EAGLE VALLEY LAND TRUST

# LANDOWNER INFORMATION PACKET

Dear Landowner:

Thank you for your interest in learning about the Eagle Valley Land Trust (EVLT) and its land conservation program. As you may know, Eagle Valley Land Trust has a very strong mission that aims to conserve wildlife habitat and open space to preserve the rural character of our community.

One way this can be accomplished is through agreements (called conservation easements) with willing landowners who want their properties to remain in essentially their current condition, and protect existing or potential revenue streams. Another way is to assist you in selling your property to a conservation-minded buyer or to a public agency for conservation purposes.

If you are interested in conserving your property, you may qualify for state and/or federal tax benefits. More information about EVLT's conservation program can be found in the attached documents.

Enclosed or attached you will find several documents detailing EVLT's conservation easement program as well as the possible tax benefits. For more information about the conservation easement tax credit, please visit a tax broker's websites (eg. http://www.taxcreditconnection.com, Conservation Tax Transfer - Conservation Tax Credit Transfer).

This is an important decision for you and your family - we strongly encourage landowners to seek legal, financial and tax advice from qualified independent professionals before proceeding with any conservation transaction, including the conveyance of a conservation easement to EVLT, and EVLT makes no representations, implied or otherwise, as to the tax treatment a transaction may receive.

We would be happy to discuss the details of the enclosed materials and our program, so please contact me if you have any questions or would like to discuss this idea further. Thank you for your time.

Sincerely,

Jessica Foulis
Executive Director

**Enclosures:**

- *An Introduction to Eagle Valley Land Trust and Conservation Easements*
- *Conservation Project Flow Chart*
- *Conservation Easement Process Overview - Donated Conservation Easement*
- *Conservation Easement Process Overview - Bargain Sale*
- *Costs and Benefits of Conservation Easements*
- *Eagle Valley Land Trust Project Selection Criteria and Evaluation Form*

# INTRODUCTION TO EVLT AND CONSERVATION EASEMENTS

## EVLT'S APPROACH TO CONSERVATION

Eagle Valley Land Trust partners with willing landowners to support their efforts to conserve the lands we love forever. We are proud to work with a variety of entities including private landowners, local government, and local nonprofits. EVLT is your local land trust - we are members of this community here to support landowners like you who own, manage, and steward the land and its natural resources including wildlife habitat, agricultural land, and open space.

## CONSERVATION EASEMENT 101

What you should know before you get started

### WHAT IS A CONSERVATION EASEMENT?

Conservation easements are voluntary agreements between landowners and a qualified conservation organization that permanently protect specific conservation values and limit development and subdivision of properties. Easements are permanent and stay with the land through any and all conveyances of the property. Each easement is unique and is tailored to the specific landowner and the conservation values on the property. Examples of conservation values include wildlife habitat, open space, agricultural lands, public access and education, scenic vistas, and historic properties. While conservation easements restrict development and subdivision, they do not restrict the landowner's ability to continue to use the land for traditional uses, including grazing, crop production, hunting, fishing, and low impact recreation. Conservation easements do not require public access.

### WHO OWNS THE LAND AFTER A CONSERVATION EASEMENT IS CONVEYED?

The landowner retains ownership of the property after a conservation easement is conveyed. The conservation easement conveys only certain rights to the designated Grantee, the other party to the agreement, usually a land trust. The rights that are conveyed can include the right to develop or subdivide - these rights are then extinguished.

### WHAT RIGHTS ARE TYPICALLY RETAINED BY THE LANDOWNER AFTER A CONSERVATION EASEMENT IS CONVEYED?

The landowner retains full ownership of the property, including, but not limited to, the right to sell, lease, convey, or otherwise transfer the property; the right to continue existing agricultural operations or customary enterprises; and the right to control access.

### HOW LONG DOES A CONSERVATION EASEMENT ENCUMBER A PROPERTY?

Conservation easements are perpetual documents and will encumber the property forever, regardless of ownership.

## WHO CAN HOLD A CONSERVATION EASEMENT?

In order for the landowner to realize tax and financial benefits, they must work with a Grantee that is accredited by the Land Trust Alliance (LTA) and certified by the State to hold Conservation Easements. EVLT is a 501(c)3 independent nonprofit land trust that is accredited by LTA and certified by the state to hold conservation easements - we are the only local organization serving the greater Eagle County area.

## WHAT ARE THE BENEFITS OF A CONSERVATION EASEMENT?

*Conserving the Lands We Love Forever*

Conservation easements ensure the lands we love and depend on will always be available for agricultural production, wildlife habitat, and scenic open spaces. These agreements can help to conserve a landowner's legacy into the future and ensure future generations have clean air and water, as well as the breathtaking views we enjoy today.

Conserving land with a conservation easement can help to maintain economic viability in our community by stabilizing and promoting agriculture and the businesses that support agriculture - one of the drivers of our local economy. Easements also serve to help communities to work together to perpetuate the natural resources, open space, wildlife habitat, and scenery that drive our local recreation and tourism economy.

*Financial and Tax Incentives*

Landowners who sell or donate development rights through perpetual conservation easements may be eligible for certain financial and tax benefits through direct cash payments, federal income tax deductions, additional estate tax exemptions, and transferrable state income tax credits. Proceeds from direct cash payments and/or sale of transferable state tax credits may help landowners reinvest in their property or save for long term expenses. Conservation easements also reduce the value of the land, which may make it easier to transfer the land to the next generation.

## HOW MUCH DOES IT COST TO CONVEY A CONSERVATION EASEMENT?

Depending on the transaction, the conveyance of a conservation easement may cost between $75,000 and $175,000 per transaction. Transaction cost assistance may be available, ask EVLT staff for details.

## WHAT EFFECT DOES A CONSERVATION EASEMENT HAVE ON THE VALUE OF THE PROPERTY?

A conservation easement will typically reduce the value of a property between 25% and 65%, depending on the terms of the conservation easement.

## WHAT IS EVLT'S RELATIONSHIP WITH LOCAL GOVERNMENTS?

EVLT is a private nonprofit organization. While our local community leaders also care about permanently conserving important lands to benefit the public, EVLT has no formal relationship with local government agencies. However, EVLT can partner with local governments. For example, EVLT may partner with Eagle County on conservation projects that utilize the County's Open Space Fund.

