

Attachment 2 – Economic Value of Conservation Easements on Private Property

The value of a conservation easement is defined as the difference between the land's value without the easement and its value with the easement restriction. Landowners voluntarily place conservation easements on their private property for a variety of reasons. Their motivations include permanently maintaining wildlife and habitat lands, providing a buffer from unwanted urban development, preserving open space and scenic landscape, generating income from sale of an easement, and maintaining productive farm and ranch lands.¹ However, a primary reason for placing a conservation easement is to ensure success in passing on the land to the next generation. Often times when the estate tax is triggered upon the owner's death and transfer to heirs, the amount of the tax is so great due to the value of the land that it could induce the unwilling sale of the property. A conservation easement could help to eliminate this unwanted scenario through the potential reduction of the property's value and subsequent tax savings.

The flexibility of a conservation easement contract is attractive in that it can be written to meet a particular landowner's needs while protecting the property's natural resources. A contract could include preserving some limited development potential on the land that is compatible with the existing use, such as an agricultural use. With the sale or donation of a conservation easement, the landowner retains fee title ownership for the land, but some or all of the other associated rights to use of the land is transferred to a unit of government, or a charitable conservation or historic preservation organization such as a non-profit land trust.

A Williamson Act contract is similar to an agricultural conservation easement in that both provide legal binding agreements to limit certain activities on the land as well as provide a reduction in assessed property value. However, a Williamson Act contract, as well as a Farmland Security Zone, expires after ten and twenty years, respectively, whereas a conservation easement is typically permanent. Future owners of the land will be bound by the conditions of the easement agreement.

When properly structured, a conservation easement can have financial benefits to the landowner and heirs. The benefits include qualifying a landowner for significant estate tax or inheritance tax savings, reduction of income taxes, and reduction of property taxes. To qualify for an income tax deduction, the tax law requires that the easement be "for conservation purposes" and meet one of the conditions, as defined in the Internal Revenue Service Code.² Under state law, the purpose of a conservation easement is "to retain land predominantly in its natural, scenic, historical, agricultural, forested or open-space condition".³

¹ Westrup, Laura. Land Conservation tools: the effective use of Agricultural Conservation Easements and the Williamson Act. California State Parks, Planning Division. June 2006

² Grossman, Lawrence. Smart Investment Strategies for California's Rural Landowners. December 2000.

³ Pollack, Harry. How Long is Forever? Agricultural Easements and the "In Perpetuity" Clause. Great Valley Center, Issue No. 2, Spring 2002.

The donation of a conservation easement to a land trust is treated as a charitable gift of the development rights. The donation creates a charitable tax deduction, equal to the value of the conservation easement, on the landowner's Federal and State income tax returns.⁴ The federal tax incentive for conservation easement donations includes a tax deduction a donor can take plus allowing a number of years to take the deductions. Property taxes can also be reduced as a result of the reduced valuation on the property subject to the conservation easement. A conservation easement can be valuable for estate planning purposes and transferring of land to heirs for the continuation of existing uses such as agricultural business.

A research effort by the Lincoln Institute of Land Policy calculates sample tax effects for a range of tax incentives and shows that many easements can qualify for tax subsidies that more than pay for the value of the easement.⁵ Future growth in property values will increase the deferred tax savings; in some cases the aggregate savings may be as much as twice the original value of the donation. The common use of deductions strongly favors donations by property owners with substantial tax liabilities, while property owners with low tax liabilities, who may have property with equal or greater conservation values, often have much less incentive to donate easements.

Depending on the location of the easement on the subject property, land use restrictions could affect only certain portions of a property but allow development on the remainder. This could impact the sales value of the property when it is sold or transferred. Research on conservation easements and property values by another institution shows that conservation easements have only modest, if any, negative impact on property values.⁶

However, further empirical research from the same study shows that, by indicating whether or not the easement restrictions were in place prior to the sale, it appears that easements do not reduce property values for residential parcels, but do have a significant negative impact on vacant parcels. This could suggest there is a strong demand for conservation properties with residences but also that there may be a selection issue where higher quality residential properties are more likely to have easements. On vacant lands, it appears that the conservation easements are most likely to be placed on the least valuable properties where it is less costly for landowners to give up their development rights. One implication is that voluntary easements may be protecting the parcels that are least likely to be developed.

Provided that the Priority Conservation Areas (PCAs) identified in the Oak Woodland Management Plan occur in primarily agricultural and rural residential zoned designations, conservation easements can make permanent these existing uses (e.g. farming, grazing and agriculture). Development rights would be transferred, although some limited

⁴ U.S. Fish & Wildlife Service. Habitat Management Techniques.

⁵ Sundberg, Jeffrey O. and Richard F. Dye. Tax and Property Value Effects of Conservation Easements. Lincoln Institute of Land Policy, Lincoln Institute Product Code: WP06JS1, 2006.

⁶ Michael, Jeffrey A. Conservation Easements and Property Values: Selection Effects and Differential Impacts on Vacant and Residential Properties. Department of Economics Towson University, Towson, MD. May 2007.

compatible development could be negotiated in the conservation easement agreement. Actual valuation of property in a conservation easement would depend upon conditions such as location of the easement on the parcel and the development potential in the easement location, as allowed by current zoning.