in using the land to meet wildlife management, habitat protection, and/or public access needs. Conservation easements also have a certain degree of flexibility and adaptability, because the terms of each conservation easement can be tailored to meet the specific needs of both the landowner and the Division. However, even with this flexibility, certain Division goals may be difficult to achieve through a conservation easement. For example, under a conservation easement the land remains the private property of the landowner and, as stated previously, not all landowners are amenable to offering the public access to their property. Thus, policy preferences that favor acquiring conservation easements potentially limit the Division's ability to provide hunting and fishing access, which is an important goal to many of the Division's constituents.
- **Private Ownership.** Many believe that landowners are in a better position to effectively and efficiently manage the land than are government agencies. From this perspective, a primary advantage of a conservation easement is that the property can be maintained under private ownership while still protecting and preserving wildlife habitat. Depending on the terms of the conservation easement, traditional land uses such as livestock grazing or agricultural production may be allowed to continue on the property. The landowner still has the ability to occupy

the land, sell it, or pass it on to heirs. The property also continues to contribute to the local tax base, although with fee title lands the Division makes payments in lieu of taxes to local governments. Conservation easements avoid the political issues surrounding public ownership of land; however, fee title acquisitions may be more attractive to some landowners because they have no involvement beyond the acquisition. The landowner's ongoing legal and financial responsibility to maintain the property and uphold the easement terms is an important consideration, especially in situations where the landowner and the agency holding the conservation easement no longer have a common understanding of the values and goals of the easement. Division staff reported that these situations are becoming more prevalent as conservation easements pass to the next generation of landowners.

- **Cost.** Fee title acquisitions provide much flexibility; however, purchasing the entire bundle of surface property rights comes at a significantly higher cost. Conservation easements, where landowners give up the right to develop their property but not the property itself, are generally less costly, thereby making dollars go farther. Consequently, government agencies look to conservation easements as a potentially effective and less expensive method for protecting wildlife and habitat. Although conservation easements have a lower up-front cost, as we discussed in Chapter 3, conservation easements require a significant dedication of resources on the part of the easement holder to provide ongoing monitoring and enforcement of the easement terms and conditions. According to some of the academic literature we reviewed, little to no data exist comparing the long-term cost of conservation easement management, monitoring, and enforcement against the costs of fee title ownership. Thus, it is not clear whether conservation easements are less costly than fee title acquisitions over the long-term.
- **Tax Benefits.** As we discussed in Chapter 2, many of the Division's conservation easements have both a purchased and a donated component. One attractive aspect of conservation easements for landowners is that donated conservation easements qualify as charitable donations. Thus, landowners are potentially eligible for tax benefits. At the federal level, donated conservation easements may qualify for federal income and estate tax deductions. In Colorado, donated conservation easements may also qualify for a state income tax credit that can be claimed by the landowner (taxpayer) or sold to other taxpayers. It is important to note that these tax benefits, while beneficial for the landowner, represent an additional cost to the government for acquiring these land interests. That is, the State "pays" for the cost of the conservation easement tax credits claimed on any donated land values by lost income tax revenue. During our audit we obtained data from the Department of Revenue's conservation easement

tax credit database. We found that as of April 2009, taxpayers had claimed a total of about \$1.6 million in state income tax credits associated with conservation easements donated to the Division since January 1, 2000, the effective date for the state income tax credit. These are costs that the State has incurred to date from the Division's decision to accept a full or partial conservation easement donation. These costs could increase because the Department of Revenue's database does not yet include tax credits claimed after the 2006 tax year.

- **Permanency.** Conservation easements are generally perpetual in nature, which means that the current and future landowners have a legal and potentially a financial obligation to maintain the property in accordance with the easement terms and conditions. However, it is unclear how the permanent nature of the conservation easement can be maintained while allowing for ecological change, new scientific data, and changes in conservation needs over time. According to some of the academic literature we reviewed, conservation biologists are only now considering the long-term implications of *perpetual* conservation easements for preserving wildlife habitat. For example, wetland habitat covered by a conservation easement may dry up, becoming useless for conservation purposes. A conservation easement created to protect an endangered species could become useless if the species becomes plentiful or extinct. By contrast, fee title land interests can be more easily sold should they no longer continue to fulfill the purpose for which they were acquired.

