



EAGLE VALLEY LAND TRUST

## **Conservation Easement Program Process**

Thank you for considering the permanent preservation of your property. Conservation of your property is voluntary and your right as a private property owner to pursue or not to pursue. Eagle Valley Land Trust (EVLТ) is not affiliated with Eagle County Government or any governmental agency. EVLT is a non-profit land trust whose mission is to help land owners preserve their land in perpetuity. There are typically significant financial and/or tax benefits available to land owners for doing so.

EVLТ is nationally accredited with the [Land Trust Alliance](#) and is certified by the state of Colorado to hold Conservation Easements (CEs), thereby satisfying the highest standards of professionalism available to landowners and the CE process. EVLT has made a commitment to uphold the restrictions you place on the property in perpetuity. Because EVLT is an accredited land trust, you can be confident EVLT will uphold the CE and will make sure that the property is conserved as you intend for future generations.

Taking a project from inception to closing typically requires approximately 3-6 months depending on the complexity of the project. The major phases of the process include:

1. Initial information gathering and negotiation
2. Document drafting
3. Due diligence including title review and baseline documentation
4. Funding including grant applications and appraisal completion
5. Closing
6. Post-closing monitoring

EVLТ will attempt to minimize early fees and costs in case it becomes clear that conservation of your property as you envision will not be possible (eg. the tax benefits, largely determined by the appraisal, are not high enough, grant funding requests are denied, etc.). Please refer to EVLT's "A Guide to Conservation Easement Transaction Costs" for more information about costs.

The following list contains a more detailed explanation of the typical steps in the process EVLT will manage in preserving your property. Every transaction is different, so this list is only for the purposes of guiding the process to the extent it is a typical transaction.

1. Initial Consultation - Discuss your goals for your property and typical CE terms with the land trust to determine if a CE is a viable solution for you. EVLT must visit the property and evaluate the project to determine its appropriateness for preservation (EVLТ may not be willing to accept every proposed CE).
2. Professional Consultation - Contact your accountant or financial advisor and an attorney to discuss the financial and legal implications of conserving your land and to confirm your continued interest.

3. Engagement Letter - EVLT will enter into a letter agreement with you, setting forth the expectations of the parties and outlining the terms of the proposed CE and allowing EVLT to begin the due diligence process. This is a non-binding but good faith commitment on both EVLT's and your part to pursue the conservation of your property.
4. Formal EVLT Approval - EVLT's Projects Committee and the Board of Directors will review the proposed CE and either approve or reject the proposal.
5. Title Commitment - EVLT will need a title commitment using a title company familiar with EVLT that, at minimum, provides a legal description of the property, identifies any mortgages or liens on the property, and reports on the status of mineral rights. This will indicate early in the process whether there are any time consuming title issues that need to be resolved, such as lack of mineral rights or gaps in the chain of title. You will need to satisfy all the requirements of closing contained in the commitment. A new policy insuring EVLT's CE interest will be issued at closing.
6. Contract - EVLT may draft a contract for your review and approval setting forth the terms and conditions for closing on the CE.
7. CE Drafting - In general, for a CE to be tax-deductible, the easement must comply with 170(h) of the Internal Revenue Code and associated sections of the Colorado Revised Statutes. EVLT will draft a CE for your review and approval. The CE must be substantially in its final form for a preliminary appraisal and in its final form in order for the appraiser to finalize the appraisal. An attorney experienced in conservation law can help ensure the CE is structured to preserve exactly what you want to protect and how you want to protect it. The parties may need to customize the CE to satisfy the requirements of any grant funders. To be acceptable to EVLT, a CE must satisfy Land Trust Alliance standards and practices even if no donation or tax benefits are claimed by you.
8. Appraisal - In order for the donation of a CE to qualify as a charitable contribution, the value of the CE donation must be determined by an appraiser qualified to appraise CEs in accordance with Treasury Regulations and Uniform Standards of Professional Appraisal Practice (USPAP). Because tax benefits are often claimed by landowners, there is a high level of scrutiny of CE appraisals, they are very specialized and take time to complete (typically 100-200 pages). Advise the appraiser of any grants that are being applied for as they could result in revisions to the CE. Some appraisers are willing to provide a preliminary appraisal prior to writing the full report for a portion of their fee. EVLT must be permitted to review the appraisal prior to closing and must reject the donation if it is apparent to EVLT that the appraisal misrepresents the value of the donation or does not clearly conform to applicable regulations. The appraisal's effective date must be within 60 days of the recorded CE or it will need to be updated by the appraiser. As the donor, the landowner is the appraiser's client and the landowner and appraiser together are solely responsible for the appraisal contents and compliance with the Treasury Regulations. EVLT expressly does not guarantee the sufficiency of the appraisal for tax benefit eligibility.