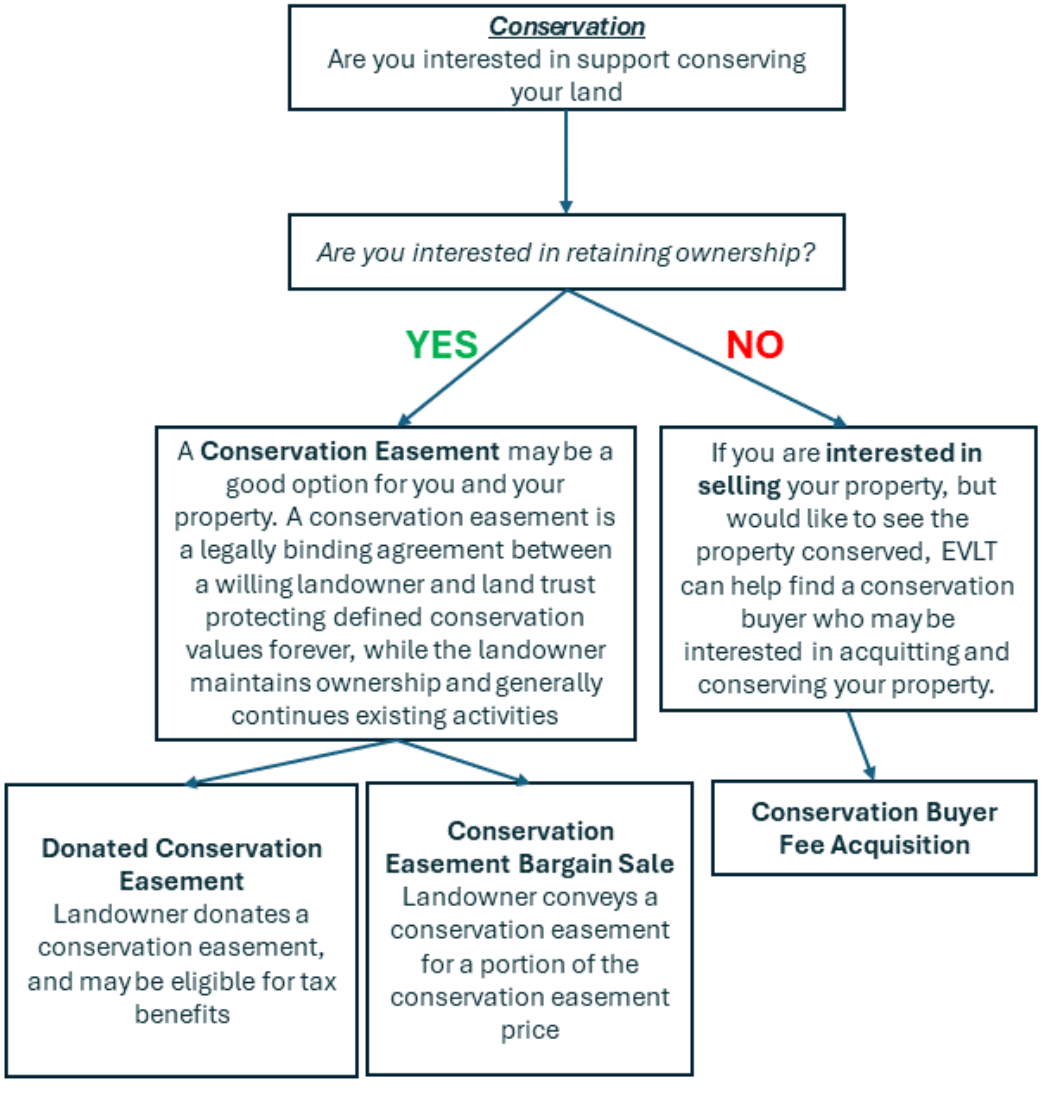
# LAND CONSERVATION PROJECT FLOW CHART

Eagle Valley Land Trust has several tools in our toolbox to support landowners in the conservation and stewardship of your land. For the purposes of this document, the following terms are defined as:

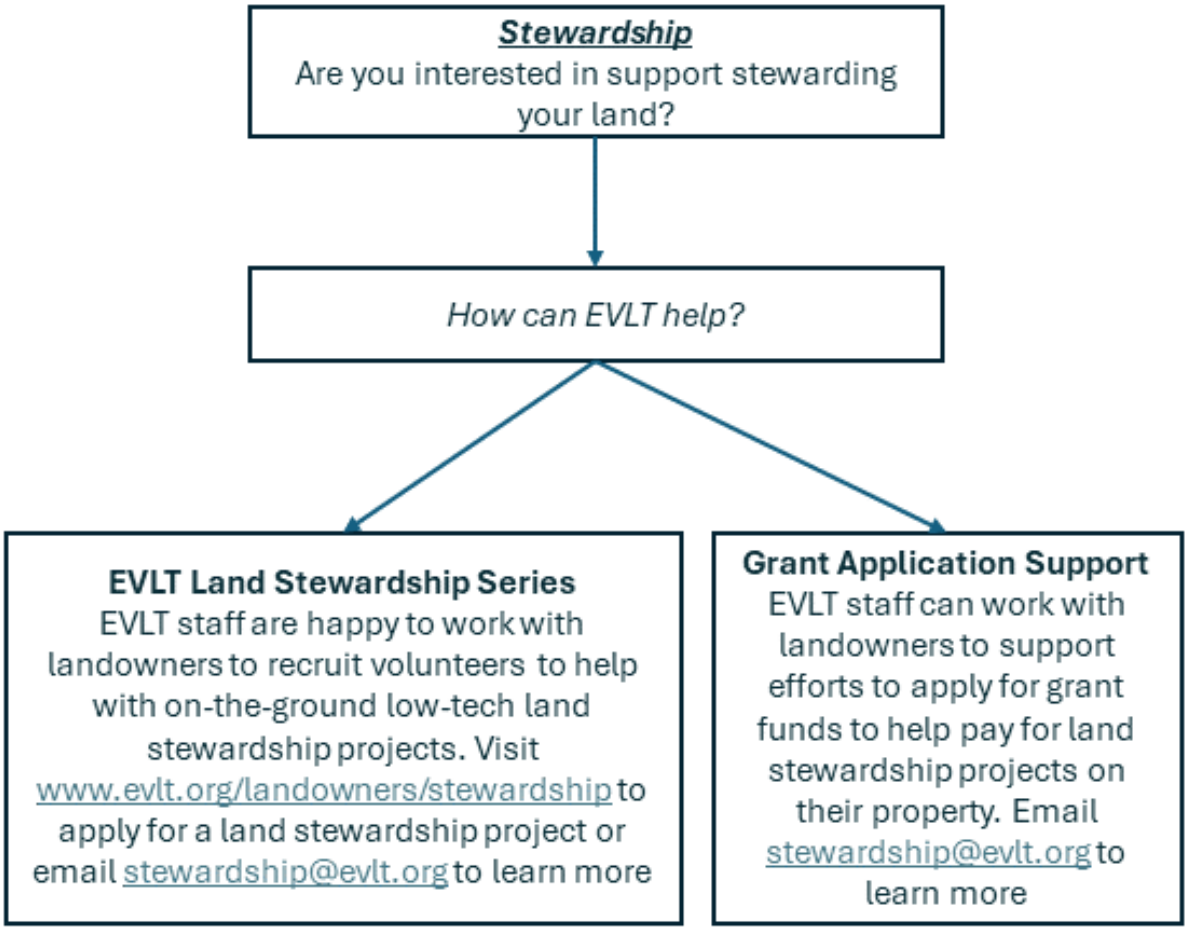
**Conservation:** ensuring the property will remain in its current state, and the conservation values are protected, forever.

**Stewardship:** supporting landowners in protecting, improving and promoting conservation values through on the ground projects.

The flow charts below provide an overview of the options available through EVLT. Please reach out to stewardship@evlt.org with any questions you may have.



# LAND STEWARDSHIP PROJECT FLOW CHART



# CONSERVATION EASEMENT PROCESS OVERVIEW

## DONATED CONSERVATION EASEMENTS

### IMPORTANT NOTES REGARDING PROCESS

***Timeline:*** It typically takes a minimum of 9-18 months after EVLT Board approval and a Letter of Engagement signing to go through the process of developing and completing a conservation easement donation.

***Landowner Legal Counsel:*** EVLT strongly encourages landowners to retain independent legal representation to assist in negotiating and reviewing conservation easement documentation on the landowners' behalf. This is a big decision, and EVLT wants every landowner to fully understand the legal ramifications associated with a perpetual conservation easement.

***Landowner Financial Advisor:*** Conservation Easements have significant financial and tax ramifications. EVLT strongly encourages landowners to retain independent financial advice. EVLT wants every landowner to fully understand all of the financial aspects associated with granting a conservation easement.

### STEPS TO COMPLETING A DONATED CONSERVATION EASEMENT TRANSACTION

**1. Contact EVLT** and Request a Landowner Information Packet and Landowner Application
EVLT's work is predicated on private property rights, and we respect your privacy. Therefore, we are not in the business of soliciting conservation projects. Interested landowners must make the initial contact to notify EVLT of their interest in conservation and to request an information packet and application. The information packet includes information about EVLT and conservation easements. If, after reviewing the packet,, a landowner is interested in having further conversations with EVLT about a potential conservation easement, the landowner must contact EVLT.

**2. Landowner Application**
The Landowner Application should be completed by the landowner and submitted to EVLT for review. EVLT will also provide a proforma with provides estimated costs and financial benefits. NOTE: Typically, a donated conservation easement will cost between $75,000 and $150,000 to complete.

**3. Site Visit**
After reviewing the Landowner Application, EVLT staff will determine if the project meets EVLT's Project Criteria. If the project is determined to meet the Project Criteria, EVLT staff will work with the landowner to establish a time for EVLT staff and board members to visit the property and further evaluate the conservation values. The site visit is used to gather

additional information about the property and further assess its consistency with EVLT's Project Criteria.

