

# A Landowner Introduction to Conserving Land with





# Thank you for your interest in conserving your land!

In this guide, we hope to give you a general understanding of:

- What a conservation easement is and does
- The financial benefits of conserving your land
- An overview of the conservation easement process

## **What it is like to work with Colorado Open Lands**

We know that you will have a lot to consider. We understand that your situation is unique. We'd love to talk with you about the hopes and plans you have for your land, and to discuss some options with you.

If you have ever wondered what options you might have to protect your land, please feel free to call our conservation team anytime at (303) 988-2373.

This guide does not constitute legal, financial or tax advice. Landowners are strongly encouraged to retain qualified legal and other advice before conserving their land.

## What is a conservation easement?

A conservation easement is a voluntary legal agreement between a landowner and a land trust or government entity which contains permanent restrictions on the use or development of land in order to protect certain values of the property. The conservation easement is recorded in the county records and binds all current and future owners of the land.

If you think of private property rights as a bundle of sticks, conservation easements give you a way to exchange two big sticks—the right to subdivide and the right to commercially develop—for the financial incentives described within. COL “holds” the conservation easement, but does not own the property or get involved in day-to-day management.

The majority of conservation easements that Colorado Open Lands holds protect working farms and ranches, wildlife habitat, and to protect scenic lands visible from public roads or nearby public land.



*Tarryall Creek Ranch, Park County. Photo by Liam Doran, courtesy of Beartooth Capital*

## Typical restrictions in a conservation easement:

- No subdivision or limited division
- Limited homes and other buildings within identified areas (“building envelopes”)
- No surface mining, though renewable energy and subsurface mining activities can be permitted if they meet certain requirements
- Continued historic use of water rights on the property

A conservation easement does not allow the public to access your land (unless you want to allow access). A conservation easement does not prevent you from mortgaging, leasing, selling, or passing on your land.

## What is a land trust?

A land trust (like Colorado Open Lands) is a private, non-profit organization with a mission to help landowners conserve properties with outstanding natural and agricultural values. Land trusts typically do this by holding conservation easements and ensuring that the terms of the easements are being followed. The land trust works with you to create the conservation easement document and agrees to care for, or “steward,” your conservation easement forever.



# Benefits of Conserving your Land

*Culebra Creek Ranch, Costilla County. Photo by Joseph Lobato.*

Conserving your land with COL may qualify you for a variety of financial benefits. These benefits are established at the federal, state and local level and by private organizations in order to encourage landowners to conserve their land.

## **Federal Tax Deduction**

The donation of a conservation easement that meets federal tax code requirements may be considered a charitable gift, which can qualify for a charitable income tax deduction. The value of the gift is the difference between the value of the property prior to the easement donation and the value of the property after the easement donation, as determined by a qualified appraiser. The amount of the charitable income tax deduction is limited to 50 percent (10 percent for C corporations) of the landowner's Adjusted Gross Income (AGI) in any one year. If the full deduction is not used completely in the first year, it can be carried forward for an additional fifteen years or until the donation is fully expended, whichever comes first.

If you are a farmer or rancher, the benefits are even better. If more than 50% of your gross income comes from agricultural activities, you can deduct up to 100 percent of your income per year up to a maximum of sixteen years up to the donated easement value.

## **Estate Tax Incentive**

Extinguishing some or all of the development rights for a property through a conservation easement may reduce the value of the land for estate tax purposes to the after-easement value, thus reducing the estate taxes. This could provide a substantial benefit for family members. In addition, Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion from the gross estate of up to 40% of the remaining encumbered value of the land (excluding any improvements on the land) protected by a qualified conservation easement. The exclusion is capped at \$500,000 and is reduced if the conservation easement reduced the land's value by less than 30% at the time of the contribution. To qualify, the easement must prohibit all but "de minimis commercial recreational use." (26 USC §2055, 26 CFR §1.2055 and 26 USC §2013(c))

## **Colorado State Tax Credits**

Colorado taxpayers may be eligible for a transferable state income tax credit for the donation of a qualified conservation contribution. Unlike a deduction, a credit provides a dollar for dollar write-off on taxes owed. The tax credit is valued at 75% of the first \$100,000 in conservation easement value and 50% of the remaining conservation easement value up to a credit amount of \$1,500,000, and can be used over a 20 year period. The donor of the qualified conservation contribution can also transfer all or part of the tax credit to other Colorado taxpayers at approximately \$0.83 per dollar. (CRS §39-

22-522) Colorado Open Lands can provide information on conservation easement tax credit brokers who assist with the sale of tax credits, including application to the state for a tax credit certificate.

