

DEPARTMENT OF LOCAL AFFAIRS

Division of Local Government

CONSERVATION TRUST FUND ADMINISTRATION, INCLUDING MONITORING, ENFORCEMENT AND GUIDANCE REGARDING ALLOWABLE EXPENDITURES (C.R.S. 29-21-101)

8 CCR 1306-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

BASIS AND PURPOSE

The basis for these rules is C.R.S. 29-21-101 (2)(a)(I) which states: "There is hereby created in the division the conservation trust fund."

The purpose of these rules is to implement the provisions of C.R.S. 29-21-101-102(3)(a) through (c) by developing procedures regarding monitoring of eligible entities' compliance with relevant rules and statute, procedures regarding enforcement of penalties for noncompliance, and guidance regarding allowable expenditures of conservation trust fund revenues.

RULES

Part I. Definitions

- A. "Capital improvements" means the acquisition or improvement of fixed assets.
- B. "Division" means the Division of Local Government in the Department of Local Affairs.
- C. "Fixed assets" means land, buildings, equipment and improvements other than buildings that the recipient uses to provide Conservation Trust Fund-allowable expenditures, including costs of construction, renovation, demolition, rehabilitation, deferred maintenance, improvements, equipment and furnishings. Fixed assets are determined to be those with an original cost of \$500.00 or more, or with a useful life of one year or more.
- D. "Interests in land and water" means any and all rights and interests in land or water, or both, including fee interests and less than full fee interests such as future interests, developmental rights, easements, covenants, and contractual rights. Every interest in land or water may be in perpetuity or for a fixed term and shall be deemed to run with the land or water to which it pertains for the benefit of the citizens of this state.
- E. "Maintenance" means keeping Conservation Trust Fund-eligible assets in an original or existing state of repair or of preserving them from failure or decline.
- F. "New conservation sites" means interests in land and water, acquired after establishment of a conservation trust fund pursuant to this section, for park or recreation purposes, for all types of open space, including but not limited to floodplains, greenbelts, agricultural lands, or scenic areas, or for any scientific, historic, scenic, recreational, aesthetic, or similar purpose.

Part II. Reporting and Monitoring - Procedures necessary to allow the division or its agents to monitor eligible entities' compliance with the requirements of C.R.S. 29-21-101 and of rules promulgated pursuant to C.R.S. 29-21-101, including annual reporting and entry and inspection of records regarding accounting and expenditures of revenues from the Conservation Trust Fund.

- A. On forms supplied by the division, each eligible entity shall annually submit to the division a certification that they have established a Conservation Trust Fund and are eligible to receive Conservation Trust Fund moneys.
- B. The treasurer of a municipality or special district, chief financial officer, or the official custodian of the Conservation Trust Fund of an eligible entity shall annually review and certify to the division that the eligible entity's self-reported Conservation Trust Fund expenditures comply with the requirements of Article 21 of Title 29, C.R.S., and of rules promulgated pursuant to that article.
- C. On forms supplied by the division, each eligible entity shall annually submit to the division a statement showing the total amount of state moneys in its local Conservation Trust Fund, the amount of any state moneys encumbered or expended from such fund since the previous year's report, interest earned on the balance of Conservation Trust Funds from the previous year, and the purpose of the encumbrance or expenditure.
- D. All recipients of Conservation Trust Fund funds shall maintain records regarding accounting and expenditures of revenues from the Conservation Trust Fund moneys.
- E. An eligible entity shall not deposit any other moneys in its conservation trust fund.
- F. All interest earned on the investment of moneys in a local Conservation Trust Fund shall be credited to the fund and shall be expended only for purposes authorized by C.R.S. 29-21-101.
- G. In the utilization of moneys received pursuant to C.R.S. 29-21-101, each eligible entity may cooperate or contract with any other government or political subdivision pursuant to C.R.S. 29-1-201 et seq., subject to the separate accounting requirement of C.R.S. 29-21-101 (2)(b)(II). Such cooperation may include the sharing of moneys held by any such entities in their respective Conservation Trust Funds for joint expenditures for the acquisition, development and maintenance of new conservation sites.
- H. All such records shall be made available for inspection upon demand by the division's staff or its agents.
- I. Division staff or its agents shall develop a system to monitor accounting and expenditure of revenues from the Conservation Trust Fund. Such a monitoring system shall include review and verification of data in annual reports submitted by eligible entities. The review shall provide assurance that the information self-reported by eligible entities is accurate and complete, and identify unallowable or questionable expenditures for follow-up. When concerns are noted during the review process, documentation to verify the eligible entities' expenditures or accounting practices shall be provided upon demand.

Part III. Enforcement - Procedures necessary to allow the division to enforce eligible entities' compliance with C.R.S. 29-21-101, including penalties, forfeiture of shares previously distributed, issuance of an order after a hearing held pursuant to C.R.S. 24-4-105 to repay to a state or local Conservation Trust Fund specific revenues from a conservation trust fund that were expended for purposes that are not authorized by C.R.S. 29-21-101, and, if the eligible entity fails to timely comply with the order, issuance of an order to the treasurer holding moneys of the eligible entity that were generated pursuant to the taxing authority of the eligible entity to prohibit the release of any such moneys until the eligible entity complies with the order, and the ability to treat a noncompliant eligible entity as though it were an ineligible entity.

- A. Upon preliminary determination that a Conservation Trust Fund recipient has violated statutes or rules governing fund expenditures or accounting practices, the division will notify the entity before considering enforcement actions.
- B. Prior to considering enforcement actions, the division shall conduct a hearing held pursuant to C.R.S. 24-4-105, in which pertinent facts concerning violations are presented. The recipient shall have full rights of and access to procedural due process to present facts and to rebut the determination of violation.
- C. Upon a finding of violation of statutes or rules, the division, in its sole discretion, shall have the authority to consider and take certain enforcement actions. Such actions shall include these options:
 - 1. Provision of a written warning and a corrective course of action.
 - 2. Issuance of an order to repay to a state or local Conservation Trust Fund specific revenues that were expended for purposes that are not authorized by statute or these rules.
 - 3. If the eligible entity fails to comply with the order, the division will withhold future funds and treat the noncompliant eligible entity as though it were an ineligible entity.
 - 4. Upon chronic non-compliance, the division will issue an order to the county treasurer to prohibit release of property tax revenues until the entity complies with the order.

Part IV. Expenditures - Guidance regarding allowable expenditures of Conservation Trust Fund revenues to facilitate eligible entities' compliance.

- A. Allowable expenditures of Conservation Trust Funds include the following:
 - 1. Acquisition, development, and maintenance of new conservation sites.
 - 2. Capital improvements or maintenance for recreational purposes on any public site.
 - 3. Operation of a system of television relay and translator facilities and the use, acquisition, equipping, and maintenance of land, buildings, and other recreational facilities therefore.
- B. Unallowable expenditures of Conservation Trust Funds include, but are not limited to the following:
 - 1. Operating expenditures, including salaries, except those operating expenditures, including salaries, that are considered to be for maintenance purposes.

2. Expenditure for activities such as athletic teams, fireworks, recreational programs, and public associations or clubs.

Editor's Notes**History**