9. Baseline – The baseline document informs the drafting of the CE and must be completed prior to closing and is generally prepared by a biologist or other qualified professional. Landowners have found the Baseline Report to be one of the most rewarding parts of the process. An ecologist will come to your property to take pictures, and study the plants and animals that live on your land. You may learn about something special you didn't already know about your property. This report documents the condition of the property at the time of donation. Down the road, if you and the land trust have any questions about the condition of the property when you did the CE, the baseline report serves as the benchmark. It is also the document that shows the state and the IRS why your land is special and deserving of tax benefits.
10. Grant Applications - EVLT will lead the grant application process, seeking input from necessary parties. Transactions are typically contingent upon EVLT securing adequate funding for the transaction except in the case of donations.
11. Mineral Remoteness - If the Title Commitment reveals that the owner does not own 100% of the mineral rights on or under the property, the IRS requires that a "mineral remoteness" letter be prepared that indicates that the probability of extraction or removal of minerals from the property by surface mining by a third party is "so remote as to be negligible". This report needs to be prepared by a professional, certified geologist.
12. Mortgage Subordination - If you have a mortgage, confirm early in the process that your lender will issue a subordination letter.
13. Survey - A survey may be required. Survey's help you and EVLT defend you the CE from encroachments by outside parties. The cost of the survey varies widely and is dependent upon such factors as acreage, survey method, and property terrain.
14. Access – If the road accessing your property crosses other private property, EVLT will need to obtain an access easement across that property in order to carry out its duties.
15. Environmental Assessment - It may be necessary to complete an Environmental Assessment of the property to determine the probability that the property has been contaminated with toxic waste or hazardous materials. This report is required in connection with limiting certain liabilities, particularly of some grant funders, and needs to be prepared by a qualified consultant.
16. Management Plan – The landowner and EVLT may need to enter into a management plan for the property, particularly if grant funders require it or to comply with Land Trust Alliance best practices.
17. Closing Preparation - Once the preliminary appraisal is obtained and determined by you to be satisfactory, the final work toward closing will be will commence including finalizing the appraisal and all documents for closing. EVLT must review the final appraisal (dated within 60 days prior to closing) for sound appraisal assumptions and values prior to closing. If state tax credits are being sought, provide all documentation in advance to a tax credit

broker or consider obtaining a preliminary conservation purposes and appraisal opinion from the state.

18. Closing - Sign the CE, receive the expected payments at closing, pay the remaining fees and costs.
19. Tax Credits- Apply for and receive your tax credits for your use or their sale to a third party (typically at a discount). Talk to your tax credit broker for more information.
20. Tax Forms - If you are claiming a federal tax deduction, it will be necessary to file a form 8283 signed by the appraiser, you and EVLT. If you are claiming a state tax credit, additional forms such as State of Colorado DR 1305 forms, will need to be circulated and signed by the parties. It is extremely important to have these forms properly filled out and reviewed by a CPA familiar with these forms. Improperly filled out forms have been known to increase audit risk.
21. Ongoing Monitoring - To make sure that the property is conserved as you intend, EVLT must monitor the property annually in perpetuity, which includes visiting the property and documenting the visit itself as well as any issues or violations (which then must be addressed by the current landowner). By conserving your property in perpetuity, landowners are leaving a lasting legacy, protecting the land's agricultural viability, natural habitat, scenic, or public recreational value. A CE is a restrictive document so that you can be confident that future owners will be bound by your desire to conserve the property – forever. Whether accidentally, intentionally, or as a result of neglect, future landowners may allow these values to be damaged and EVLT will be there to help (or if necessary, compel) the landowner comply with the restrictions you place in the CE.

**NOTICE:** EVLT will not knowingly participate in a project where it has significant concerns about the appraisal or eligibility of the CE to meet the requirements of applicable federal or state regulations. CEs are widely accepted and utilized conservation tool, encouraged by both state and federal legislatures. While problems are rare, there are risks associated with accepting the tax benefits offered including increased audit risk and the potential that any tax benefits may be rescinded in future years requiring full or partial repayment including penalties and interest. It is in your best interests to reject exaggerated donation appraisal values and to hire qualified professionals with CE experience.

**DISCLAIMER:** Even if EVLT accepts a donated CE and agrees in writing to recognize donation value, EVLT expressly does not guarantee and makes no representations implied or otherwise, on legal or financial (including tax, estate, or real estate) matters or that the transaction has donation value or that the donation will receive tax benefits. Landowners should consult qualified independent professionals to obtain legal, financial and tax advice before concluding that a donation of a CE would be eligible for tax benefits.