### Property Tax Benefits

For agricultural properties consisting of at least 80 acres (or if less than 80 acres and no residential structures), you may be entitled to maintain agricultural classification after a conservation easement is placed on your property, even if agricultural use later ceases. The agricultural property tax rate is typically lower than other classifications. For non-agricultural properties, the donation of

a conservation easement on your property may reduce the amount that you pay in property taxes. (House Bill 95-1268, CRS §39-1-102(1.6)(a)(III) and §CRS 38-30.5-109)

### Grant-Funding

In rare cases, Colorado Open Lands may be able to raise funds through various grant programs to pay for a portion of the value of your conservation easement. These funding programs are highly competitive and different funding sources may require particular restrictions in a conservation easement. COL will work with you to determine if your property qualifies for available funding programs. Even when we can raise funds for a conservation easement, a certain percentage of the value of the conservation easement is typically donated. You may then be eligible for tax benefits, based on the donated value of the conservation easement. This is known as a bargain sale. The bargain sale of a conservation easement is usually at least a two-year process.

## Understanding the State Tax Credit

- **Colorado taxpayers are eligible for transferable income tax credits for the donation of a qualified conservation easement.**
- **A tax credit is based on 75% of the first \$100,000 in appraised conservation easement value and 50% of the remaining conservation easement value up to a maximum credit amount of \$1,500,000.**
- **Conservation tax credits are transferable to other Colorado taxpayers and may be sold for cash at a discount. Brokerages exist to match sellers and buyers.**
- **You must apply for a tax credit certificate from the Colorado Division of Real Estate. However, once the certificate is issued, the appraisal and transaction cannot be reviewed or disallowed by the Department of Revenue.**

**“It’s important for me to preserve Colorado’s open spaces. We like the fact that nobody can subdivide this property ever. It’s much larger than us; we are mere temporary stewards. We care about every single person that owned this place and was a prior shepherd. Through COL and our easement we can care about those that come after us.”**



**- George Meyers  
Owner, Santa Maria Ranch**

# The Conservation Easement Process

Placing a conservation easement on your property is a very personal, individual process. There are several steps that are necessary to complete before and after the conservation easement is signed. Our staff will assist you with each step, making the process easier for you and your family.

## Title Commitment

COL will order a copy of a current title commitment for your property that contains a legal description of the property, ownership, mineral estate ownership, mortgages and liens. The cost for obtaining a title commitment is often included in the premium charged for the title insurance policy.

## Title Insurance Policy

Although the title commitment identifies any known exceptions to title, it does not insure the title. The purpose of purchasing a title insurance policy is to protect Colorado Open Lands from any loss sustained because of defects in the title other than those specifically excluded in the policy. The amount of the policy equals the appraised value of the conservation easement, and the title company will charge a premium based on this policy amount.

## Subordination Agreement

The IRS requires that any mortgage or lien interests be subordinated to the conservation easement. If your lender or lienholder cannot or will not subordinate, your easement conveyance will not be a qualified conservation contribution under the Internal Revenue Code. Colorado Open Lands will be available for consultation with the lender or lienholder.

## Survey

If there is a question regarding the legal boundaries of your property, a survey may be necessary.

## Mineral Rights

If you do not own 100% of the mineral rights on or under the property, IRS Code requires that a letter be prepared by a geologist to determine the probability of extraction of minerals from the property by surface mining is “so remote as to be negligible” (language in quotations is from the Code). If the report does not reach this determination, then your project will not be a qualified conservation contribution.

## Appraisal

If the donation of the conservation easement is intended to be a qualified conservation contribution, you must have a qualified appraisal to document the value of your gift. The IRS has specific requirements that define a “qualified appraiser” and what constitutes a “qualified appraisal.” Colorado Open Lands will require a copy of the appraisal, and will not knowingly participate in a project where we have significant concerns about the value of the gift.

## Deed of Conservation Easement

COL will negotiate with you the terms of the conservation easement and draft the Deed that conveys the conservation easement from you to Colorado Open Lands. We strongly encourage you to have the Deed reviewed by your own attorney. Understanding exactly what the conservation easement says – and most importantly – that it says what you want it to say and means what you intend it to mean, is your most important task as a landowner.

## Present Conditions Report

A Present Conditions Report (also known as a “Baseline Report”) is an IRS requirement which must be prepared to document the resources on and conditions of the property at the time the conservation easement is conveyed. The present conditions report will need to be prepared by a qualified preparer and approved as accurate by you.

## Environmental Assessment

In a few cases, it may be necessary to complete an environmental assessment of the property to determine if the property has been contaminated with toxic waste or hazardous materials. This report is required in connection with limiting certain liabilities, and must be prepared by a qualified consultant.

