

Conservation Easements and Property Valuation

Guidance: How to Assess Land Permanently Encumbered by a Conservation Easement

The purpose of this guidance is to help an assessing official determine whether a conservation easement has an effect on the market value of a property that he or she is assessing.

Conservation easements are legally binding agreements between a landowner and another entity, such as a land trust or government agency. An easement may be donated or sold by the landowner. A conservation easement typically limits how the land may be used by the current owner and all future owners. The loss of these rights may or may not diminish the value of a property, depending on local market conditions and the degree to which the conservation easement has changed the property's highest and best use. As you know, many factors go into a property's market value and the extent to which a conservation easement affects a particular property's value will vary from property to property and location to location. This document provides guidelines that will help you determine whether a conservation easement affects market value, and if so, to what extent.

Before we proceed, please note that a conservation easement is entirely different than enrollment in the Current Use Program. Conservation easements are legally binding agreements between two parties and Current Use is a purely government program that allows landowners to pay taxes on "use value" rather than "market value." A property may be subject to a conservation easement in addition to being enrolled in Current Use but you should not assume that is the case. As you know, you are required to determine a market value for properties enrolled in Current Use, so you should apply the guidelines in this document to all properties without regard to Current Use enrollment.

Locating Properties Subject to Conservation Easements in Your Municipality

Conservation easements are recorded with the deed in your municipal office. We advise that you note a conservation easement on the property

Essential Resources for Valuing Property Subject to a Conservation Easement:

- **Property Transfer Tax Return** – Located in your town records, the return will inform you of a transfer of development rights in Box G.
- **Conservation Easement Agreement** – This should be on file in your town records. We advise that you focus your attention on the "purpose," "restricted uses," and "retained rights" sections to understand how a particular easement may affect property valuation.
- **Database of Sales** – Land trusts and agencies that hold conservation easements typically keep a database of sales of properties subject to conservation easements. This information can be crucial when conducting a sales comparison.
- **Conservation Easement Map** – A conservation easement map may be available from the land trust or agency that holds the easement. It is helpful for locating special protections on the property, excluded parcels, and other special zones where limited development may be permitted. Additionally, a baseline report is a much more detailed and long document that the holder may be willing to provide if you want significantly more information. (Note that the conservation easement itself has the essential information you need, so a baseline report is optional.)

card when you discover one while searching deeds. Additionally, a property transfer tax return can help you identify a possible conservation easement. Box G of the property transfer tax return has a checkbox for the conveyance of development rights, which includes conservation easements.

Highest and Best Use

As with any other property, your valuation of a property subject to a conservation easement should be based on the highest and best use of the property. A conservation easement will usually limit how the land can legally be used.

You must read the provisions of the conservation

easement and the conservation map so that you do not determine a highest and best use that is actually not legally permissible because of the conservation easement. This is similar to the treatment you would give a deed restriction.

Highest and Best Use is the reasonable, probable, and legal use of the property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.

Your Goal: Develop a Grade Factor for the Land Schedule

You should follow the process for conducting a sales comparison given below to develop a grade factor that can be applied to the existing land schedule. You should conduct a sales comparison for as many easement types as you can, with emphasis on the types most common in your area. A description of common easement types is given later in this guidance. It is crucial to remember that one grade factor will not cover all the various types of restrictions that exist in conservation easements, so you will need to create factors for all the major easement types.

A Sales Comparison is the Preferred Approach to Valuation

Collect sales data for transactions involving conservation easement encumbered properties. It is likely that you will have to expand your search regionally to obtain a meaningful sample. The databases of sales kept by land trusts and governmental entities are excellent resources for sales data.

Once data is collected, the first step is to sort the data into homogenous groups. We recommend that you review the categories of types of conservation easements given below and sort your sales according to those types. Next, you will review the easement documents of all properties you are considering for comparison. Unfortunately, the provisions of an easement agreement will vary from easement to easement, which complicates the

comparison of two encumbered properties even if they seem to have similar sizes and features.

Again, check the categories of easement types below for advice on what to look for when reviewing each type of easement. You should remove all transactions from your data set that have easement provisions that are significantly more or less restrictive than the property you are valuing. Use the easement agreement and the conservation map to learn more about the specific restrictions of a property. Use the remaining data to conduct a sales comparison.

Contact your district advisor if you need assistance finding sources for sales data.