**4. Project Approval from the Board of Directors**
EVLT staff will use information gathered from the Landowner Application and site visit to prepare a Project Evaluation and Board Approval form and formal presentation to the EVLT Stewardship and Projects Committee. Upon review of the project, the EVLT Stewardship and Projects Committee will either seek additional information, or provide a formal recommendation to the full Board. The full Board will then review the project. Upon formal Board approval, EVLT will send the landowner an engagement letter. Following receipt of the signed engagement letter and a nonrefundable project fee deposit (which will be applied to the project fee), EVLT staff and the landowner will begin the process of ordering the required due diligence and negotiating the terms of the conservation easement.

*NOTE: EVLT strongly recommends that the landowner hire independent legal counsel to assist in negotiating and reviewing the conservation easement immediately following formal Board approval.*

**5. Due Diligence**
The following four (4) due diligence reports need to be completed prior to conveying a conservation easement:

**A. Appraisal:** An independent qualified conservation easement appraisal must be prepared to determine the value of the conservation easement. NOTE: A standard land appraisal will not qualify for conveyance of a conservation easement. The value of the conservation easement is what determines financial benefits.

**B. Mineral Remoteness Letter:** Federal law required a Mineral Remoteness Assessment be completed in all instances where the mineral estate has been severed and is owned separate from the surface estate. The mineral report must be completed by a professional geologist and must conclude that the likelihood of surface mining is "so remote as to be negligible."

**C. Baseline Inventory Report:** Federal law requires that a Baseline Inventory Report that documents the property's conservation values, natural resources, and current condition be completed. This report is used by EVLT staff to carry out our perpetual stewardship obligations.

**D. Title Work:** EVLT will review the property's chain of title and examine all exceptions to the title. EVLT will order title of the property from a title company that operates in the area. If the property is subject to any deeds of trust and the landowner does not plan to pay those off prior to closing, the landowner and EVLT will work with the lender to have the lender subordinate the deed of trust to the conservation easement. The consent and subordination agreement will be attached to the deed of conservation easement. It is important to determine how many deeds of trust will be addressed as early in the process as possible as lenders often require a significant amount of time to review subordination requests.

**6. Conservation Easement Drafting**
EVLT staff and counsel, along with the landowner and landowners' counsel will draft the deed of conservation easement. The initial drafting will be based off EVLT's conservation easement template. EVLT's conservation easement template is available for review, as is an explanation of required conservation easement language from LTA. The deed of conservation easement

will be tailored to fit the specific characteristics and conservation values of the property, and the needs of the landowner. Negotiating the terms of the conservation easement can be complex and time consuming. It is essential that EVLT and the landowner fully agree on all of the terms of the deed of conservation easement at the end of the negotiation.

**7. Easement Approval from the EVLT Board of Directors**
Once the conservation easement has been fully negotiated, the EVLT Board of Directors will review it for their approval. Once the Board has formally approved the deed of conservation easement, EVLT and the landowner may proceed to closing and recording.

**8. Closing and Recording**
Closing will be handled through a title company that will ensure the deed of conservation easement is signed by all parties. The signed deed of conservation easement will be recorded in the county records by the title company. The title company will then issue a title policy on the conservation easement interest to EVLT.

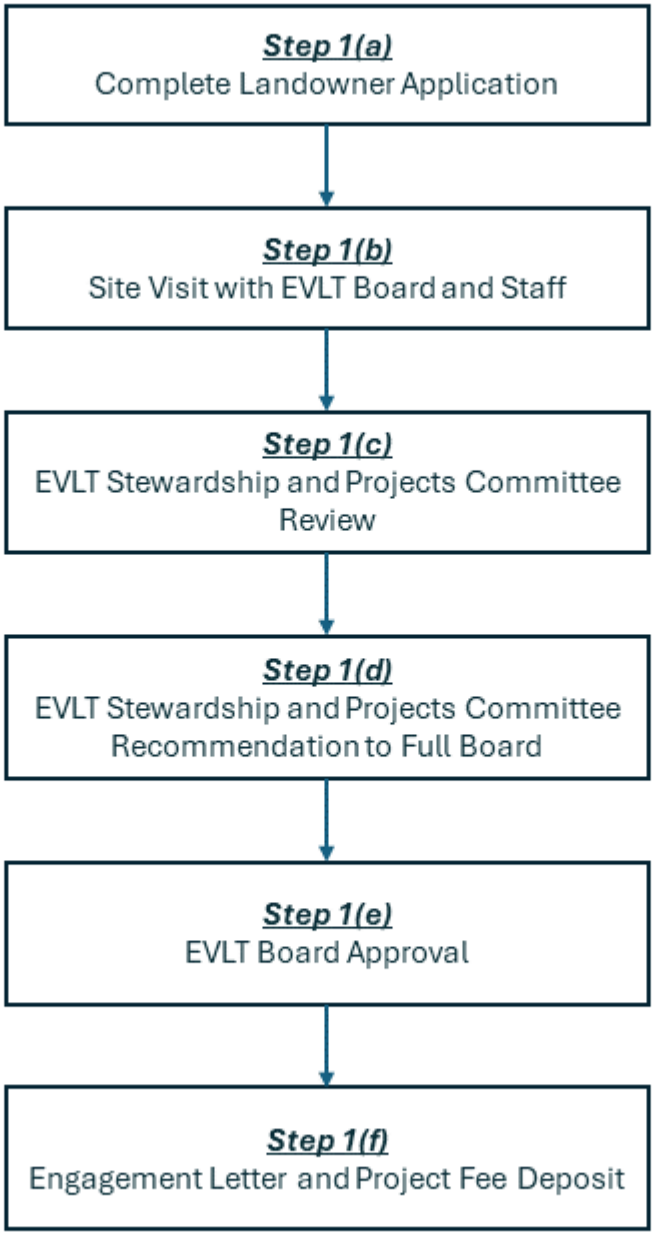
**9. Secure a Tax Credit Broker**
EVLT strongly encourages landowners who desire to sell their conservation easement tax credits to work with a reputable conservation easement tax credit broker. EVLT will provide a list of individuals who specialize in this work.

**10. Working with the Broker to sell your Tax Credits:**
Following closing and recording, the landowner and EVLT staff will work cooperatively with the tax credit broker to complete all necessary forms and applications related to the issuance and sale of conservation easement tax credits. Once the Division of Conservation receives the completed tax credit application, it has 120 days to review all of the documents and issue the credits or request additional information.

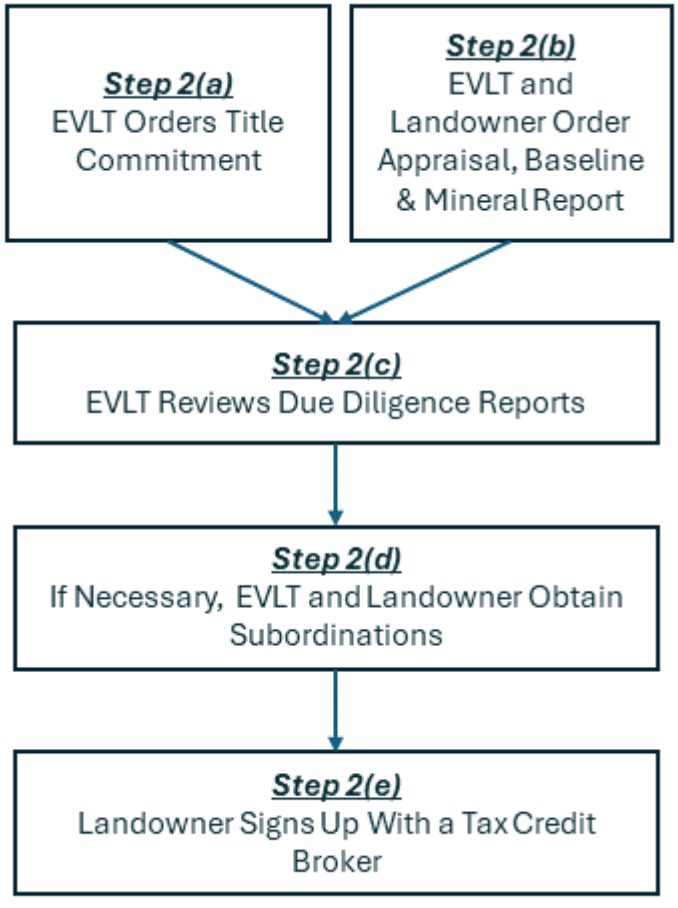
EVLT has developed a flow chart to assist landowners in learning about the process of conveying a donated conservation easement. See below

