

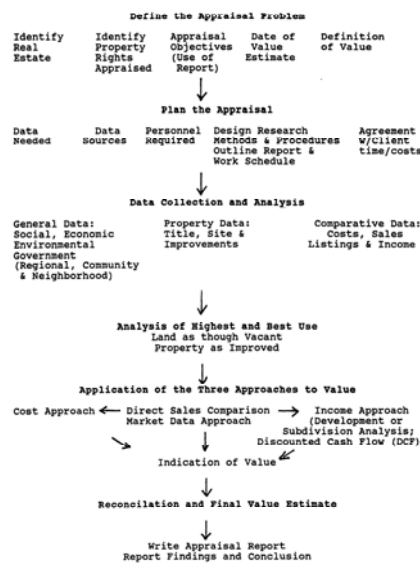
VALUATION OF CONSERVATION EASEMENTS

WHAT MAKES CONSERVATION APPRAISALS UNIQUE



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THE APPRAISAL PROCESS - FLOW CHART



Before and After Appraisals:

- **The before and after approach to value measures the difference between the fair market value of the property unrestricted by the easement and the fair market value of the property immediately after the imposition of an easement.** In other words, what difference (if any) exists in the value of the property with and without the easement.
- Easement Terms are essential to the after value
 - Read, know and understand the easement terms!!

- **The Appraisal Report needed to successfully complete an assignment, in terms of reporting format and in terms of identifying the property to be appraised, depends on the Intended Use and the Intended Users.**
- **Intended Use Defines Subject Property**
- **What is the Subject Property to be Appraised?** Who are the Intended User(s) and what is the Intended Use?

- **Conventional Appraisal under USPAP** – If a conservation easement were being purchased by an entity outright with no donation or bargain sale and no federal monies requiring Yellow Book standards be met, then the property being appraised is the property being placed under easement typically called the subject property.
- **Uniform Standards of Professional Appraisal Practice (USPAP)**
The financial Institutions Reform, Recovery and Enforcement Act of 1989 recognize USPAP as the generally accepted appraisal standards. State Appraiser Certification and Licensing Boards, federal, state, and local agencies, appraisal services, and appraisal trade associations require compliance with USPAP.
- USPAP purpose is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions and conclusions to intended users of their services in a manner that is meaningful and not misleading.
- **USPAP - Uniform Standards of Professional Appraisal Practice**
These are minimal standards by which all appraisers must comply.

- **Federal Monies that Require Yellow Book Appraisals** - If a conservation easement were being purchased using federal monies which require an appraisal done to the standards set forth in the Uniform Standards for Federal Land Acquisitions (aka Yellow Book) the property to be appraised is typically called the “larger parcel”.
- Like traditional eminent domain appraisals, the appraisal of a conservation easement using Yellow Book must define the larger parcel. In determining the larger parcel three criteria apply:
 1. The contiguity of title.
 2. Physical contiguity.
 3. Contiguity of highest and best use.

Consider:

3 Woodland Tracts not contiguous but near one another – Are they to be appraised as 3 separate parcels or does Highest and Best Use indicate they are to be appraised as 1 parcel.

- **Role of the Review Appraiser**
- **Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA aka Yellow Book)** Yellow Book may be required by certain public programs when public monies are involved. Specific public programs may have additional supplemental standards. Conflict between Yellow Book and USPAP are minimal. When conflicts occur the Yellow Book take precedence and it may be necessary to invoke the Jurisdictional Exception Rule to USPAP. Example, Exposure Time USPAP SR 1-2(c) required by USPAP not by Yellow Book: Yellow Book has appraiser disregard the influence of the “Project”.
- Yellow Book has some very detailed requirements:
 - Subject-sales history 10 yrs, not 3 yrs USPAP: Report last sale
 - Comparable Photos – who took and where: North arrows on all maps
- **Beware of Supplemental Standards** – Example Dept. of Agriculture’s Natural Resource Conservation Service (NRCS)

Conservation Easement that is being Donated/Bargain Sale (IRS)

- If a conservation easement is being donated or sold as a bargain sale (therefore having some donative element) then the client is the landowner and the report must conform to Treasury Regulations. The IRS has a specific requirement defining the property to be appraised.
- Internal Revenue Service, Reg.Sec.1.170A-14(h)(3) reads: "The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family as defined in section 267(c)(4) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction".
- A conservation easement property being appraised under treasury regulations may be referred to as the "contiguous family-owned property". Donor's family is defined as "brothers, sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants".
- See Internal Revenue Code 267 (c)(4) for definition of Donor's family.

