

# Black Canyon Land Trust

Serving the Uncompahgre, North Fork, and Lower Gunnison Watersheds

## **ANSWERS TO COMMON QUESTIONS ABOUT EASEMENTS**

### **WHAT IS A CONSERVATION EASEMENT?**

A conservation easement is a legal agreement a property owner voluntarily makes to restrict the type and amount of development that may take place on his or her property. Each easement's restrictions are tailored to the particular property and interests of the landowner. The specific rights a landowner forgoes when granting a conservation easement are spelled out in each easement agreement. The owner and the land trust work together to identify which rights are use restrictions are necessary to protect the property – what can and cannot be done on the property.

To understand the easement concept, think of owning land as holding a bundle of rights. The landowner may sell or give away the whole bundle, or just one or two of those rights. These may include, for example, the right to construct buildings, to subdivide, or to grow crops. To give away certain rights while retaining others, a property owner can grant an easement to a conservation organization such as the Black Canyon Land Trust.

### **ARE THERE DIFFERENT TYPES OF EASEMENTS?**

Easements are often called by different names, according to the resource they protect. An easement to protect an agricultural operation can be called an agricultural easement. A scenic easement protects scenic values. Wildlife easements protect wildlife habitat and corridors. Another term for conservation easement is a conservation restriction. No matter the name, the easement concept remains the same.

### **WHY GRANT A CONSERVATION EASEMENT?**

People grant conservation easements to protect their land from inappropriate development *while retaining private property ownership*. By granting an easement in perpetuity, the owner is assured that the resource values of his or her property will be protected indefinitely, no matter who the future owner may be. Granting an easement can potentially also yield significant tax savings, as discussed later.

### **WHAT KIND OF PROPERTY CAN BE PROTECTED BY AN EASEMENT?**

Any property with significant natural habitat or scenic open space values can be protected by an easement. This includes farms and ranches, wetlands, rivers and streams, undeveloped land containing wildlife habitats or scenic views, and more. The Black Canyon Land Trust helps landowners evaluate the unique features of their property for easement consideration.

### **WHO CAN GRANT AN EASEMENT AND TO WHOM?**

Any owner of property with significant conservation value, agricultural, or historic value may grant an easement. If the property belongs to more than one person, all owners must consent to granting an easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure. To claim tax benefits for the gift, the easement must be

donated or sold for less than fair market value, to a public agency or to a private [501 (c) 3] conservation organization, such as the Black Canyon Land Trust.

### **HOW RESTRICTIVE IS AN EASEMENT?**

An easement restricts development to the degree that is necessary to protect the significant resource values of that particular property. If the goal is to preserve a pristine natural area, for example, an easement may prohibit all construction, and/or activities that would alter the land's natural condition. If the goal is to protect scenic open space including farm or ranch land, however, an easement may restrict subdivision and development while allowing for structures and activities associated with agricultural operation. Most conservation easements typically permit landowners to continue traditional uses of the land.

### **HOW LONG DOES AN EASEMENT LAST?**

An easement can be written so that it lasts forever, known as a perpetual easement. Only gifts of perpetual easements qualify for income and estate tax benefits. Ordinarily, the Black Canyon Land Trust accepts only perpetual easements.

Easement restrictions "run with the land". That is, the original owner and all subsequent owners (within the easement "term") are bound by the restrictions of the easement. After closing, the easement is recorded at the county recorder's office so all future owners and lenders can see the documentation in a title report.

### **WHAT ARE THE LAND TRUST'S RESPONSIBILITIES?**

The Land Trust is responsible for monitoring and enforcing the restrictions spelled out in the easement. Annually, land trust representatives visit the property (usually with the property owner) to determine that the property remains in the conditions prescribed at the time of the easement. This visit also keeps the land trust and the landowner in regular communication. If monitoring reveals the easement has been violated, the land trust has the legal obligation to require that the owner correct the violation and restore the property to its original condition.

Holding a conservation easement is a great responsibility. A landowner should make sure that the recipient organization has the time and resources to carry out that responsibility. The Black Canyon Land Trust, like most charitable land trusts, typically will ask the property owner to make a contribution toward the costs of monitoring the easement in perpetuity.

### **MUST AN EASEMENT ALLOW PUBLIC ACCESS?**

No, landowners that grant easements choose whether to open their property to the public. Landowners may choose to convey certain public access rights, such as allowing fishing, rafting, or hiking in specified locations. Other landowners do not allow any public access. If an income tax deduction is to be claimed, however, some types of easements require public access. Easements for recreation or educational purposes require public access. For scenic easements, much of the property must be visible to the public, but physical access is not necessary. Access generally is not required for easements that protect significant natural habitats.