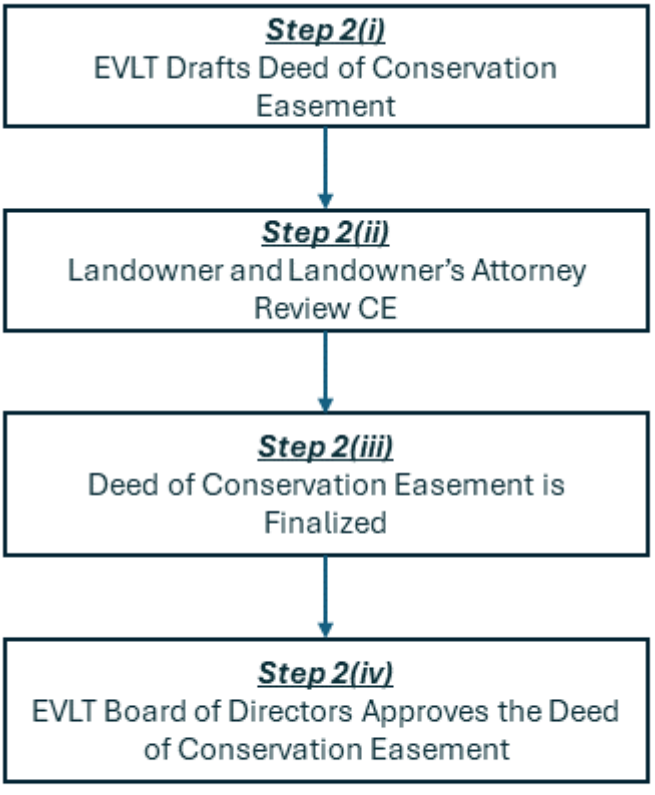
***Please don't hesitate to contact EVLT staff (970) 748-7654 with any questions you have about the process for donating a conservation easement.***

# STEP 1: PRE-PROJECT PHASE

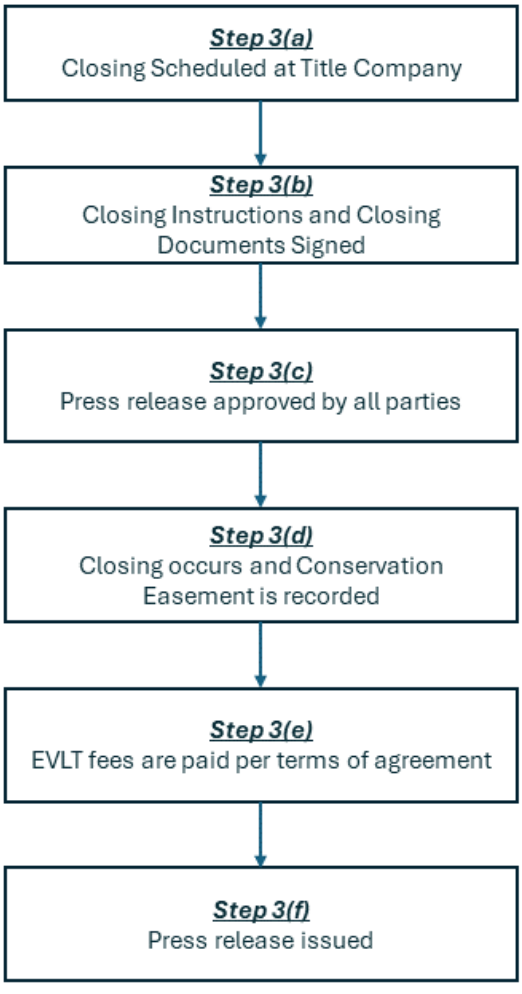


# STEP 2: DUE DILIGENCE AND EASEMENT DRAFTING PROCESS

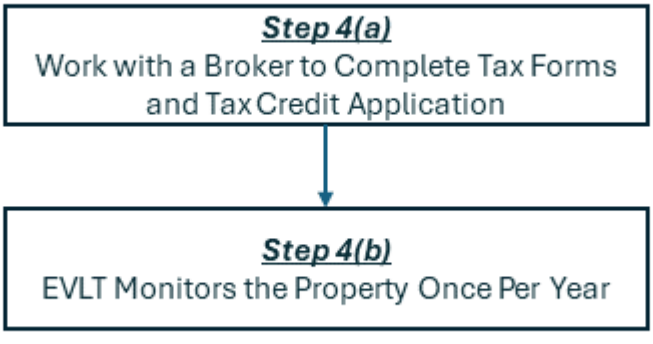


# STEP 3: CLOSING PROCESS




# STEP 4: POST CLOSING PROCESS



# CONSERVATION EASEMENT PROCESS OVERVIEW

## BARGAIN SALE

*This document outlines the general process of conveying a bargain sale conservation easement to EVLT. A bargain sale is a conservation easement transaction where the landowner sells a portion of the value of the conservation easement to EVLT and donates any remaining value. The landowner may be compensated for the donated component through tax benefits. EVLT raises money from various public and private sources to pay for the purchase component of a bargain sale.*

### IMPORTANT NOTES REGARDING PROCESS

**Properties that Qualify for Funding:** Various public entities (federal and state agencies and county programs) and private foundations make funding available for conservation projects. Not every property will qualify for funding. Funding sources are limited, and money is directed towards priorities of each respective funder. Each funding source has its own priorities, restrictions and interests. These funding priorities vary and frequently include specific wildlife habitats, riparian areas, and public access. While the priorities vary, most funders consider the urgency of the project and the threats to the property. EVLT strives to submit projects that will compete well in highly competitive rounds.

**Matching Requirements:** Most funding sources require that their funding is leveraged with other sources of cash as well as a landowner donation. Typically, a conservation easement funder will fund approximately 25% of a bargain sale transaction. That 25% will be matched with cash from another funding entity bringing the total purchase component of the transaction somewhere close to 50% of the total value of the conservation easement. The remaining 50% of the value of the conservation easement is typically donated by the landowner who may be eligible to receive federal and state tax incentives (i.e. federal tax deductions, estate tax incentives, and Colorado state income tax credits.)

**Additional Restrictions:** Funding almost always comes with strings attached. Most funding sources will require additional restrictions to be placed in the deed of conservation easement. These restrictions can vary from management plans to additional limitations to use of the property beyond what is required by federal and state law to create a qualified conservation easement. As a landowner, it is important for you to consider in advance if these restrictions are palatable before pursuing the funding source.

**Typical Funding Sources:** EVLT works with a variety of funders including, but not limited to, Great Outdoors Colorado (GOCO), Colorado Parks and Wildlife (CPW), Eagle County Open Space (ECOS), private foundations, and individual funders.
**Timeline:** It typically takes a minimum of two (2) to five (5) years after EVLT Board approval and Letter of Engagement signing to go through the process of developing and completing a bargain sale conservation easement.

**Landowner Legal Counsel:** EVLT strongly encourages landowners to retain independent legal

representation to assist in negotiating and reviewing conservation easement documentation on the landowners' behalf. This is a big decision, and EVLT wants every landowner to fully understand the legal ramifications associated with a perpetual conservation easement.

**Landowner Financial Advisor:** Conservation Easements have significant financial and tax ramifications. EVLT strongly encourages landowners to retain independent financial advice. EVLT wants every landowner to fully understand all of the financial aspects associated with granting a conservation easement.

## STEPS TO COMPLETING A BARGAIN SALE CONSERVATION EASEMENT TRANSACTION

**1. Contact EVLT and Request a Landowner Information Packet and Landowner Application**
EVLT's work is predicated on private property rights, and we respect your privacy. Therefore, we are not in the business of soliciting conservation projects. Interested landowners must make the initial contact to notify EVLT of their interest in conservation and to request an information packet and application. The information packet includes information about EVLT and conservation easements. If, after reviewing the packet, a landowner is interested in having further conversations with EVLT about a potential conservation easement, the landowner must contact EVLT.