- **Two Features Unique to the IRS:**
 - **Subject Property**
 - **Enhancement**
- **Other IRS Requirements for QUALIFIED APPRAISAL**
 1. Can not be made earlier than 60 days before date of contribution. Can be made after date of contribution but before tax filing and the effective date is the date of contribution. Appraisal must be received by donor before due date of tax return including extensions.
- **Characteristics of easements qualifying them for deduction:**
 1. Must be perpetual (written and recorded)
 2. Must be exclusively for conservation purposes
 3. Must be granted to a proper recipient such as a government body or a 501(C)(3) conservation organization
 4. Must be a gift – No Quid Pro Quo – **Foresters/Surveyors** - beware of your language on a survey plan or in a planning board meeting. Avoid creating the impression that a landowner will be conveying a CE as a condition to receiving whatever approval is being sought.
- **Beware Amendments**

- **IRS Enhancement:**

The appraisal of a Conservation Easement must consider the Easement's impact on any adjacent or nearby property owned by the Grantor or other related persons. Because adjoining or nearby properties owned by the donor or related persons are to be considered for any possible enhancement in the "after value" the appraiser's task is not limited to just the land encumbered by the conservation easement.

- Reg. Sec. 1.170A-14(h)(3) which says in part "If the granting of a perpetual conservation restriction after January 14, 1986 has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous". The fact, that enhancement is to be considered for the "contiguous family-owned property" itself is found in the regulatory language where it states: "Further there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of the property. In such instances, no deduction would be allowable". In short, enhancement is to be considered for the property itself as well as contiguous and/or nearby properties owned by the Grantor or Related Persons.
- A related person includes family members as defined in IRS Section 267(c)(4) and refers to corporations, partnerships and trust. In order to be identified as a related person, one must have a controlling interest (more than 50%) in the corporation, partnership or trust.
- See Internal Revenue Code 267 (b) for definition of Related Persons.

Items Helpful to Appraiser Re: Request for Proposals (RFP's)

- **Identify the client** with a written engagement letter requiring the clients' signature and a deposit.
- Identify the Intended User(S) and Intended Use of the report.
- Identify the property to be appraised which is dependent upon the intended use and user(s).
- Realize the reporting format will be dependent upon the intended use and user(s). A Restricted Appraisal Report is for the client only, it is not to be used by any intended user beyond the client.

Documents helpful when provided to the Appraiser:

- Source Deed (Legal Description)
- Tax Map and Lot Numbers (Maps, Surveys and Sketches)
- Assessment Cards
- Town's Land Use Regulations/Zoning
- **Land Management Plan and/or Timber Cruise**
- Forest Legacy – Advocating an Independent Timber Cruise
- Consider a cabin site as a reserved right on a land tract
- Proposed Conservation Easement Deed - In order for an appraiser to do a good job in completing an appraisal he/she must understand the easement terms.
- Are there any known encroachments or easements presently on the property?
- Depending on complexity additional consultants may be required (land planner, engineers, foresters etc.)
- One **contact person** for the project
- **Be aware that a significant lead time may be required as most appraisers who specialize in conservation easement appraisals are frequently backlogged.**

