



SHACKELFORD & ASSOCIATES

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*Commercial / Residential / MAI Appraisals * Full Service Brokerage * County Revaluation Services*

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Conservation Easement Appraisal Frequently Asked Questions

Q: How is my conservation easement value determined?

A: The value of the conservation easement, or sometimes referred to as the diminution of value caused by the imposition of the conservation easement, is determined by using the before and after method. In this method, the appraiser determines the value of the property prior to the conservation easement and the value of the property subject to the easement being in place. The difference between the before value and the after value is the value of the easement or the diminution of value caused by the easement.

Q: How does the appraiser arrive at a value of the property before and after the easement is in place?

A: There are three approaches to value, the Cost Approach, Sales Comparison Approach, and Income Approach. In conservation easement appraisals, the sales comparison approach is the preferred approach and therefore we'll discuss that approach here.

In the sales comparison approach, while analyzing the before easement value, the appraiser searches for recent sales of similar properties. The best comparable sales will be those that have a similar highest and best use as the subject property, are recent sales, are in close proximity to the subject, and share other similar attributes. After the best comparables are selected, the appraiser will make adjustments as necessary to the sales prices of the comparables based on the dissimilarities between the comparables and the subject property.

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This process is repeated to determine the value of the property with the easement in place. In this analysis, comparable properties are sought similar to the search performed in the before analysis, but with a different set of rights, as some property rights will be forfeited by the conservation easement. The best after comparables are properties that have sold with an easement already in place. Even these comparables sometimes require adjustments as not all conservation easements restrict or allow the same uses. In some cases, none of these sales are available in close proximity to the subject. In this case, we may use a mixture of sales of properties that sold with an easement in place outside of the subject's immediate market area as well as properties in close proximity to the subject that sold without an easement in place, but have a similar highest and best use as the subject with the easement in place due to certain physical characteristics.

Q: Are all conservation easements appraised under the same rules or are there different rules for appraisals based on the intended user and intended use of the appraisal report?

A: There are different rules for conservation easement appraisals based on the intended use, intended user, and funding for the project. The different rules are applied based on the following factors: if the easement represents a charitable contribution or a bargain sale that will be used as a tax deduction; if the easement is being purchased by a federal agency or federal funds are being utilized in the transaction; if the easement is being purchased by a state or local agency, with no federal funds being used, and is not going to go to the IRS to substantiate a charitable deduction for a bargain sale.

All conservation easement appraisals are performed under the Uniform Standards of Professional Appraisal Standards (USPAP), which are generally accepted appraisal standards. Appraisals performed for purchase by state and local agencies, with no federal funds being used that will not be going to the IRS to substantiate a charitable deduction must only meet USPAP requirements. Appraisals performed for charitable contributions must also conform to additional noncash charitable contribution appraisal guidelines provided by the IRS. Appraisals performed for many federal agencies and/or involving federal funds must conform to the Uniform Appraisal Standards for Federal Land Acquisitions. (UASFLA or also known as the "Yellow Book") These standards are compatible with USPAP, but also contain additional specific requirements.

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One of the biggest differences between the different types of requirements involves determining the property required to be appraised before and after to determine the value of the conservation easement. For appraisals performed for purchase by state and local agencies, with no federal funds being used that will not be going to the IRS to substantiate a charitable deduction, only the property being placed under easement needs to be appraised, even if the easement area represents only a portion of the total property.

Under UASFLA (Yellow Book) regulations, the property to be appraised to determine the value of the conservation easement is referred to as the larger parcel. The larger parcel is defined as that tract, or those tracts, of lands which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements of consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

Under IRS regulations for deductions for noncash charitable contributions, the property to be appraised includes all contiguous family owned parcels. Regulations define donor's family as brothers, sisters, spouse, parents and grandparents, children and grandchildren. In addition to appraising all contiguous family owned parcels, under IRS regulations appraisers must also consider the potential enhancement of parcels, whether contiguous or not. IRS regulations state that if the conservation easement has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the enhancement must be deducted from the value of the conservation easement, whether or not such property is contiguous. The value of the enhancement does not change the value of the conservation easement, but reduces the amount of your tax deduction by the value of the enhancement. The IRS defines related persons as those family members mentioned in determining the contiguous family owned parcels, but also corporations, partnerships, and trusts. The enhancement is measured by a before and after valuation of each individual parcel, each of which should be contained in the appraisal report. If not enhanced, the appraiser is responsible for a discussion of why the parcel is not enhanced.