**2. Landowner Application**
The Landowner Application should be completed by the landowner and submitted to EVLT for review. EVLT will also provide a proforma that provides estimated costs and financial benefits. NOTE: Typically, a bargain sale conservation easement will cost between $90,000 and $175,000 to complete.

**3. Site Visit**
After reviewing the Landowner Application, EVLT staff will determine if the project meets EVLT's Project Criteria. If the project is determined to mee the Project Criteria, EVLT staff will work with the landowner to establish a time for EVLT staff and board members to visit the property and further evaluate the conservation values. The site visit is used to gather additional information about the property and further assess its consistency with EVLT's Project Criteria. The site visit will also be used to discuss and evaluate possible funding opportunities that may be available.

**4. Discussion of Funding Opportunities**
EVLT will be able to discuss various funding opportunities that may be available. The likelihood of securing funding, the timeline, and what additional restrictions each funding entity will require.

**5. Project Approval from the Board of Directors**
EVLT staff will use information gathered from the Landowner Application and site visit to prepare a Project Evaluation and Board Approval form and formal presentation to the EVLT Stewardship and Projects Committee. Upon review of the project, the EVLT Stewardship and Projects Committee will either seek additional information, or provide a formal recommendation to the full Board. The full Board will then review the project. Upon formal Board approval, EVLT will send the landowner an engagement letter. Following receipt of the signed engagement letter and a nonrefundable project fee deposit (which will be applied to the project fee), EVLT staff and the landowner will begin the process of ordering the required due diligence and negotiating the terms of the conservation easement.

*NOTE: EVLT strongly recommends that the landowner hire independent legal counsel to assist in negotiating and reviewing the conservation easement immediately following formal Board approval.*

**6. Option Agreement**
Funders often require an Option Agreement to purchase the conservation easement be in place prior to awarding funding. The Option Agreement will be negotiated between EVLT and the landowner and will outline the basic parameters of the transaction, funding expectations, timing, and project management expectations. NOTE: Unlike standard Option Agreements, EVLT is not able to pay consideration to secure Option of the property. The Option Agreement will prohibit the landowner from selling the property or making significant alterations to the property during the Option Period.

**7. Applying for Funding**
EVLT will begin to work on securing the required funding to purchase a proportion of the conservation easement. Funding applications are time consuming and complicated documents to prepare. Completing the funding applications requires significant time and investment from both the landowner and EVLT staff. NOTE: Funding is never guaranteed. Funding opportunities are competitive and funders typically do not have enough money to award all requests.

**8. Due Diligence**
The following four (4) due diligence reports need to be completed prior to conveying a conservation easement:

**A. Appraisal:** An independent qualified conservation easement appraisal must be prepared to determine the value of the conservation easement. NOTE: A standard land appraisal will not qualify for conveyance of a conservation easement. The value of the conservation easement is what determines financial benefits.

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**10. Funder Review**
Funders are required to review and approve all due diligence reports, title, and the deed of conservation easement. Funder review does take a long time and can cause frustration for the landowner and EVLT. However, the funder review process is essential to completing the project and obtaining funding.

**11. Easement Approval from the EVLT Board of Directors**
Once the conservation easement has been fully negotiated, the EVLT Board of Directors will review it for their approval. Once the Board has formally approved the deed of conservation easement, EVLT and the landowner may proceed to closing and recording.

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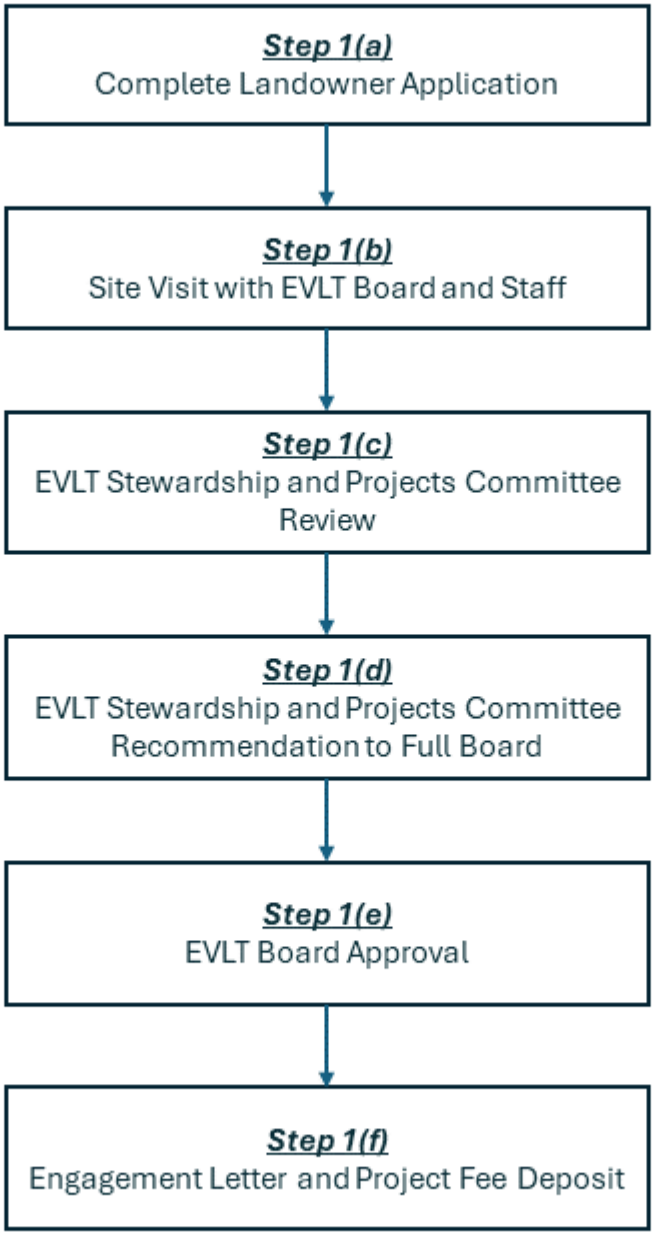
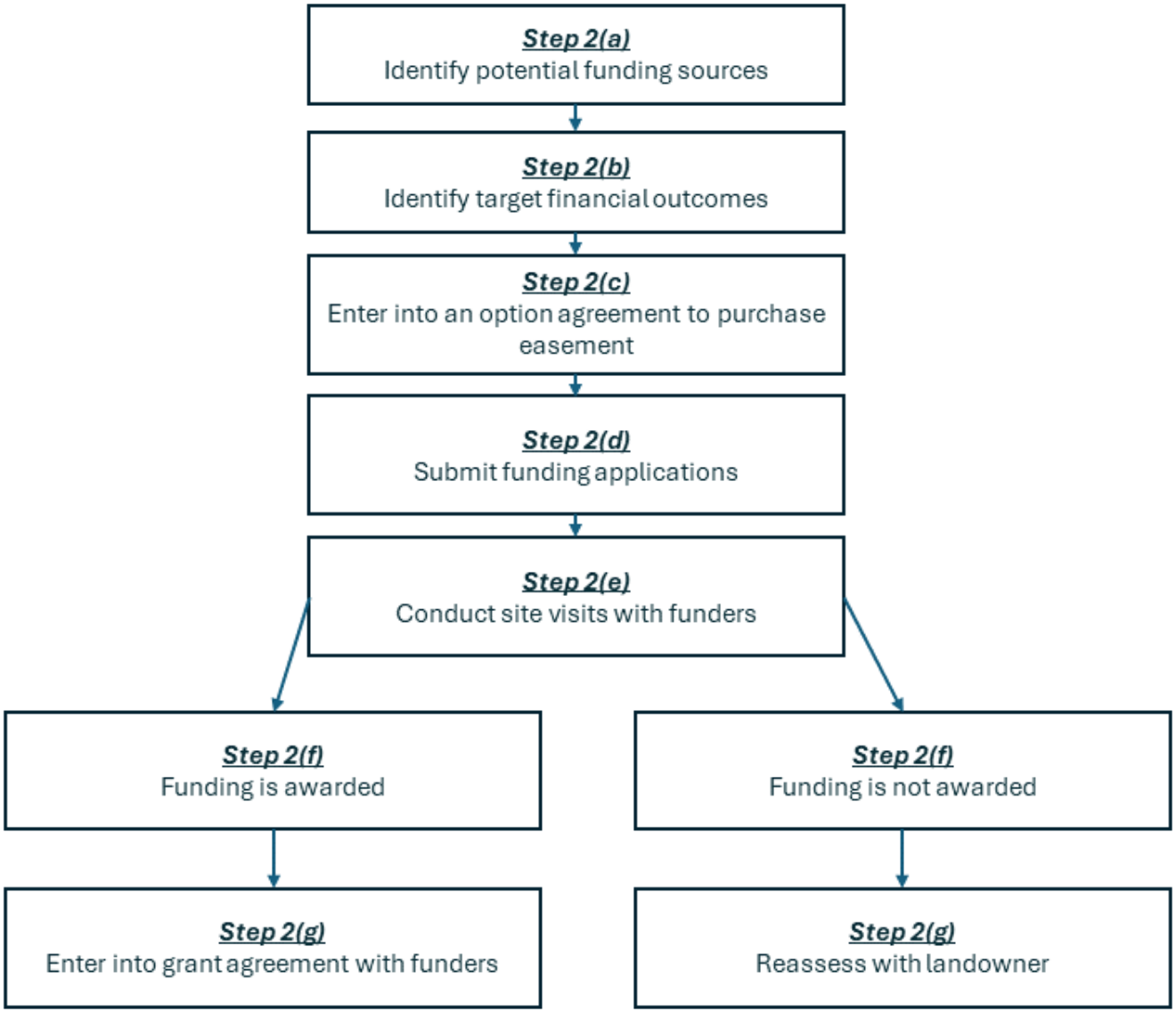
***EVLT has developed a flow chart to assist landowners in learning about the process of conveying a bargain sale conservation easement. See below***

