

Criteria for acceptance and selection of conservation easements

Aspen Valley Land Trust is recognized by the Internal Revenue Service as a non-profit conservation organization. Donations of land and water rights to AVLT are considered charitable contributions and donors may benefit from significant tax incentives. The Trust is legally required to demonstrate that its conservation acquisitions protect a genuine “conservation purpose” under Section 170(h) of the Internal Revenue Code. The Trust must also be certain that it can fulfill the stewardship responsibilities that come with its acquisition of conservation easements. Therefore, the Board of Directors has adopted the following criteria for evaluating conservation easement acquisitions.

Each project is evaluated on its own merits and must preserve and protect one or more of the following **qualified conservation purposes**:

- *open space* (including agriculture and forest land) for the scenic enjoyment of the public or pursuant to a clearly delineated government policy;
- *relatively natural habitat* for wildlife, fish, or plant species;
- *outdoor recreational or educational opportunities* for the general public; or
- *properties with historic significance* (listed in the National Register or located in a registered historic district).

Factors that contribute to establishing a significant conservation purpose:

The property (including any water or water rights to be protected with the property):

- is in a relatively natural, undisturbed condition;
- is part of a working ranch or other agricultural operation;
- provides scenic views or is part of a scenic view plane visible to the public;
- provides habitat or habitat buffer zones for state or federally listed Rare, Threatened or Endangered species;
- provides critical or significant habitat for other native wildlife or plant species (including deer, elk, bear, fish, sagebrush, and riparian or wetland areas, etc.);
- protects or contributes to an important linkage of habitat landscapes or habitat connectivity, and/or supports known migration routes or wildlife movement corridors;
- preserves significant portions of unobstructed natural waterways, or is an integral part of a significant watershed area, lake, or other body of water;
- shares a common boundary with publicly or privately conserved land;
- is of sufficient size that its conservation values are likely to remain intact in spite of adjacent development; and
- will be conserved with few or no retained building rights.

Factors that may preclude Trust involvement:

- The conservation value of the property is likely to be significantly diminished by development or habitat destruction of the adjacent area;
- The donor requires conditions that the Trust believes will seriously compromise the conservation value of the property;
- The property can be effectively protected through other avenues; or
- The Trust has significant reservations about the nature or value of a conservation donation being claimed, and/or the donation does not meet IRC and state regulations for gifts of conservation easements.



Financial requirements for creating a conservation easement



There are costs associated with the completion of a conservation easement transaction. AVLT will provide interest-free loans to qualified landowners to cover up-front costs through a “landowner repayment agreement.” The repayment for costs incurred is due by April 15 of the year following the agreement, whether or not the easement transaction is completed.

Landowner’s Financial Requirements:

- **Title work** - A **\$500 non-refundable fee** is due to AVLT at the time the landowner signs the engagement letter. AVLT will use these funds to order a current title report and to complete a title review.
- **Transaction and monitoring fees** - \$10,000 is due upon closing of the conservation easement. These funds are for ongoing monitoring and defense of conservation easements, and help cover a portion of AVLT’s transaction costs.
- **Phased transaction fee** - If an easement is phased over two or more years, *each successive phase consolidated with a previous, contiguous phase* is subject to a \$7,500 transaction and monitoring fee.

Additional Financial Considerations:

In addition, the landowner should expect the following costs when creating a conservation easement:

- **Baseline Inventory** - \$3,000 - \$5,000.
- **Survey** – a simple survey of a building envelope may cost as little as \$2,000, while a full-fledged boundary and improvement survey, if necessary, could cost considerably more.
- **Mineral Remoteness Assessment** – this is typically a one-time cost of \$850 - \$2,000.
- **Real Estate Appraisal** – Depending on the time of year and complexity of the project, this may cost between \$7,500 and \$12,000.
- **Legal and Financial Counsel** – costs vary according to scope of work. AVLT is not able to provide this advice.

A single conservation easement may cost an average of \$25,000.

Claiming Tax Benefits:

After completing a “qualified” conservation easement, the landowner will need to file the following tax forms in order to claim a federal tax deduction and Colorado conservation tax credit (*AVLT will provide these forms*):

- **IRS Form 8283** must be completed by the landowner in order to claim a federal tax deduction. The form must be signed by the appraiser and AVLT. AVLT will sign the form after it is complete, but does not guarantee the deductibility of the easement, nor the value being claimed. AVLT reserves the right to refuse to sign the 8283 if it feels the appraisal value is too high or that the appraisal does not meet relevant standards.
- **Colorado DR Forms 1303, 1304 and 1305** are required to claim or transfer a Colorado Conservation income tax credit. The landowner must meet certain criteria in order to qualify.

You may elect to sell all or part of your Colorado conservation tax credit individually or through a tax credit broker service. A list of brokers around the state is included in the landowner packet.

All conservation easements and appraisals are subject to review and approval by the Aspen Valley Land Trust.

Checklist for creating a conservation easement

The following steps are necessary in order to convey a conservation easement to Aspen Valley Land Trust:

AVLT will provide:



___ **Current Title Report** and \$50,000 of title insurance issued to AVLT by a title company and legal review by AVLT's legal counsel;

___ **Deed of Conservation Easement** prepared by AVLT staff and legal counsel in cooperation with the landowner and landowner's legal counsel; and

___ **Ongoing annual monitoring** of the easement property and legal defense of the easement according to the terms of the easement.

Landowner will provide:

___ **Legal Description** of the parcel to be conserved;

___ **Baseline Inventory (or "Present Condition Report")** of the property documenting its conservation values, improvements, and condition at the time of the donation;

___ **Map or Survey** of the parcel to be conserved showing property boundaries, building envelopes, improvement locations, and any reserved uses;

___ **Oil and Gas Leases, Surface Use and/or other agreements** affecting mineral or other resources on or beneath the property. AVLT reserves the right to reject a potential easement if it feels the current or future level of oil and gas development on the property may damage its conservation values;

___ **Water Rights** documentation for any water rights used to irrigate or otherwise maintain conversation values on the property on the property, including deeds, court decrees, referee rulings, ditch share certificates, contracts or other documentation.

___ **Mineral Assessment** - If the landowner does not own 100% of the property's mineral rights, a Mineral Assessment (MA) from a qualified geologist is required to prove that the likelihood of surface mining on the property is "so remote as to be negligible." If the MA finds the likelihood greater, the easement will not be tax-deductible;

___ **Mortgage Subordination** - For properties subject to a lien or mortgage, the lender must subordinate the mortgage to the conservation easement using AVLT's model subordination agreement;

___ **Real Estate Appraisal** of the easement property completed by a qualified AVLT-approved appraiser no more than 60 days before the date of the easement donation;

___ **Business Documents** - If the property is owned by an LLC, partnership, or other pass-thru entity, a Statement of Authority is necessary to provide adequate authorization to encumber the property with a conservation easement; and

___ **Legal and Financial Counsel** - AVLT does not provide legal or tax advice and highly recommends that every easement donor obtain appropriate legal and financial counsel.