

## SEVEN MYTHS ABOUT CONSERVATION EASEMENTS

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### Myth #1:

*If you donate a conservation easement, it will allow other people to tell you what you can and cannot do with your land and how to manage your land on a day-to-day basis.*

### The Reality:

- The only rules about managing land, and what can and cannot be done with the land, are those rules that you agree to in the conservation easement.
- If a governmental entity is paying you for particular conservation values and for managing those conservation values, you may have to agree to manage the land in a certain way if you want to be compensated.
- In any donation of a conservation easement, it requires a willing landowner to impose management requirements on the land.
- The only access typically required to be granted to the property is the right to go on to the property to monitor the terms of the easement. Most easements contemplate that being done once or twice a year, unless a violation is reasonably thought to be occurring.

### Myth #2:

*If you donate a conservation easement, you will be giving away a substantial part of the value of the property so that the state or federal government can come in and buy your land at a cheap price. The conservation easement will set the stage for the government to eventually take full possession of your property.*

### The Reality:

- If the government only buys the landowner's interest in the property at its reduced value, the land will still be subject to the conservation easement.
- If the government wants to be the holder of full title to the property, i.e., the fee title and the conservation easement, it will also have to condemn the value of the conservation easement and pay that value to the land trust.
- Why would a governmental entity, interested in the protection of open space or agricultural lands, pay for land that is already protected from development, instead of offering those monies to landowners for the purchase of conservation easements on additional lands.
- Even if all of the above were not true, where would governments that can't find the money for public infrastructure, for fighting the war on terrorism, and for balancing budgets, find the money to buy all of the lands that are subject to conservation easements.
- The federal and state governments do have the right of condemnation, but a conservation easement will not increase the likelihood of that power being exercised.

### Myth #3:

*The land trust to which you donate the conservation easement will transfer the conservation easement to a national environmental organization or to the federal or state governments, and they will tell you how to manage your lands.*

### The Reality:

- See Reality #1 for what obligations a conservation easement does and does not impose on a landowner.
- The conservation easement can provide that the easement would not be assigned without the consent of the landowner and could designate a back-up land trust in the event that the donee organization ever ceases to exist.
- If somebody feels strongly about who the conservation easement should or should not be assigned to, the conservation easement can include prohibitions on assignment to certain organizations or types of organizations.
- A landowner should not donate a conservation easement without having a high level of comfort with the land trust.

### Myth #4:

*Even though you grant a conservation easement to a land trust with whom you have a high level of comfort, third parties may try to enforce the terms of the conservation easement if they believe the land trust is not doing so.*

The Reality:

- State enabling acts for donating conservation easements typically do not provide for a right in any third party to enforce the terms of the conservation easement.
- Even if there is no authority under state law, the conservation easement itself can still make clear that there is not intended to be any third party right of enforcement, that the land trust to whom the easement is donated is the only party with a right of enforcement.
- If a public agency is funding a purchase of a conservation easement, that agency may also want the right of enforcement as a condition of their payment for the conservation easement.

Myth #5:

*No banker will lend money on property that is subject to a conservation easement or subordinate their existing loan to a conservation easement.*

The Reality:

- A banker will make a simple economic analysis. They loan money on the value of property.
- If they are loaning money based on the agricultural values of a property, the conservation easement will not be a problem for them.
- If somebody desires to borrow money on the development values of the property which are going to be limited by the conservation easement, then it would be unrealistic to expect a bank to lend money in that circumstance.
- We are not aware of any conservation easement transaction in Colorado in which the bank was not able to be satisfied regarding the donation of a conservation easement. That makes clear that there are a large universe of bankers who understand conservation easements and are still willing to lend money on properties which are subject to them.

Myth #6:

*When you strip the development values from a property by a conservation easement, you will be left with a property that nobody will want to purchase because all they will be left with is land that cannot be developed, while having the duties required under the conservation easement.*

The Reality:

- See Reality #1 for what obligations a conservation easement does and does not impose on a landowner.
- Properties subject to conservation easements are initially reduced in value, but then are appreciating in value in a manner comparable to, and sometimes in excess of, general real estate values.
- Properties subject to conservation easement typically have significant open space, scenic, or wildlife values. Those values do not disappear because of the conservation easement and are often the reason a conservation easement property may appreciate more rapidly than other real estate.

Myth #7:

*The federal and state governments, and national conservation organizations are "up to no good," so anybody who does business with them must be tainted as well.*

The Reality:

- Whether they are really "up to no good" is a matter of opinion.
- Doing a conservation easement transaction with a local land trust is not the same as doing a conservation easement with the federal government.
- Doing a conservation easement transaction with a local land trust is not the same as doing a conservation easement transaction with a national conservation organization.
- The essence of this argument is based upon "guilt by association."
- Every one of these large organizations has done something, somewhere, regarding conservation easements that we may disagree with. But that does not mean that everything that everybody does regarding conservation easements is tainted by those actions.