## IRS Tax Form 8283

Upon completion of your conservation easement donation, Colorado Open Lands will work with you

and your tax professional to complete the appropriate portions of the IRS Form 8283 for Non-Cash Charitable Contributions. The form must be submitted with your federal tax return. The cost of this is included in Colorado Open Lands' project fee.

### **Sale of Tax Credit**

If you are interested in selling your tax credit, Colorado Open Lands can provide a list of qualified tax credit brokers for your consideration. In addition, in order to claim a Colorado Tax Credit for a conservation easement donation, a donor must obtain a tax credit certificate from the State. The application for the tax certificate is made to the Colorado Division of Real Estate, which reviews the conservation easement, appraisal and other documentation to determine if it meets State requirements for a tax credit.



*Beatty Canyon Ranch, Las Animas County. Photo by Joy Wooten.*

### **Colorado Open Lands Legal Advice**

Although we strive to keep our legal costs down, we will incur legal expenses related to (1) variances from our standard easement provisions; (2) title issues; (3) coordinating closings or (4) other issues with legal implications. If your conveyance is unusually complicated or there is a specific issue of concern that we believe will require extensive legal consultation, Colorado Open Lands will discuss potential legal costs with you before incurring them.

### **Landowner Professional Fees**

We strongly encourage you to seek independent professional advice concerning legal, financial, tax, estate planning, real estate, and accounting matters associated with the conveyance of a conservation easement.

### **Other Costs**

Closing fees, courier fees and other miscellaneous costs related to the project sometimes occur.

