

Criteria for acceptance and selection of conservation easements

Aspen Valley Land Trust (AVLT) is recognized by the Internal Revenue Service as a tax-exempt non-profit conservation organization. Donations of land and water rights to AVLT are considered charitable contributions which provide a public benefit and donors may benefit from significant tax incentives. AVLT is legally required to demonstrate that its conservation acquisitions protect a genuine “conservation purpose” as defined in Section 170(h) of the Internal Revenue Code (IRC). AVLT must also be certain that it can fulfill the perpetual stewardship responsibilities that come with its acquisition of conservation easements. AVLT’s 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 recognized under Internal Revenue Code Section 170(h)**:

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

Factors that contribute to establishing a significant conservation purpose and public benefit:

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 to the public 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 or contiguity with publicly or privately conserved land;
- is part of or near a Potential Conservation Area as defined by the Colorado Natural Heritage Program (www.cnhp.coloradostate.edu);
- if in Garfield County, is identified on the Garfield County Greenprint as having significant conservation values (www.garfieldlegacy.org/uploads/Garfield_Greenprint_Public_Workshop_Presentation.pdf);
- 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 AVLT involvement:

- The property is outside of AVLT’s service or focus area;
- The conservation value of the property is likely to be significantly diminished by development or habitat destruction of the adjacent area;

MORE on back



MORE factors that may preclude AVLT involvement (cont. from front):

- The donor requires conditions or reserved rights that the Trust believes will seriously compromise the conservation value of the property;
- Pre-existing mineral leases do not preclude significant surface disturbances;
- The property can be effectively protected through other avenues; or
- AVLT 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.

AVLT does not provide legal or financial advice.

Aspen Valley Land Trust, 320 Main Street, Suite 204, Carbondale, CO 81623
970.963.8440 **V** 970.963.8441 **F** avlt@avlt.org **E** www.avlt.org **W**

2017 Financial requirements for creating a conservation easement

There are several costs associated with the completion of a conservation easement transaction. Because this can be a hardship, AVLTL may provide loans to qualified landowners to cover up-front costs through a “cost partnership program.” *A single easement may cost the grantor \$70,000 - \$80,000.*

Landowner’s Financial Requirements payable to AVLTL:

- **Deposit - \$1,500 non-refundable fee** is due at the time the landowner signs the engagement letter.
- **Transaction and monitoring fees - \$30,000** due upon closing for first-phase or stand-alone easements. \$20,000 of this fee goes toward AVLTL’s ongoing monitoring, legal defense, and easement insurance costs, and the remaining \$10,000 covers a portion of AVLTL’s transaction costs.
- **Successive phases or amendments to add acreage – \$7,500 - \$30,000**, depending on the structure and rights reserved, due upon closing of a subsequent easement donation or amendment to add acres to an existing easement over two or more years.
- **Complexity** – Easements associated with high levels of development (either adjacent to or as part of the easement), requiring grant applications, or with special management considerations, may be charged an additional fee.

Landowner’s Financial Requirements payable to consultants for required supporting documentation and advice:

- **Baseline Inventory** – \$3,000 - \$5,000.
- **Mineral Remoteness Assessment** – \$1,250 - \$2,000, if landowner does not own 100% of mineral rights.
- **Real Estate Appraisal (if claiming tax benefits)** – \$10,000 - \$35,000, depending on the time of year and complexity of the project.
- **Survey** – a simple survey of a building envelope may cost as little as \$2,000, while a full boundary and improvement survey, while usually not necessary, may cost closer to \$25,000.
- **Legal and Financial Counsel** – costs vary according to scope of work.
- **State Tax Credit Certificate Application (if claiming a state tax credit)** – \$12,350, plus additional \$6,175 for optional preliminary advisory opinion.

Claiming Tax Benefits:

After completing a “qualified” conservation easement, the landowner will need to apply for a state tax credit certificate from the Colorado Division of Real Estate and file the following forms in order to claim a federal income tax deduction and Colorado conservation tax credit. Additional restrictions and qualifications apply:

- **IRS Form 8283** must be completed by the landowner in order to claim a federal tax deduction. The form must be reviewed by AVLTL’s consultant CPA and signed by the appraiser and AVLTL. AVLTL does not guarantee the deductibility of the easement, nor the value being claimed. AVLTL reserves the right to decline to sign the 8283 if it has significant concerns over the nature or value of the donation or if the appraisal does not meet relevant standards.
- **Colorado Tax Credit Certificate** is required for all donors wishing to claim a Colorado conservation tax credit. Applications must be submitted to the Colorado Division of Real Estate with a recorded copy of the easement document, complete real estate appraisal, other supporting documentation, and application fee.
- **Colorado DR Form 1305 (and its subform 1305E, 1305F, 1305G as applicable)** are required to claim or transfer a Colorado conservation tax credit.

You may elect to sell all or part of your Colorado conservation tax credit individually or through a tax credit broker service. AVLTL is experienced in assisting with buying and selling of state tax credits.

*AVLTL does not provide legal or financial advice.
please consult your tax or financial adviser for more information.*



Checklist for creating a conservation easement

The following steps are necessary to grant a conservation easement to Aspen Valley Land Trust:

AVLT will provide:

- ___ **Deed of Conservation Easement** prepared by AVLT staff and legal counsel in cooperation with the landowner and landowner's legal counsel.
- ___ **GIS map of property**
- ___ **Ongoing annual monitoring** of the easement property and legal defense of the easement according to the terms of the easement.
- ___ **Staff time to complete transaction** and legal review by AVLT's legal counsel.

Landowner will provide:

- ___ **Current Title Report** and title insurance issued to AVLT by a title company
- ___ **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 conservation values 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** by a qualified AVLT-approved appraiser within 60 days prior to the easement donation or up until the landowner files tax returns for the year of donation.
- ___ **Business Documents** - If the property is owned by an LLC, partnership, or other pass-through entity, a Statement of Authority is necessary to provide adequate authorization to encumber the property with a conservation easement.
- ___ **Legal and Financial Counsel** - Every easement donor should obtain legal and financial counsel.
- ___ **Stewardship and Transaction Fee** - Dependent on complexity and structure of transaction

