

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 activities and acquisitions preserve and 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 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 conservation purposes: open space (including farm and forest land) pursuant to a clearly delineated government policy or for the scenic enjoyment of the public; relatively natural habitat for wildlife, fish, or plant species; or outdoor recreational or educational opportunities for the public.

Factors that contribute to establishing a significant conservation purpose:

- The land or water provides habitat or habitat buffer zones for state or federally rare, threatened or endangered species.
- The land provides critical or significant habitat for deer, elk, bear and other native species.
- The land is an important landscape linkage habitat that may also support known migration routes and/ or wildlife movement corridors.
- The land is part of a working ranch or other agricultural operation.
- The land is in a relatively natural, undisturbed condition.
- The land will be conserved with few or no retained building rights.
- The land shares a common boundary with publicly or privately conserved land.
- Development of the land would diminish scenic views or views across protected natural open space.
- The land contains significant portions of unobstructed natural waterways, or is an integral part of a significant watershed area, lake, or other body of water.
- The parcel is of sufficient size that its significant features are likely to remain intact in spite of adjacent development.
- The land is adjacent to or within a locally or regionally designated groundwater recharge area and its protection will preserve quality drinking water as well as other natural resources.
- The land is part of a greenway that provides a connection or corridor to other greenways that are of public benefit or ecological value.

Factors that may preclude Trust involvement:

- The conservation value of the land 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 land.
- The land can be effectively protected through other avenues.



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;
- ___ **Baseline Documentation Report** of the property documenting its conservation values, improvements, and condition at the time of the donation;
- ___ **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;
- ___ **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 on the property, including deeds, court decrees, referee rulings, ditch share certificates, contracts or other documentation. Water rights necessary to protect agricultural or habitat uses must be tied to the property in perpetuity through the Deed of Conservation Easement;
- ___ **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 authorize the entity to encumber the property with a conservation easement and to authorize the manager to execute the conservation easement deed on behalf of the members, unless all members are signers on the deed (*a sample form is available from AVLT*); 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.

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.” This 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:

- **\$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 title report and to complete a title review;
- **\$3,500** is due to AVLT upon successful completion of title review, after the landowner and AVLT agree to proceed with the conservation easement transaction (the landowner may wish to obtain an appraisal or appraisal estimate prior to agreeing to proceed). These funds will be used to complete a baseline documentation report of the property, and to cover legal fees associated with drafting and recording the Deed of Conservation Easement. Once these funds have been applied, they are **non-refundable**;
- **\$6,000** due to AVLT upon closing of the conservation easement. These funds are used by AVLT for ongoing monitoring and defense of conservation easements;
- If an easement is phased over two or more years, each successive phase is subject to a \$5,000-\$6,000 transaction fee to cover the legal and consultant costs;

Additional Financial Considerations:

In addition, the landowner should consider the following costs, which may be incurred according to the checklist of landowner requirements for creating a conservation easement:

- **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-\$1200.
- **Real Estate Appraisal** – Depending on the time of year and complexity of the project, this may cost between \$4,000 and \$10,000.
- **Legal and Financial Counsel** – costs vary according to scope of work.

Total transaction costs are typically up to \$20,000 for a single conservation easement.

Claiming Tax Benefits:

After the conservation easement is complete, 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. There are several brokerages around the state.

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