

Your Loss Is Not My Benefit; Your Gain Is Not My Detriment



The Tenuous Link Between Value to Landowner and Value to Conservation in Easement Transactions

How does decrease or increase in market value of land resulting from establishing or amending an easement relate to the conservation easement's value? What do we mean when we refer to "value"? This guide explores these questions.

Introduction

This guide does not review the numerous factors to consider in analyzing whether to move forward with an easement amendment.¹ It does not provide guidance regarding the crafting of restrictive covenants. It aims only to bring clarity to thinking in regard to the market value of land and its *tenuous relationship* to the financial and conservation value of a conservation easement.

We can think of the word *value* in market terms—the amount of money that a willing buyer would pay a willing seller in an arm's length transaction. Or we can view *value* in conservation terms: water quality, wildlife habitat, scenic, or other environmental benefits delivered by an action or state of affairs. We might attach a dollar value to these conservation benefits based on the ecosystem services they provide, but—generally speaking and barring fundamental changes in our present economic system—they do not hold market value; there is no market in which to buy and sell the conservation value.

Value Impacts of Easement Amendments

Consider a proposed amendment to a conservation easement. Let's assume that no money changes hands between landowner and land trust. Let's also assume that the amendment would result in a lower market value for the eased property.

Can we gather from this information alone that the land trust would gain value in this amendment transaction? No!

In strictly economic—dollars on the barrel—terms, the value delivered to the land trust is ZERO whether the market value of the property drops by 90% or increases a hundredfold. A landowner losing asset value in no way increases the marketable assets of the land trust. No matter the scenario, conservation easements consistently have essentially zero value on the market because they are unmarketable.²

In conservation terms, the scenario presents too little information to evaluate whether the amendment delivers additional wildlife, water, scenic, or other conservation value. From the reduction in market value, one might infer that construction or other activities have been further limited in such a way as to create additional conservation value. While this inference likely will be correct, you cannot reliably discern the impact on conservation values by looking at the financial impact on the landowner; you must instead directly examine how the easement changes will affect the land.

Value Impacts of Initial Easement Conditions

Consider now the deliberation over the terms of a grant of conservation easement that is to be conveyed from landowners to land trust. Let's assume the parties are contemplating two possibilities regarding the types of uses permitted in a small, well-defined area (the "Minimal Protection Area") within the larger property to be eased:

Alternative A. The restrictive covenants will restrict all new improvements on the land to the Minimal Protection Area. Use of the Minimal Protection Area is further restricted to residential

use or *any use that has no more impact on conservation values than potential residential uses* (for example, home businesses or some light commercial). If the transaction were to proceed, the easement would result in a \$200,000 reduction in the market value of the land.

Alternative B. The owners recognize that they only have interest in residential use; they are relatively young and could care less about the impact of restrictions on future owners. Number-crunching suggests that the market value of the land would be reduced by \$300,000 if commercial uses of the Minimal Protection Area were to be prohibited and only residential use allowed. Due to the greater loss of market value brought by the more restrictive covenants on the Minimal Protection Area as compared to Alternative A, they could claim a larger tax deduction (or perhaps sell the conservation easement for a larger sum) based on the before-and-after land values determined by appraisal.

Alternatives A and B result in essentially the same conservation outcomes. Neither alternative delivers appreciably better wildlife, water, scenic, or other conservation values than the other. Yet the alternatives deliver strikingly different financial results to the landowners.

Consider now a different scenario where a fixed number of future structures (or impervious coverage) is to be permitted on a property. The easement's covenants could be drafted to require that the structures be concentrated in one location chosen to be of least impact to conservation values, or the covenants could instead permit them to be spread across the property in any number of configurations. The concentrated approach would deliver far superior conservation results, but the choice of it over another configuration may or may not make any difference in the financial outcome for the landowners (although they may have preferences regarding placement).

Conclusion

One should not assume a straightforward relationship between the change in market value of the land and the conservation benefits delivered (or conservation detriment caused).

One should not assume that one set of restrictive covenants is superior in conservation terms to another purely on the basis of impact of those covenants on land value.

No matter the scenario, the value of the easement as a financial asset to the land trust is the same—essentially zero. Also, as in the amendment scenario, the choice of restrictive covenants may or may not affect conservation values.

The latest version of this guide and related resources are posted at [WeConservePA.org](https://www.WeConservePA.org)

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¹ For that, see the [Guide and Model Policy for Conservation Easement Amendment](#)

² Could there be a scenario where one land trust covets another's conservation easement for some marketing or other advantage? And from this, could one endeavor to assign some financial value to the easement? Sure, but this is quite the stretch.