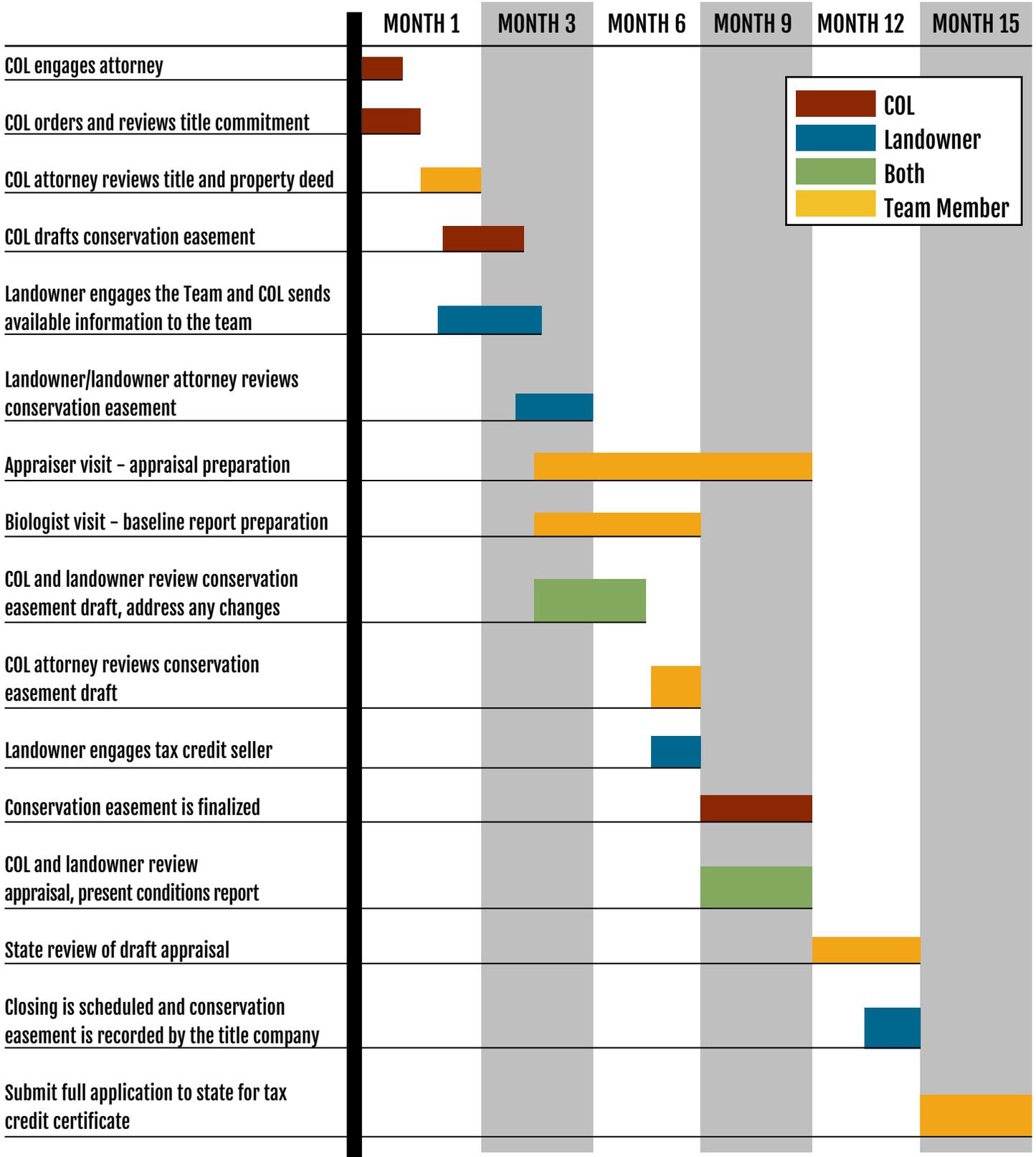
### **Stewardship Endowment**

We always request a one-time contribution from landowners as a stewardship endowment for their easement. This contribution covers expenses related to annual monitoring of the property, as well as possible legal costs associated with defending the terms of the conservation easement in court. We will be happy to provide you with an estimate of what it will cost to endow your conservation easement. While this is a one-time contribution, it will perpetually endow your easement.

### **After Closing**

Once the easement is in place, COL works with you to ensure that it meets our mutual conservation objectives. We schedule a time to visit your property each year to take photos and ensure that the terms of the conservation easement are being met. We ask you to notify us before doing certain things like building new structures. These conversations foster good communication and provide an opportunity to answer questions or respond to concerns. In addition, we're available to try to answer any resource questions you may have or connect you with agencies or professionals who can assist you with property issues like weed management. If you're interested in this type of information, just let us know. We'll do our best to help!

# Estimated Timeline to Complete the Process



Although a conservation easement is a private transaction between a land trust and landowner, there are other people who are necessary to make it all happen. A conservation easement is, at its core, a mutually agreed upon document that outlines the conservation values of a property and how they are to be protected; however, it is also a real estate transaction and a perpetual legal document. Consequently, a land trust is charged with conducting due diligence in accepting a conservation easement. Here we outline these steps and the various partners who will help with different parts of the process (the “Team”).

## The Team

- Appraiser
- Biologist/Baseline preparer
- Geologist/Mineral report preparer (only necessary if severed or leased minerals)
- Attorneys (COL and landowner)
- Tax Attorney/Accountant
- Bank (only necessary if there is a mortgage)
- Title Company

The steps illustrated in the table to the right are a general overview of those necessary in donating a “typical” conservation easement. The process can be complicated by a mortgage on the property, title issues, severed or leased mineral rights, or if funding is sought.

# Estimated Financial Costs and Benefits

## Estimated range of costs

COL project fee	\$7,500-10,000
Mineral report	\$2,000-3,000
Title insurance policy	\$1,200-2,500
Appraisal	\$12,000-20,000
Baseline report	\$2,500-3,500
COL legal costs	\$3,000-12,000
Closing costs	\$100-200
State appraisal pre-application	\$6,175
State tax credit application fee	\$12,350
Stewardship endowment	\$15,000-22,000
<b>Total estimated costs</b>	<b>\$61,825-91,725</b>

This does not include expenses for your own legal or tax advice.