***Please don't hesitate to contact EVLT staff (970) 748-7654 with any questions you have about the process for donating a conservation easement. This is a big decision and a complicated process, we are here to help.***

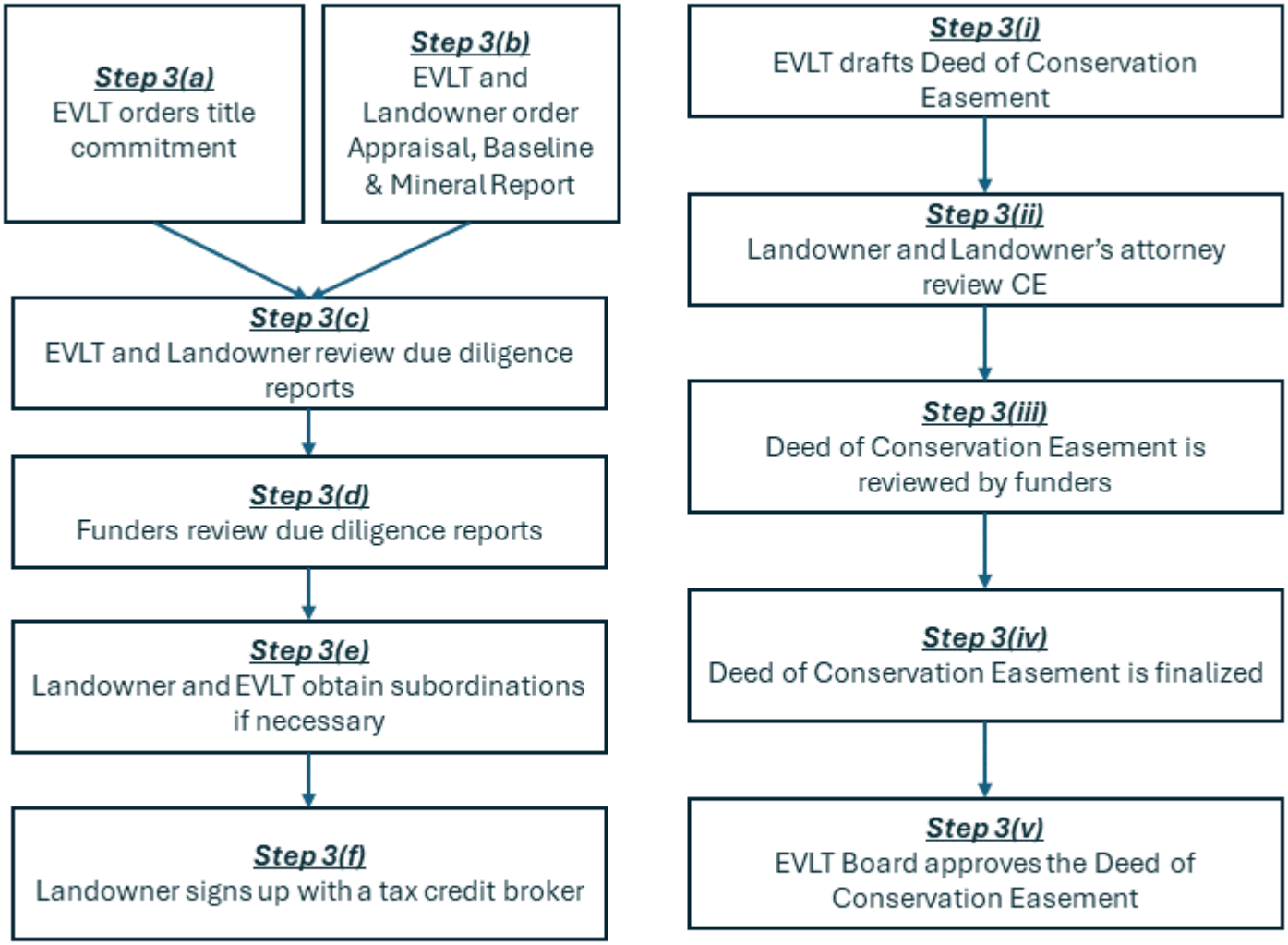
# STEP 1: PRE-PROJECT PHASE



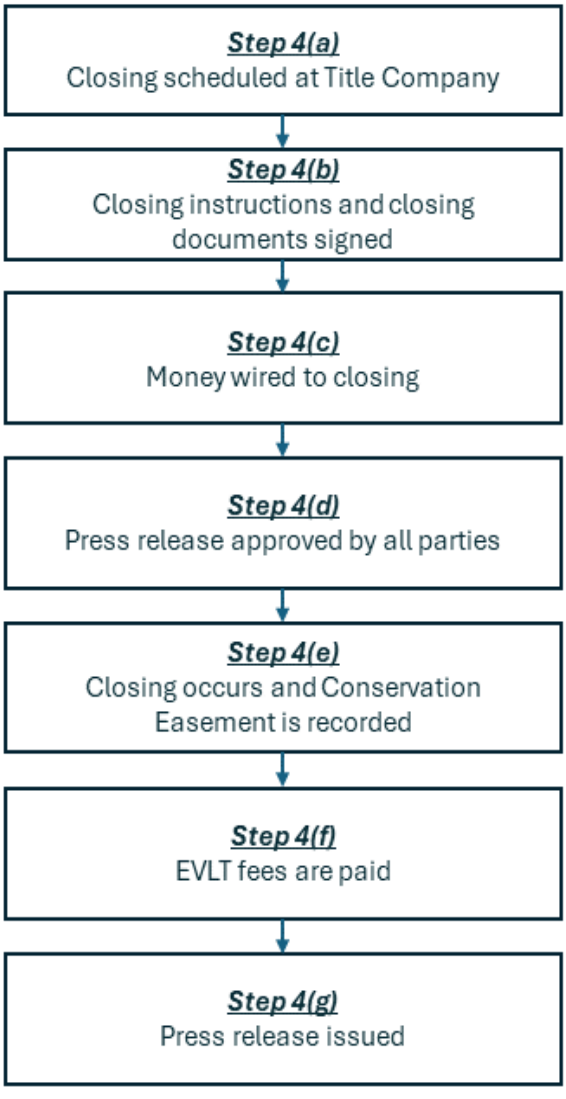
# STEP 2: FUNDRAISING PROCESS



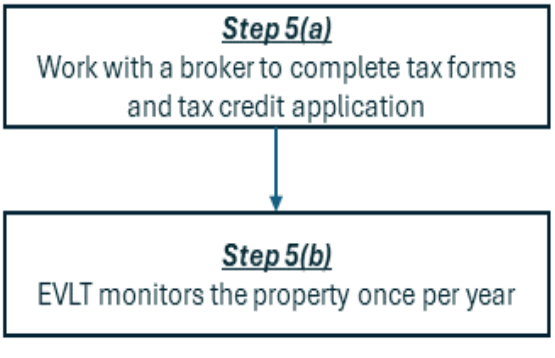
# STEP 3: DUE DILIGENCE AND EASEMENT DRAFTING PROCESS



# STEP 4: CLOSING PROCESS




# STEP 5: POST CLOSING PROCESS



# COSTS AND BENEFITS OF OF CONSERVATION EASEMENTS

Conveying a conservation easement on your property has both intrinsic and financial benefits for you, your family and your community. Several governmental entities (federal, state, and local) and private organizations have established financial incentives to encourage landowners to conserve their lands. These incentives include cash payments and various tax incentives that landowners can use to diversify or expand operations, pay down debt, pay expenses, and save for retirement. This document provides an overview of both the financial and non-financial benefits and the costs of conveying a conservation easement.