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Q: I don't understand how an easement changes the value of my property. I farm it now and I can farm it with an easement in place. What am I losing?

A: An appraisal has to consider the value of the property at its highest and best use. *The Appraisal of Real Estate* defines highest and best use as:

the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.¹

- **Permissible Use.** What uses are permitted by zoning and other legal restrictions?
- **Possible Use.** To what use is the site physically adaptable?
- **Feasible Use.** Which possible and permissible use will produce any net return to the owner of the site?
- **Maximally Productive.** Among the feasible uses which use will produce the highest net return, (i.e., the highest present worth)?

Highest and Best Use should not be confused with current use. The highest and best use of a property may be a residential development if there is significant demand for residential development in the area. However, the landowner may be resisting the pressure to develop the property and continuing to farm the property. The fact that he is currently farming the property does not in any way diminish the value of the property at its highest and best use.

If the landowner places an easement restricting development of the property, and assuming that the value of land for development exceeds the value of land strictly for agricultural purposes in this area, the property has declined in value as a result of the easement, despite the fact that the landowner can continue to farm the property as before the easement. This is due to the fact that he has given up a valuable property right. The fact that he wasn't exercising that right, and may have never intended to exercise that right doesn't change the fact that it carried value.

¹ *The Appraisal of Real Estate* 11th Edition, Page 297, Appraisal Institute

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Q: I have already donated a conservation easement. Can you still appraise it even though it's already been donated?

A: To be considered for federal tax deduction purposes, the appraisal must not be more than 60 days prior to the date of the contribution of the easement. An appraisal can be performed at any time after that date, up until the date the tax return is due, including extensions. Any appraisal performed after the date of the contribution will have an effective date being the date of contribution.

Q: What types of easement clauses can impact my conservation easement value either in a positive or negative manner?

A: Since appraisers consider the diminution of value caused by the removal of property rights, easement values can be impacted by which rights are being retained and which rights are being removed. Some of the rights that can be restricted by a conservation easement include development rights, the right to subdivide the property, agricultural rights, forestry rights, etc. The more rights you attempt to retain, the less valuable your easement will be. Conversely, the more rights removed by the easement, the more valuable your easement will be. One common right many landowners attempt to retain is a home site, or even multiple home sites. In many areas, these home sites can carry significant value and the retention of a home site can reduce your conservation easement value.

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Q: Can any real estate appraiser appraise a conservation easement, or does it take a special certification?

A: The IRS requires that any conservation easement value taken as a deduction must be appraised by a “qualified appraiser”. For IRS purposes, an individual will not be treated as a qualified appraiser unless that individual

- a) Has earned an appraisal designation from a recognized professional appraisal organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary of the Treasury.
- b) Regularly performs appraisals for which the individual receives compensation.
- c) Meets such other requirements as may be prescribed by the Secretary in regulations or other guidance
- d) Demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and
- e) Has not been prohibited from practicing before the IRS by the Secretary at any time during the three-year period ending on the date of the appraisal.

As you can see, not just any appraiser is qualified to appraise conservation easements for tax purposes. At Shackelford & Associates, we have two appraisers on staff who meet the IRS requirements for qualified appraisers, including an MAI appraiser, and have appraised more than 150 conservation easements. Both of our conservation easement appraisers have significant conservation easement appraisal experience and both have taken the weeklong certification course, “Valuation of Conservation Easements”, which was put together by the Land Trust Alliance, the Appraisal Institute, the American Society of Farm Managers and Rural Appraisers, and the American Society of Appraisers. Further, both of our conservation easement appraisers have completed the “Yellow Book” seminar which is required for appraising property under UASFLA standards. Our firm is well educated, qualified, and experienced in all types of conservation easement appraisals.

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