

CONSERVATION EASEMENT OVERVIEW

Greenbelt Advisory Commission

September 5, 2013



Overview



- Easement Basics
- Conservation Easement Appraisals
- Tax Implications
- Drafting Easements
- Standard Easement Provisions
- Monitoring and Enforcement

What is a Conservation Easement?



- Conservation Easement - Legal agreement to limit the type and amount of development to protect a resource.
- Allows a organization / agency to monitor and enforce the protection of the property's conservation values.
- Perpetual agreement

CONSERVATION EASEMENT IS...



- A contract between a 'qualified organization' and a landowner...

And all future landowners

- Spells out how land will be protected for future generations

A conservation easement does **not...**



- ❑ Allow the public to access (but can)
- ❑ Prohibit (or force) hunting
- ❑ Require specific farming or gardening practices
- ❑ Prohibit landowner from selling land, making money from it, or passing it on to their heirs
- ❑ Allow things not allowed by local zoning

Conservation Easements

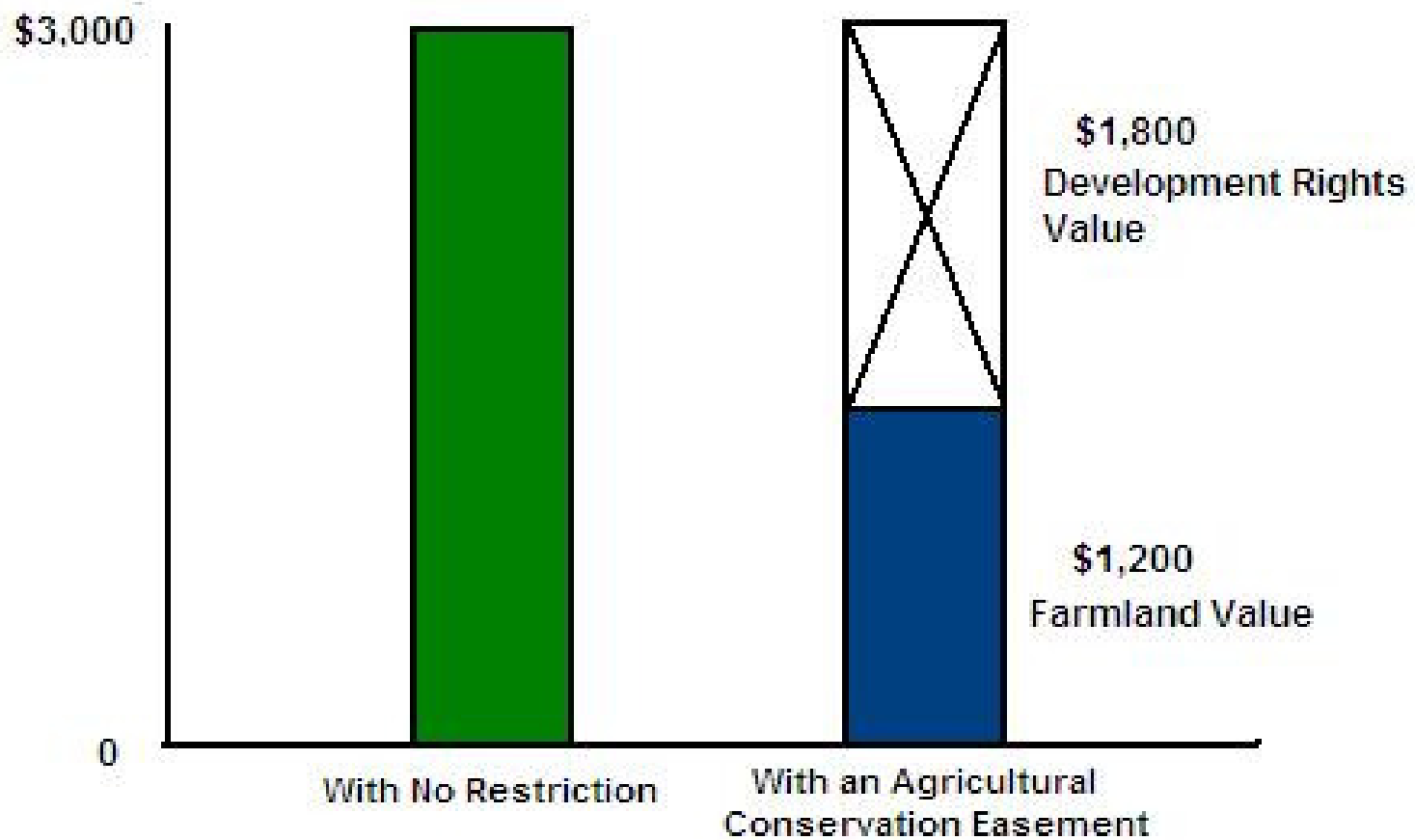


Value of Easement:

Fair Market Value before
- Market Value after

Value of CE

Example of Development Rights Value for One Acre of Farmland



Relationships



- Successful working land conservation easements are primarily based on the relationship between the landowner and the conservation organization.
- Therefore the quality and effectiveness of the relationship has a direct impact on the success or failure of the land preservation effort.
- Getting the relationship right the first time pays dividends later.

What Makes Working Land Conservation Easements Different?



- The Landowner!
- Unlike most open space conservation easements the landowner is working the land
- The landowner typically remains on the property. They're always there!
- The use of the land is dynamic rather than static.

What does the landowner want to achieve?



Landowner Donations

- Value of Easement = \$200,000
- Purchase Price = \$120,000
- **Donation Value = \$80,000**

- Adjusted gross income = \$50,000
 - ▣ Maximum of 30% of AGI (\$15,000) per year
 - ▣ Carry forward up to an additional 5 years
- Deduction
 - Years 1 - 5 = \$15,000 deduction
 - Year 6 = Remaining \$5,000

Like Kind Exchanges -- 1031



- Working lands like agriculture and forestry
