



Land and water (and conservation easements)

Changing Lands, Changing Hands

June 14, 2017

Conservation easement

Voluntary legal agreement that restricts or prohibits certain types of development on a property and certain uses of a property in order protect the property's conservation values forever

- Held by public entity or nonprofit organization
- Perpetual and enforceable (by holder)

Conservation easement approach

Typical restrictions in a conservation easement:

- No subdivision or limited division
- Limited homes and other buildings within identified areas (“building envelopes”)
- No surface mining
- Continued historic use of water rights on the property

Template

- Staff driven, attorney-reviewed
- Seeks to limit impacts rather than trying to identify all possible permitted or restricted activities
- *It is all about the conservation values*

Easement valuation

“Before Value” –

“After Value” =

Conservation Easement Value

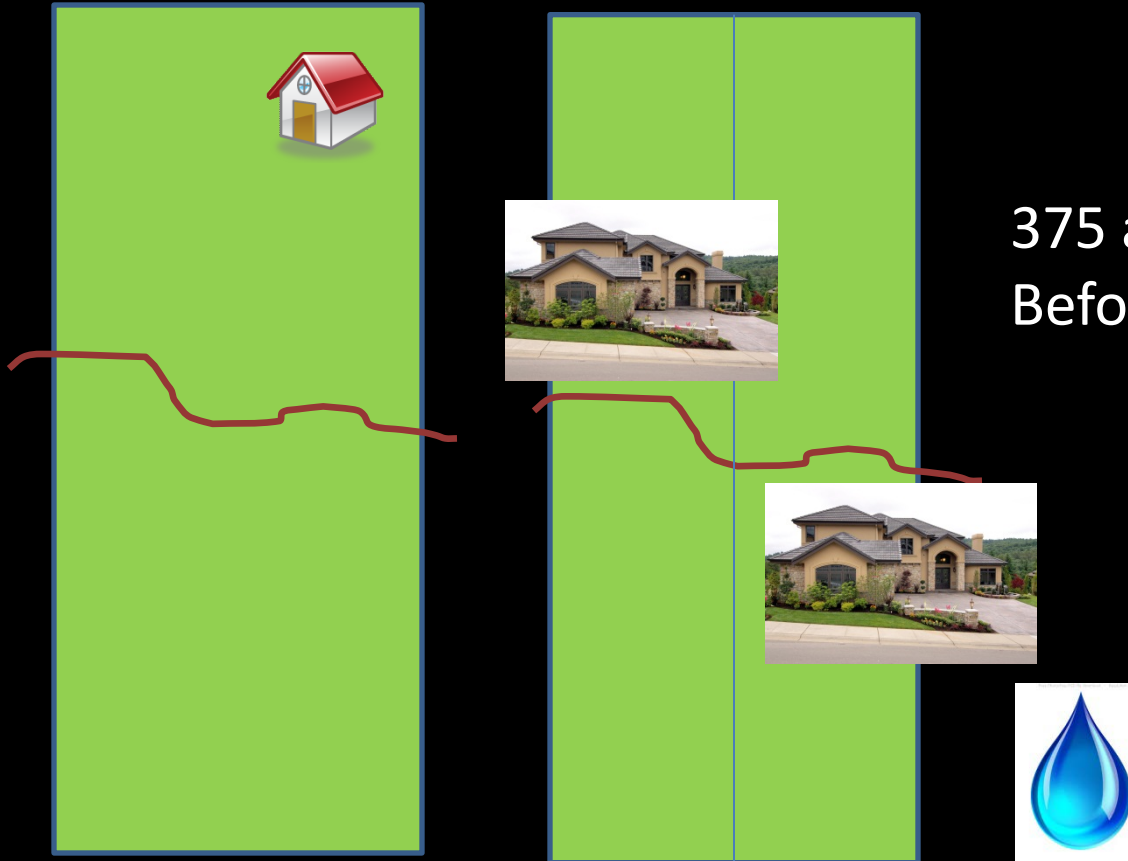
Before value involves a determination of highest and best use; uses adjusted comparable sales data

After value is based on impact of the conservation easement restrictions on the highest and best use; uses sales of comparable conservation easement encumbered properties

Example

Current farm

Highest and best use



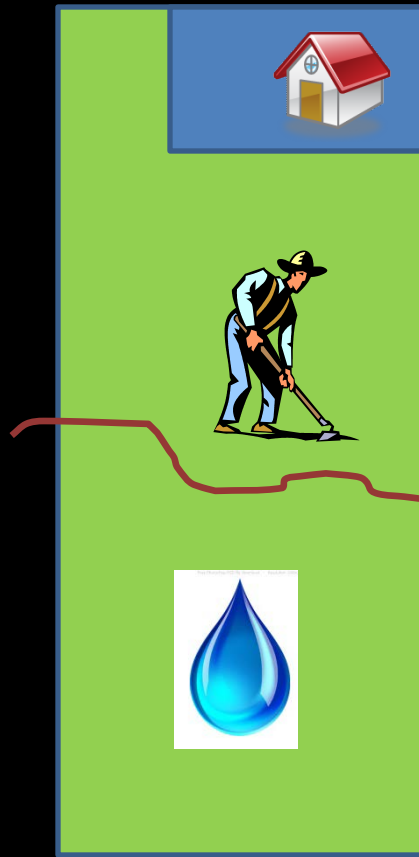
375 acres at \$8,000/acre
Before value of \$3,000,000

Example

Conservation easement



Highest and best use
after conservation easement



375 acres at \$5,333/acre
After value of \$2,000,000
(CE reduces the property's value
by 33%)

Conservation Easement
Value
\$1,000,000

Landowner Benefits

Partial purchase of conservation easement

Donation of conservation easement

Tax benefits

- Federal income tax deduction
- Federal estate tax reduction
- Federal estate tax exclusion
- State income tax credit (transferrable)
- Local assessment treatment

Water Rights and Conservation Easements

- Industry standard has been to include all water rights and tie them to the land they have irrigated (i.e. prevent change of historic use, lease, or sale)
- What does this mean for a landowner?
 - Landowner donating/selling easement
 - Successor landowner trying to purchase ag land

A more flexible future?

- Increasing recognition of need for multiple uses for water rights
- AND increasing recognition of need for farmers to have options to diversify and use water as an alternative “crop”
- Goal – permanently tie water using conservation easements, but retain flexibility for leasing arrangements

Questions?

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