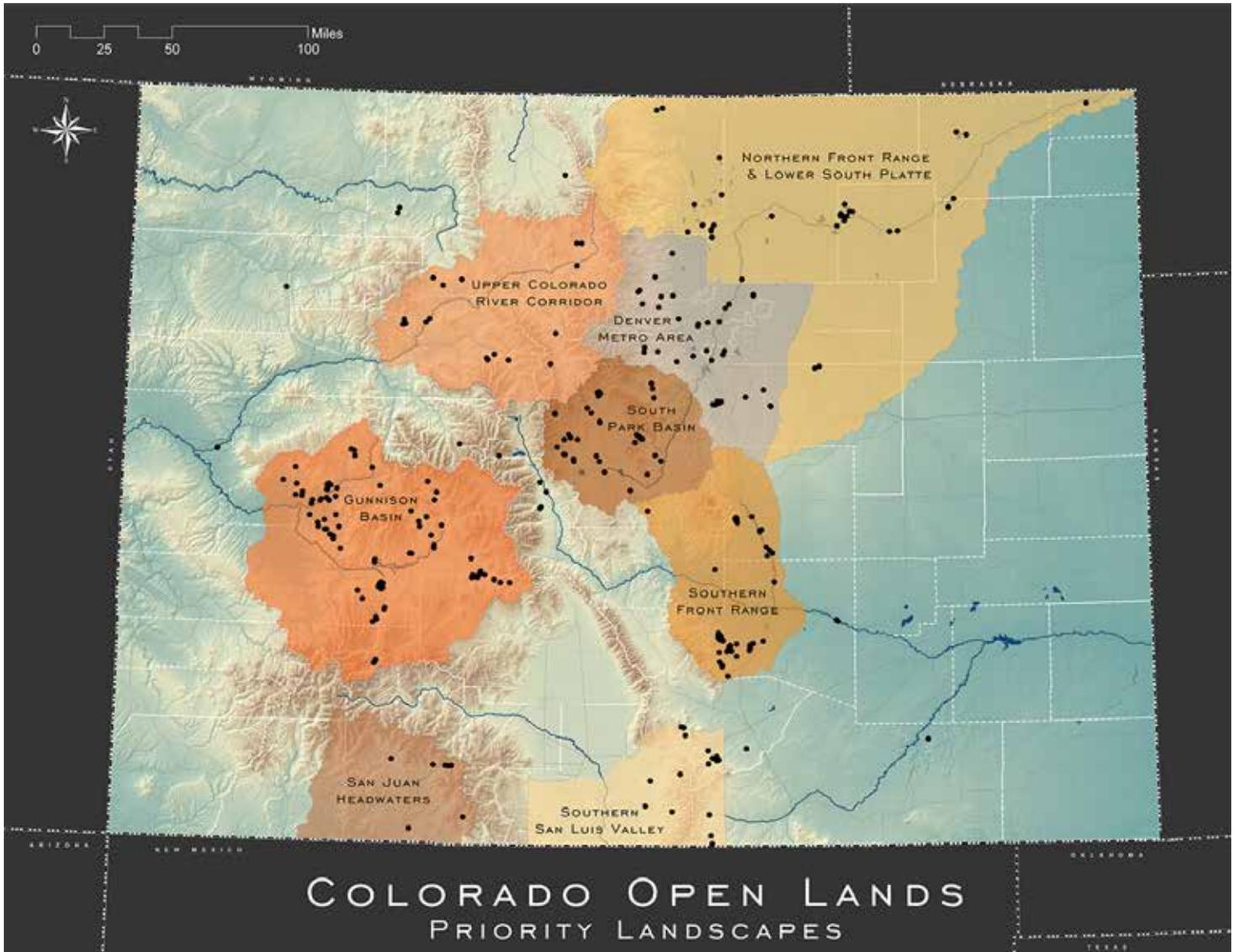
## Estimated financial benefits

*Estimated financial benefits for a donated conservation easement valued in excess of \$1,000,000.*

Colorado conservation easement tax credit	\$525,000*
Proceeds from sale of tax credit at 83%	\$435,750
<b>Net estimated financial benefits</b>	<b>\$344,025-373,925**</b>

\*The maximum tax credit that can be claimed is \$1.5 million (appraised conservation easement value of \$2,950,000 or greater).

\*\*This does not include the value of any cost savings realized from federal tax benefits. Individual circumstances will vary. Please consult qualified legal and financial advisors familiar with your circumstances before proceeding.



Colorado Open Lands focuses our work in the eight priority landscapes illustrated above. However, as a statewide land trust, we do hold conservation easements all across the state. If your land falls outside of our priority landscapes, please feel free to give us a call. If we're not the right fit, we will try to connect you with another organization.

# Why you should work with Colorado Open Lands

Colorado Open Lands' mission is to preserve the significant open lands and natural heritage of Colorado through private and public partnerships, innovative land conservation techniques, and strategic leadership. Colorado Open Lands was founded in 1981 by a team of business leaders known as the Colorado Forum.

Placing a conservation easement on your property is a very personal, individual process. Colorado Open Lands' staff has experience in working with all types of landowners and situations, and prides itself on being especially landowner-friendly. We take a long-term approach in each community we work in, understanding that successful conservation is about more than land and water—it is about people.

## Colorado Open Lands' Guiding Principles

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### Integrity

We earn the trust of our landowners, partners, donors and community by fulfilling our commitments and holding ourselves to the highest ethical standards in all we do.

### Creativity

We are focused on creating, championing, and celebrating conservation-minded solutions that turn land use challenges into opportunities.

### Inspiration

We are driven by a love of Colorado's magnificent lands and a respect for the landowners that steward them and the citizens that cherish them.

# Staff Directory

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**Brandy Bertram** - *Director of Development*

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**Jordan Vana** - *Director of Programs*

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also see [www.coloradoopenlands.org](http://www.coloradoopenlands.org)

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