**Benefits - Financial**
There are five (5) types of financial benefits that can come from a conveyance of a conservation easement, (1) federal tax deductions; (2) Colorado state income tax credits; (3) estate tax benefits; (4) property tax benefits; and occasionally, (5) cash payments. Each financial benefit is detailed below.

**Federal Tax Deduction**
The donation of a conservation easement may be treated as a charitable gift, making the value of the conservation easement tax deductible. The federal charitable tax deduction for the donation of a conservation easement is reduced by the value of any state tax credits received. After that reduction, you are allowed to deduct the donated amount up to 50% (100% for qualified farmers and ranchers)of your adjusted gross income, with a fifteen (15) year carry-forward period. If you receive state tax credits for 90% of the donated value of the conservation easement, the federal charitable deduction may only be the remaining 10% of donated value.

**Colorado State Income Tax Benefits**
Qualified private property owners from Colorado may be eligible for transferable tax credits for all or a portion of the conservation easement value. The conservation easement value is determined by a qualified appraiser. The value of the tax credits are 90% of the conservation easement value. The maximum owners can receive is $5M in credits, which can only be distributed in increments of up to $1.5M annually. Owners can then (1) apply the conservation tax credit against their state income liability; (2) transfer (sell) the tax credit to another taxpayer that needs it for their state income tax liability; or (3) claim a cash refund from the state in revenue positive years. Any portion of the tax credit not used in the year of donation can be used in the 20 years succeeding income tax years. No additional credits can be claimed until the original grantor or transferee have used or forfeited tax credits prior to 2014. There is an overall $50 million dollar cap per year for the tax credits. If the cap is exceeded, the landowner will receive a tax credit for a future year. Typically, tax credits are received 4 months after a complete application is submitted to the Division of Conservation, which is usually 5-6 months after the easement is recorded. Tax credit certification requires review by the State prior to generating any credits. NOTE: Landowners should sell conservation easement tax credits through a reputable tax credit broker. Brokers work throughout the year to identify buyers and match them with sellers. The sale of a tax credit generates taxable income.

**Updates resulting from Senate Bill 24-126**

1. The credit is now refundable in TABOR and non-TABOR years. Starting in 2027, landowners can claim up to $200,000 as a refund.

2. The credit percentage (the value of the tax credit as a percentage of the conservation easement value, as determined by a qualified appraisal) will decrease from 90% to 80% (of the conservation easement value) on January 2, 2027. This means you have 2 years to take advantage of the best incentives for conservation we have ever seen.

**Estate Tax Benefits**
When a conservation easement is placed on a property, most often the property value will be decreased and this will decrease the taxable value of the deceased's estate. In addition, if the easement qualifies under certain provisions of the Internal Revenue Code, then 40% of the property value remaining after the granting of an easement can be excluded from the value of the estate, up to a maximum exclusion of $500,000.

**Property Tax Benefits**
If the property is being taxed at the agricultural rate at the time the easement is placed, the landowner may continue to receive the favorable agricultural tax treatment even if agricultural production is discontinued in the future.

**Cash Payments**
Occasionally, EVLT can raise money from public and private funding sources to purchase a portion of a conservation easement with cash. The cash is received by the landowner at closing. This is known as a bargain sale conservation easement conveyance. Typically, 50% of the value of the easement is purchased in a bargain sale transaction. The remaining 50% is treated as a donation and compensated through the various tax benefits described above.

**Benefits - Non-Financial**
Landowners have different reasons for deciding to encumber their land with a conservation easement. Many of these reasons have nothing to do with the financial benefits described above and have everything to do with the landowner's conservation ethic and the love of their land. Intrinsic benefits include the preservation of beautiful scenic vistas and our western heritage, fertile agricultural lands and water resources, as well as critical wildlife habitat and the animals who share the land as home. Conservation easements can also help to conserve a family's legacy and prevent family disputes over what to do with property and provide the next generation an opportunity to participate in and enjoy our western heritage.

**Costs - Financial**
The conveyance of a conservation easement requires the following reports to be produced:

1. A baseline inventory report documenting the current condition of the property
2. An appraisal to determine the value of the conservation easement
3. Mineral remoteness assessment to determine the likelihood of mineral extraction
4. Title work
5. In some circumstances
    a. An environmental assessment
    b. A water report if irrigation water rights are encumbered by the conservation easement.

In addition to the costs of these documents, there are other fees associated with the conveyance of a conservation easement including a project coordination fee, stewardship and legal defense endowment contributions, and various legal fees. Together, these fees typically range from $75,000 to $175,000, depending on the project. Bargain sale transactions are generally more expensive due to the increased complexity involved with funders and the additional due diligence requirements. A breakdown of transaction costs associated with a conservation easement is provided below. NOTE Landowners contemplating a conservation easement should also know that conservation easements can make it more difficult to obtain a mortgage. Landowners should consult with their banks/ lenders to determine how they would handle a subsequent mortgage on a parcel of land encumbered by a conservation easement.

| SERVICE | AMOUNT | NOTES |
|---|---|---|
| Title services and closing costs | $2,500-$10,000 | Due at closing |
| Conservation Easement Appraisal | $14,000-$35,000 | Required by IRS for obtaining tax incentives. Due upon report completion. |
| Baseline Inventory | $5,000-$12,000 | Required by IRS for obtaining tax incentives. Due upon report completion. |
| Mineral Report | $1,000-$3,000 | Required if the landowner does not own all of the mineral rights. Due upon report completion. |
| Water Report | $0-$2,000 | Required if all or a portion of the property is irrigated. Due upon report completion. |
| Environmental Assessment | $2,000-$6,000 | Environmental reports are generally only required when there are potential environmental hazards on the site or in a bargain sale situation with the report is a condition of funding. Due upon report completion. |
| EVLT Stewardship Endowment | $20,000-$33,000 | This fee may be increased for additional risk factors. Due at closing. |
| EVLT Legal Defense Fund | $3,000-$8,000 | This fee may be increased for additional risk factors. Due at closing. |
| EVLT Project Coordination Fee | Donated: 1% of gross tax credit value, minimum $10,000, +$2,500 per funding request, Bargain Sale 5% of funds raised, minimum $15,000 | Due at closing. |
| EVLT Legal Fees | $4,000-$25,000 | EVLT expects the landowner to cover EVLT's legal fees. Due at closing |
| Landowner Legal Fees | Unknown | EVLT expects landowners to obtain independent counsel. |
| Colorado Conservation Tax Credit Certification fee | $11,000 | Cost of the Division of Conservation's review and certification of the tax credits. This fee is set each year by the state and is likely to increase. Due upon submission of tax credit application after closing. |
| **Total Range** | **$75,000 - $175,000** | |

**Costs - Non-Financial**

Conveying a conservation easement can be a long, slow, and sometimes difficult, time-consuming process that can cause stress, frustration, and disagreement amongst family. This can be especially true in bargain sale transactions which tend to require more restrictions, cost more, and take longer. Moreover, landowners must consider that conservation easements will restrict certain uses of the property in perpetuity (forever), reduce options of future owners, decrease the value of the property, and potentially extend the time it takes to sell the property on the open market.

EVLT has strict confidentiality policies to protect landowners, but funders may require that information related to a conservation easement be shared with the public, and all conservation easements are recorded in public records. The location of all conservation easements is also shared with CU's COMap service, which is available to anyone with a subscription.