There may be other factors, in addition to those listed previously, that could affect the Commission's policies and the Division's decision to pursue fee title or conservation easement acquisitions. Thus, it is important that administrators, policymakers, and other interested parties understand these dynamics and revisit the rationale for preferred approaches for land acquisitions as wildlife needs, the State's goals, and landowners' motivations change over time.

## Division-Held Versus Third-Party Conservation Easements

As discussed previously, conservation easements are the Commission's preferred method for acquiring Division lands. However, with conservation easements a second key decision must be made. Specifically, the Division must determine whether it will hold the easement or whether an outside organization, such as a private land trust or local government, will hold the easement. As of February 2009, the Division held 126 conservation easements totaling approximately 138,000 acres. Additionally, the Division had provided funding for 49 third-party conservation easements totaling about 79,000 acres.

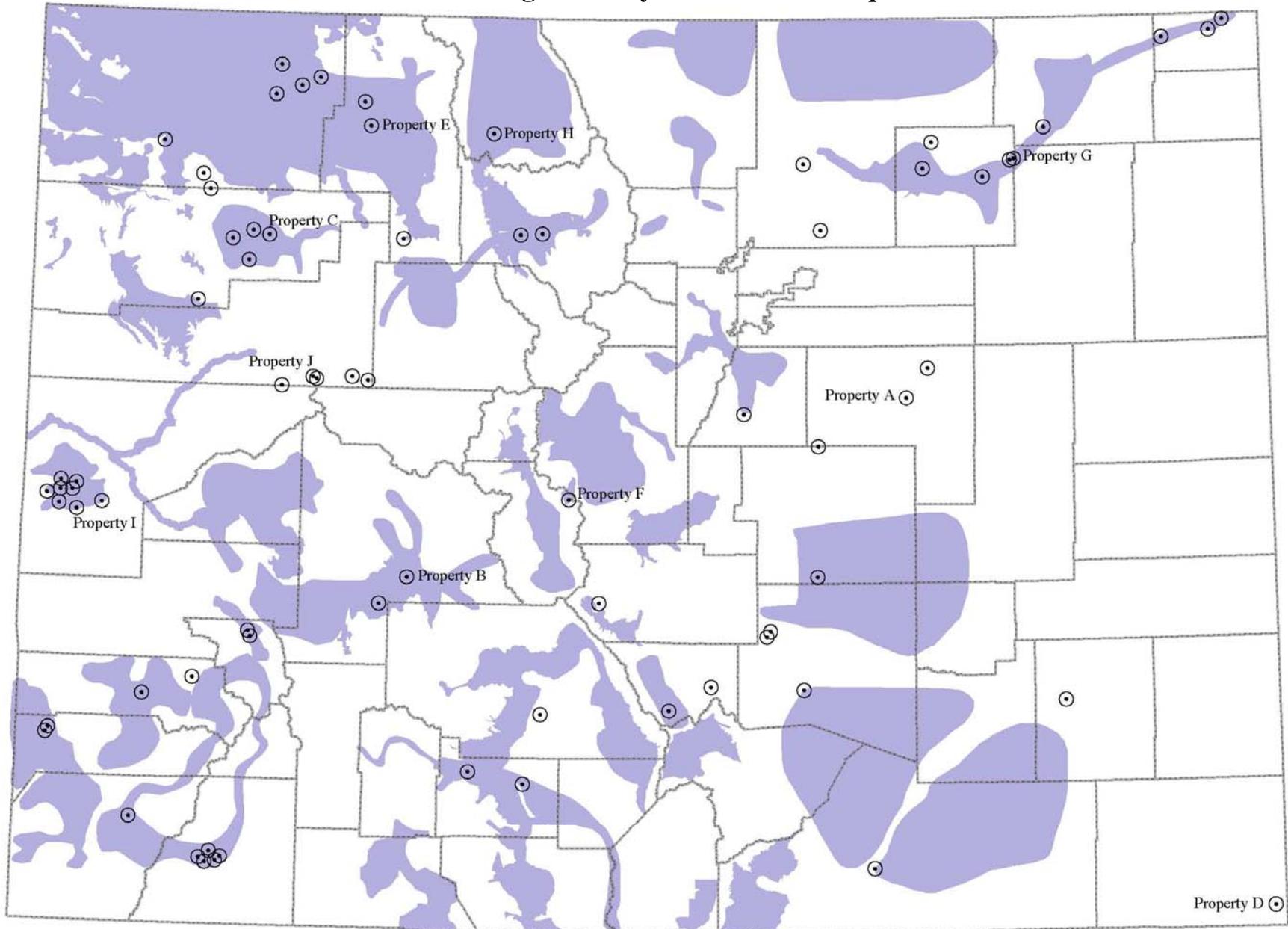
The Division holds most of the conservation easements it acquires; however, the Division also has an established history of working with other outside organizations as part of its land acquisition program. Specifically, the Division is a primary funding source that these outside organizations use when acquiring conservation easements. The Division has increased its use of third-party conservation easements in recent years. One of the benefits of third-party conservation easements is that they provide the ability to leverage available resources. On the other hand, one of the risks associated with third-party conservation easements is that they blur the lines of accountability. We discuss these concepts in more detail in the following bullet points:

- **Leverage.** A primary benefit from the Division's use of third-party conservation easements is that they allow the cost and responsibility for conservation easement acquisition and stewardship to be shared. Outside organizations benefit from having a stable funding partner whose mission is generally complementary to their own. Historically, these organizations have typically used Division funds as a primary funding source for acquisition costs. The enactment of Senate Bill 09-235 imposed a new requirement that when habitat stamp funds are used for third-party conservation easements, at least 15 percent of the acquisition cost must come from the outside organization holding the third-party conservation easement or another source of non-Division funds. The Division benefits during the solicitation process because the organizations identify potential properties and work with landowners to prepare proposals. The organizations may also secure the appraisal and complete other due diligence activities. Additionally, once the easement is acquired, the Division relies on the organization holding the third-party conservation easement to bear the cost of and responsibility for the ongoing monitoring and other stewardship activities. By leveraging available resources, the Division and these outside organizations report that they are better able to accomplish their respective missions. Building effective partnerships also adds credibility to a project. In some cases, landowners prefer that a land trust hold the conservation easement on their land rather than a governmental entity. Division staff reported that, because of this landowner preference, the Division is often able to use third-party conservation easements to gain access to lands that it would not otherwise be able to acquire on its own.
- **Accountability.** A primary risk associated with the Division's use of third-party conservation easements is the increased potential for blurred lines of accountability for the use of public moneys. The Division uses public funds to acquire conservation easements that are held by private nonprofit organizations. Thus, it is unclear whether the conservation easement is a public or private resource and what level of control the Division has over the conservation easement. Division-held conservation

easements provide more direct lines of accountability, as well as more assurance that the Division's wildlife goals for the easement are being met. However, the risks of third-party conservation easements can be mitigated and accountability achieved with sufficient oversight mechanisms (see Chapter 3, Recommendation No. 9). Historically, the Division has taken actions, such as negotiating a series of provisions in agreements with organizations that hold third-party conservation easements, to guarantee the Division's position in the real estate transaction and to protect its investment in the property. Many of these provisions were hard-fought, and the Division should be acknowledged for working to improve accountability for public funds invested in third-party conservation easements.

The relationship between the Division and the outside organizations that hold third-party conservation easements is complex, and managing this relationship is an ongoing challenge. Division managers, staff, and organization representatives we interviewed all recognized the benefits of continuing this partnership. However, in the long term, as with other policy decisions, it will be important for the Commission and the Division to reevaluate whether the investment of public moneys in third-party conservation easements furthers wildlife management goals and whether other alternatives to working with the outside organizations that hold these conservation easements warrant consideration.

## Appendix A Division of Wildlife High-Priority Habitat Land Acquisition Areas



**Source:** Division of Wildlife.

**Note:** Shading represents focal areas for land acquisition. Labeled properties (Properties A through J) were selected for acquisition through the Division's 2008 Request for Proposals.

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