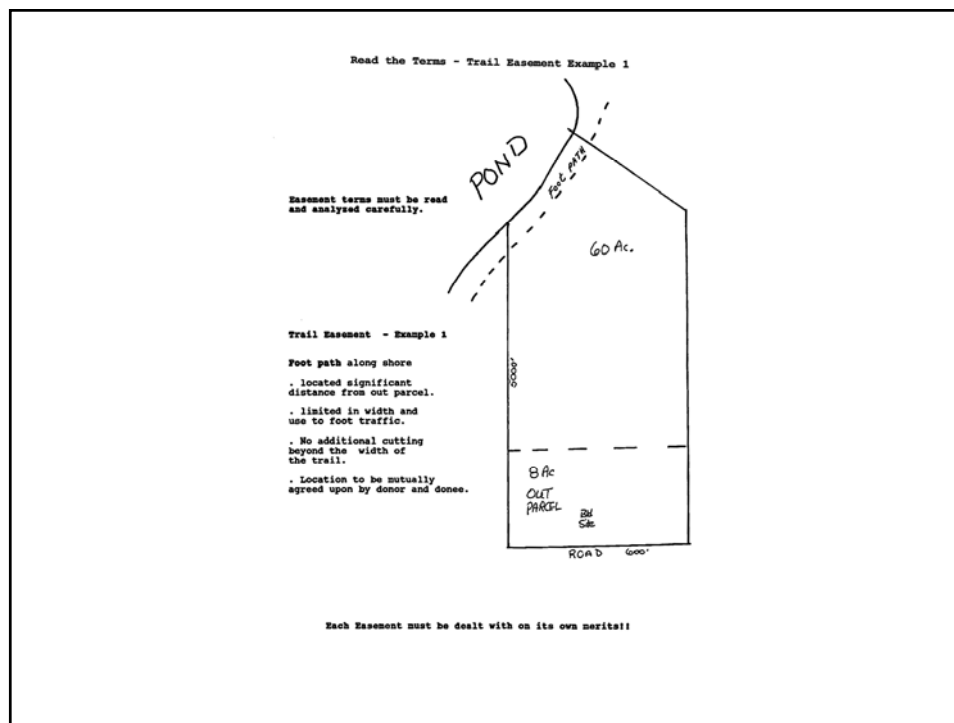
Highest and Best Use Analysis in Both Before and After Valuation:

- Highest and Best Use is that reasonable and probable use of a site which will bring the greatest economic return over a given period of time. The highest and best use of land is not limited to its present use, but considers a variety of uses including the existing uses and the potential, alternative future uses.
- An analysis as to highest and best use requires the synthesis of four factors. They are:
 1. **Permissible Use (Legal)** - What is permitted by zoning and deed restrictions on the site in question?
 2. **Physical Adaptability** - Do the physical characteristics of the land affect its potential use?
 3. **Economic Feasibility and Demand**
 4. **The Most Profitable Use.** Of the feasible uses what would be the most profitable use?

- Highest and best use considerations should be limited to those uses which have a strong probability of achievement.
- Elements affecting value that depend upon events or a combination of occurrences which, while within the realm of possibility, are remote, speculative, or conjectural, should be excluded from consideration.
- It should be recognized that highest and best use results from the appraiser's judgment and analytical skills.
- Highest and best use is an opinion based upon analysis, and not a fact which can be derived.
- In appraisal practice, highest and best use becomes the "most probable use" among realistic alternative uses for land and improvements.

- Example of a tax case: Stanley Works and Subsidiaries, Petitioner v. Commissioner of Internal Revenue, Respondent Docket NO. 26475-83, Filed August 12, 1986.
- Be aware that current usage is not by itself the determinant of Highest and Best Use in either the before or after value.
- Comment: Although the valuation of a conservation easement for its development rights is a common misnomer for easement value, each conservation easement must be dealt with on its own merits.
- A subdivision analysis should not be used exclusively as the method of valuation and if it is presented it should only be used as a secondary method and/or as a supportive method of valuation.

THE NEXT THREE IMAGES ARE ENLARGED AT THE END



Read the Terms - Trail Easement Example 2

POND

Easement terms must be read and analyzed carefully.

60 AC.

Scenic Trail

8 AC OUT PARCEL

ROAD 6000'

Trail Easement - Example 2

A Trail 25 feet running through central portion of restricted land with a maintenance provision that includes limiting forestry activity for a width of 150 feet on either side of the trail to salvage cuts, trail maintenance, vista clearing or removal of diseased or hazardous trees.