Note regarding private appraisals conducted for purposes of an IRS income tax deduction: Conservation easements often involve an easement appraisal that attempts to capture the value of property rights lost when an easement is sold or donated. The value of the property rights that were exchanged or extinguished do not have a direct effect on the value of the property itself on the market. It's entirely possible that the buyers in a particular market do not place an appreciable value on those rights. Accordingly, we warn against heavily relying on easement appraisals for purposes of property valuation.

Subdivision Development Analysis—Sometimes it is appropriate to value properties with specific development potential using a discounted cash flow approach (subdivision development analysis). As with other approaches, the assessing official must review the easement agreement and conservation map to learn the extent to which development is restricted. When an easement only encumbers part of a parcel, the valuation must take that into account. Using a discounted cash flow approach, the assessing official must determine the number of potential lots before and after the easement, as well as lot prices, infrastructure costs, absorption times, yield rates, and expenses.

Cost Approach—The direct sales comparison and subdivision analysis approaches should be used exclusively. However, it is acceptable to use a cost approach to supplement those approaches when estimating contributory value of improvements such as barns and dwellings.

Guidance for Common Types of Conservation Easements

Agricultural Land and Working Farms—A conservation easement on agricultural land will often limit the possible future development and use of the land. A review of the easement agreement and conservation map should reveal what development or use that can occur. The conservation map can tell you where specific restrictions are located.

Some conservation easement agreements that encumbered agricultural land have a provision called an “option to purchase at agricultural value” (OPAV). An OPAV limits who can purchase the property to a “qualified farmer” or the easement holder and also requires the farm to be sold at its agricultural value. This will be noted in the deed when the easement was granted. When valuing a property subject to an OPAV, only include other sales involving OPAVs in the sales comparison.

The “option to purchase at agricultural value” clause started being used around 2003. Generally, agricultural land encumbered by an easement before 2003 will not have an OPAV clause. Check for a right to first refusal provision in older easements.

Encumbered Agricultural Land without an OPAV: You should only compare this type of property to other similar properties that do not have an OPAV in the conservation easement agreement. An OPAV will have less impact if land that is used for agriculture is highly valued in your area. Check the easement agreement for other provisions that limit development and use and compare the property to sales of other similar properties subject to similar provisions. Look for a right of first refusal in the easement agreement, which may impact the fair market value.

Encumbered Agricultural Land with an OPAV: Transactions involving an OPAV are likely to directly limit the market value of the property. If enough data exists, you can attempt to conduct a sales comparison involving only properties subject to an OPAV. Whether a sales comparison is feasible or not, you should be sure to value the property as if the agricultural use was the highest and best use. A search for comparable properties should focus on sales of farm land.

Forestland and Vacant Land—For forestland and vacant land, the provisions of the conservation easement agreement are likely to determine the highest and best use of the property. Review the easement agreement and conservation map to ascertain the uses and development that are legally permissible.

Rural Countryside—Many properties subject to conservation easements are rural residential properties with forestland. The conservation easement agreement is likely to establish the maximum amount of development possible. Use the easement provisions and conservation map when determining highest and best use and conduct a sales comparison.

What to Look Out For

Common provisions within conservation easements include:

- Exclusions from the easement, such as housesites and farmsteads.
- Dwelling rights.
- Farm labor housing rights; these can be standard or at the sole discretion of the land trust or agency.
- Subdivision rights.
- Public access trails.
- Archeological protection.
- Surface water protection.
- Riparian buffer zones.
- Special treatment areas, such as a restriction that woodland shall never be converted to agricultural land.
- Gravel extraction sites.
- Option to purchase at agricultural value.
- A right of first refusal, which gives the land trust or agency the right to match any offer to purchase the property.
- Historic resource protection.
- Façade easements that place design and construction restrictions on the exterior of a building.

Effect on Neighboring Properties

Note that a property with development limitations may enhance the value of neighboring properties. For example, land adjacent to a property subject to a conservation easement would receive a benefit similar to one adjacent to land conserved by state or federal governments.

Summary

The object of the analysis is to determine the value per acre of each category of conserved land and develop a grade factor that can be applied to existing land schedules. The rule that you compare “apples to apples” is paramount. Conservation easement restrictions vary dramatically—only similarly conserved land should be used for sales analysis. The result should produce an accurate value or multiplier that can be applied to the land value to reflect the impact of the conservation easement on market value.

This guidance was developed in consultation with Vermont Assessors and Listers Association, Vermont Housing and Conservation Board, and Vermont Land Trust.