This is a very important decision for you and your family. EVLT has plenty of information provided to help landowners educate themselves on conservation easements, and EVLT staff are available to spend time with landowners to review the details and costs and benefits associated with conservation easements. Ultimately the decision is yours - it is up to you to decide if a conservation easement makes financial sense and honors the legacy you are building through your property.

***DISCLAIMER:*** *This document does not constitute legal advice or opinion in any way and EVLT does not guarantee the accuracy of the information contained herein. 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. 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. 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.*

# EAGLE VALLEY LAND TRUST
# PROJECT SELECTION CRITERIA AND EVALUATION FORM

The Eagle Valley Land Trust (EVLT)is a non-profit organization that legally must demonstrate that its land protection projects are consistent with the trust goals and provide a public benefit. Therefore, each land protection proposal is carefully reviewed by the Board of Directors, before the Land Trust accepts protective interest in the property.

**Acceptance Factors**

Compliance with federal Treasury Regulations as well as state and local regulations is required as further described below. In addition to regulatory requirements, EVLT considers many variables in determining whether or not to accept a conservation easement (CE), including if the CE will protect significant conservation values. Acceptable conservation values are those that are described in the Treasury Regulations and EVLT's mission statement and goals. Decisions on whether or not to accept a CE will depend on the combination of these factors and the final decision to accept or deny a CE is at EVLT's sole discretion.

EVLT will examine the above and following factors in deciding whether or not EVLT should accept a CE and will make each decision on a case-by-case basis. Any one factor or a combination of factors may contribute to such a decision. This list is not exhaustive of the factors EVLT may consider.

**How Well the Property Exhibits Functions of Conservation**

- **Recognized Conservation Values -** For EVLT to accept a CE, and for the donation of a CE to be tax deductible (as required by IRC 170(h) of the Treasury Regulations), the CE must be perpetual and meet one or more of the following conservation purposes:
    - The preservation of land areas for outdoor recreation by, or the education of, the general public (e.g. contains a trail easement or provides on-site educational opportunities readily available to and benefiting the general public);
    - The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem (e.g. contains a diversity of flora and fauna, riparian areas, or contributes significantly to adjacent conserved land containing such natural habitat); or
    - The preservation of certain open space, including farmland and forest land that is significantly scenic and visible to the public, and/or contributes to a clearly delineated governmental conservation policy, and that clearly yields a significant public benefit.

- **Urban Shaping –** Is the property located between or around municipalities or community service areas helping to define urbanizing vs rural areas? Does the property help protect buffer zones between residential and non-residential development?
- **Preservation –** Does the property contain critical ecosystems; natural areas; scenic vistas and areas; fish and wildlife habitats; natural resources and landmarks; outdoor recreation areas; cultural, historic and archaeological areas; linkages and trails; access to public lakes, streams and other useable open space lands; and scenic and stream or highway corridors?
- **Conservation of Natural Resources –** Does the property include forest lands, range lands, agricultural lands, aquifer recharge areas, surface water, and/or water rights?
- **Clearly Significant Public Benefit –** For EVLT to participate in a land conservation transaction, the conservation of the land must yield a clearly significant public benefit particularly as compared to the benefit conferred upon an individual or a small group of individuals. Failure of EVLT to meet this requirement could result in EVLT's loss of federal non-profit status. For example, is the parcel significantly large enough, does it contain sensitive ecological features that are significant to the greater landscape, and is the property's conservation value to the public enhanced by its surroundings (or is it surrounded by private development)?
- **Property Location –** Is the property adjacent to other protected properties or state or federal lands that constitute open space? Is the property visible from a public roadway or property open for public use? Is the property within an area identified in regional or statewide planning documents as having important conservation values? Does the property lie in an area desired for protection?
- **Property Size –** Is the property of sufficient size to keep its conservation values intact and provide public benefit, even if surrounding properties are developed? (Size is not the determining factor, however, it will weigh in with the other issues in determining whether significant conservation values can be protected.)
- **Development Potential –** Will one or more development rights be extinguished by conveyance of the CE? Is the property located in an area where it is appropriate to limit development? For example, does the property lie within or near a current or future subdivision and have no conservation value besides eliminating its development? If the latter is true, other conservation tools may be more appropriate than a CE.
- **Cultural Resources –** Does the property contain significant historical or archeological resources that are important to regional heritage?
- **Property Condition –** Is the property in good condition with no significant environmental hazards? Potential conditions that could have negative impacts on conservation values are: use as a dumpsite, large areas of contaminated soil, or surface disturbance from previous mining activities.
- **Price and Costs –** Will the public benefits of protecting the property for open space outweigh the price paid and costs associated with accepting the CE?
- **Funds for Stewardship and Defense –** Is there a funding source for stewardship and defense contributions or must EVLT seek these funds?
- **Miscellaneous –** What other factors could positively or negatively influence the conservation value of the property? Are any of the mineral rights severed from the

property? Is the property significantly impaired, or in violation of zoning codes, due to the accumulation of derelict equipment, building materials or vehicles?

**Disqualifying Factors.** EVLT will decline to accept a CE if EVLT believes, in its sole discretion, that the proposed transaction does not have adequate conservation value, will not provide a significant public benefit, and/or does not meet EVLT legal due diligence requirements. EVLT will also decline to accept the CE if a project appears to involve any type of fraud, including but not limited to tax fraud. EVLT may also decline to accept a CE if it presents negative public perception issues.

## EVLT SELECTION CRITERIA AND EVALUATION CHECKLIST

Proposed Land Project:_____
(Name of Landowner)

_____ _____
(Location & Acreage) Date of Review

### CRITERIA FAVORING A LAND PROTECTION PROPOSAL (TOTAL POSSIBLE = 70 POINTS)

| | | |
|---|---|---|
| | The property is visible and benefits the general public. | Up to 5 pts. |
| | The property is productive agricultural or forestland (or has the potential). | 5 pts. |
| | The property protects a scenic view or is part of a scenic vista. | 5 pts. |
| | The property protects a lake, stream, river, wetlands or an important watershed area. | 5 pts. |
| | The property has documented historic value. | 5 pts. |
| | The land is likely to be developed in a manner that does not preserve the rural character of the area. | 5 pts. |
| | The property contains significant wildlife habitat, an important ecosystem habitat or natural features. | 5 pts. |
| | The property provides public access and/or recreational use. | 5 pts. |
| | The property is contiguous or close to land that is already protected. | 5 pts. |
| | There is widespread community support for the project. | 5 pts. |
| | The project can pay for itself or lend itself to special fund-raising. | 5 pts. |
| | The property may encourage abutting landowners to protect their properties. | 5 pts. |
| | The project may qualify for an income tax deduction | 5 pts. |
| | Other: | 5 pts. |
| | **TOTAL of 70 points possible** | |

**CONSIDERATIONS WEIGHING AGAINST A LAND PROTECTION PROPOSAL**
**(TOTAL POSSIBLE = -27 POINTS)**

| | | |
|---|---|---|
| | Protection of the property primarily benefits a single landowner or developer for personal gain, including tax benefits or to ensure personal privacy. | -5pts. |
| | The property is not especially productive. | -2 pts. |
| | The property presents a monitoring or stewardship problem which would make it difficult for EVLT to protect forever. | -5 pts. |
| | The property would be expensive for EVLT to protect and use up significant financial resources or goodwill of the land trust. | -5 pts. |
| | The development of abutting properties is extensive or likely and would diminish the conservation values of the property. | -5 pts. |
| | The property owner insists on retaining rights to the land that are inconsistent with the Criteria Favoring a Land Protection Proposal noted above. | -5 pts. |
| | Other: For example – are there risks to the land trust or land trust community reputation (if extreme, consider rejecting the project). | -5 pts. |
| | | |
| | **TOTAL of 27 points Possible Against** | |
| | **OVERALL SCORE out of 70 Possible*** | |

** NOTE: Scores in the 30-40 point range are anticipated to be acceptable.*

*All of the preceding notwithstanding, the Board of Directors retains discretion over acquisition or disposition of conservation easements and will review each on a case-by-case basis.*

*All landowners should seek independent financial and legal advice.*