- . Vista from the trail and overlooks are to be maintained.
- . Grantor does not retain the right to post land against pedestrian, or motorized traffic (encompasses).

Each Easement must be dealt with on its own merits!!

Read the Terms - Trail Easement Example 3

POND

Easement terms must be read and analyzed carefully.

60 AC.

8 AC OUT PARCEL

ROAD 6000'

Trail Easement - Example 3

Grantee has the right to construct, manage and maintain a footpath 25 feet in width over the encumbered property and a 150 wide cutting provision limiting forestry activity and identifying a trail corridor within which the trail may be relocated in case of heavy usage, to prevent erosion and/or for public safety.

- . Grantor is required to develop vehicular access and a parking area for the general public along the access road shown on the plan.
- . Grantee may post signs to inform the public of the entrance, access and parking for the respective trails.

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What is a Good Appraisal?

- A good appraisal of a conservation easement is measured by its being a competent, thorough and disinterested analysis of all property rights retained by the landowner(s).
- Landowner(s) should be aware that the Appraiser is **Not** an advocate for the landowner or any other party.

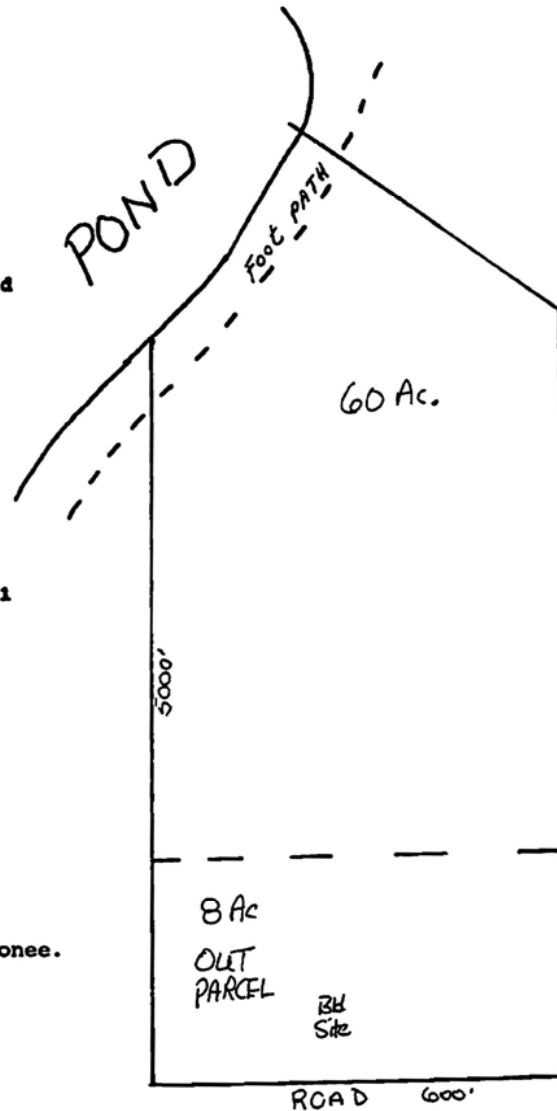
Read the Terms - Trail Easement Example 1

Easement terms must be read
and analyzed carefully.

Trail Easement - Example 1

Foot path along shore

- . located significant distance from out parcel.
- . limited in width and use to foot traffic.
- . No additional cutting beyond the width of the trail.
- . Location to be mutually agreed upon by donor and donee.



Each Easement must be dealt with on its own merits!!