- Tax implications
- No capital gains on equal value exchanged
- Timing is critical
- Finding an exchange agent
 - ▣ Title company, attorney or exchange agent

Steps in Easement Drafting



- Conservation Easement Template
- Meet with landowner and family members
- Walk Property
- City attorney review
- Landowner and their attorney review
- USDA Review (if applicable)
- Modifications
- Final Easement

Philosophical Points



- Language clear and precise
- Consistent with other easements
- Maps referenced
- Title work - right owners

Standard Easement Components

- Preamble
- Conservation Values
- Restrictions
- Reserve Rights (Permitted)
- Notice Requirements
- General Provisions
- Signatures
- Attachments
 - ▣ Baseline Document



Restrictions



- Division of property
- Industrial or commercial use
- Residential use
- Construction of buildings, roads, utilities
- Dumping, utilities, recreational use
- Mining and Resource extraction

Reserved Rights (Permitted)



- Agricultural or forestry use
- Passive Recreation or education
- Seasonal structures and fences
- Habitat management
- Convey
- Existing uses and farm lanes

General Provisions



- Assignment
- Amendment
- Termination or extinguishment
- Convey
- No Merger

Challenging Concepts

- Farmstead Complex & Impervious
- Mining
- Amendments



Farmstead Complex



- ❑ Landowners must identify in the baseline document
- ❑ Future agriculture buildings
- ❑ 2% of easement area
- ❑ Farmer retains right to repair, replace and construct farm related buildings
- ❑ Buildings can not alter agriculture value

Mining



- Mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral is prohibited
 - Soil, Sand or gravel allowed solely for a permitted use on the Property in a manner that is minimal in scope and impact.
 - Not exceeding one acre.
 - Oil and gas exploration and extraction is allowed, if the method of extraction is from another parcel.

Amendment Clauses



- All parties on Easement – i.e. U.S., Grantor and Grantee – must agree
- Consistent with conservation values stated in easement
 - ▣ Be neutral or enhance conservation values of property

Monitoring and Enforcement



□ Monitoring

- Right of entry for inspection
- Right of evidence for enforcement

□ Enforcement

Documentation

- Baseline
- Update of baseline



YOUR QUESTIONS