Read the Terms - Trail Easement Example 2

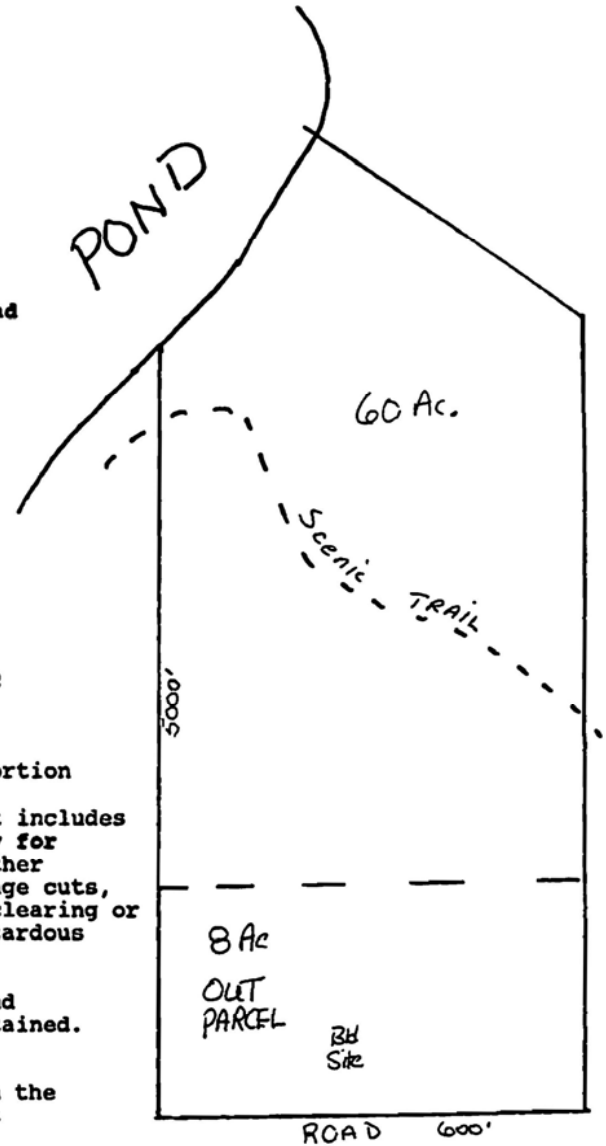
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. Vista from the trail and
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traffic (snowmobiles).



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Read the Terms - Trail Easement Example 3

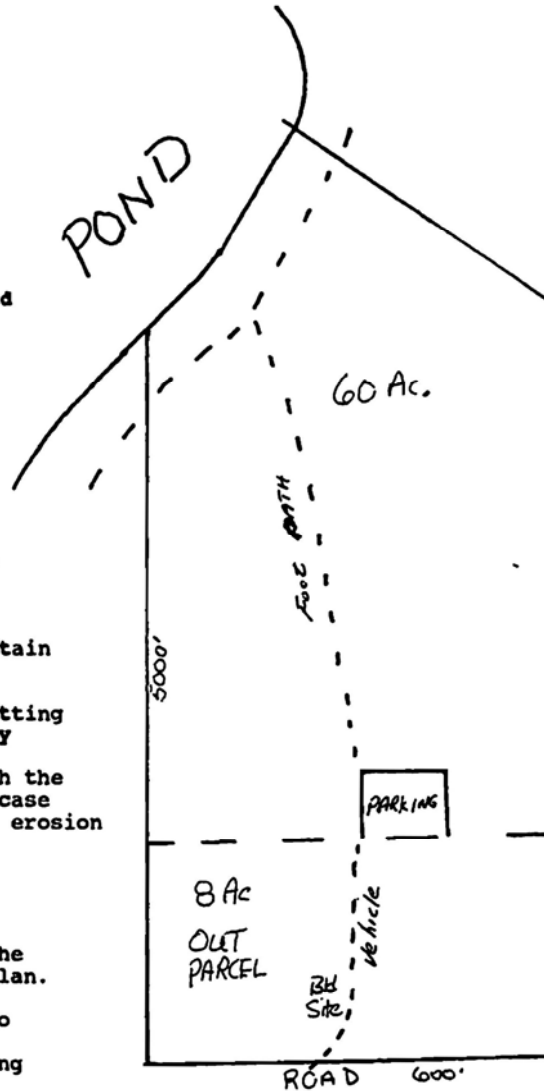
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