

**Appraisal Institute
Northern California Chapter**

**Conservation & Historic Preservation Easements
A Case Study**

**Pleasanton, California
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Presented By:

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Special Problems

The appraisal of conservation and preservation easements involves special issues, problems, and methods not encountered in the typical appraisal assignment.

(Appraisal Institute, *Appraising Historic Preservation Easements*, Course Handbook §1, Page 9.)

Standards & Regulations

- Appraisal Institute's Code of Ethics and Standards of Professional Appraisal Practice (which incorporate USPAP)
- Internal Revenue Code
(U.S. Code Title 26, Subtitle A, Chapter 1, Subchapter B, Part VI, §170)
- Treasury Regulations
(26 CFR Ch. 1, §1.170A-14)
- Treasury Publication 561, Determining the Value of Donated Property (Revised April, 2007)
- Pension Protection Act of 2006 (Public Law 109-280, August 17, 2006, 120 Stat. 1075 §1213)
- IRS Notice 2006-96 (Transitional Guidance)

Qualified Appraisal

Qualified Appraiser

Penalties

Qualified Conservation Contribution

Purpose of the Appraisal

The purpose of our services is to estimate the fair market value of:

1. the fee simple interest, subject to easements of record, in the real property in as-is condition as of May 1, 2011, prior to imposition of the conservation and historic preservation easement proposed to be recorded in favor of Pinewood Heritage and the City of Pinewood (“before condition”);
2. the proposed conservation and historic preservation easement, as of the same date of value;
3. the fee simple interest, subject to easements of record, in the real property as of May 1, 2011, after imposition of the proposed conservation and historic preservation easement (“after condition”).

The Function of the Appraisal

Intended Users

the clients (the owners of record)

Scope of Work

- inspected the property and the surrounding area
- reviewed documents submitted to us in connection with the assignment (such as the Conservation Easement Agreement for Historic Preservation, a title report, floor plans, subject's listing on the Multiple Listing Service and subsequent offers, inspection reports and disclosures, the purchase contract, etc.)
- identified, investigated, and confirmed market data (such as sales of home sites and improved properties, including easement-encumbered residences) and correlated the data for use in our analyses (sales comparison of residential lot sales, and a matched pairs analysis of easement-encumbered properties)
- inspected sale properties
- interviewed developers, brokers, homeowners, and others active in the property's market area
- reviewed Planning and Building Department files for the property, other public records, and development regulations (including the zoning ordinance and City of Pinewood historic preservation ordinance)
- reviewed sections of the Internal Revenue Code, Treasury Department regulations, and IRS Publication 561 (Guidelines for the Appraisal of Historic Preservation Easements)
- reviewed §106 of the National Historic Preservation Act of 1966, and the Pension Protection Act of 2006
- reviewed appraisal literature on the valuation of conservation and historic preservation easements

- had discussions with representatives of the City of Pinewood Planning, Building, and Public Works Departments, the Historic Resources Board, other public agencies, and easement-holding organizations.

Appraisal Report

In accord with the terms of our authorization, we are submitting the results of our appraisal in a summary report complying with Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP). Both the appraisal and summary report conform to the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice (which incorporate USPAP) and will constitute a *qualified appraisal* under I.R.C. §170(a)(4) and §170(a)(5)(a) and Treasury Regulations §1.170A-13(c)(3) and §1.170A-13(c)(5).

Qualifications of the Appraiser

- The appraisal has been performed, and the report prepared, by _____ of _____, whose professional qualifications are reproduced in the Addenda.
- State licensing or certification, and what it entitles you to appraise
- Professional designation(s)
- Qualified as an expert witness, and in what courts
- _____ has been a professional real estate appraiser and consultant since ____, regularly performing appraisal and consulting assignments for which he is compensated.
- _____ has worked in the _____ market throughout his career, and has extensive experience appraising a broad range of property types and property rights, including those represented in this appraisal: single-family residential, residential land, historic preservation and conservation easements.
- _____ has completed _____ appraisals of various types of property for estate taxes, estate planning, income taxes, gift taxes, and charitable contributions. These include the valuation of conservation and historic preservation easements, for which he has the requisite education and experience.
- _____ has been awarded a Certificate in the appraisal of historic preservation easements by the Appraisal Institute.
- By virtue of his/her background, experience, education, and designated membership in a recognized professional appraisal organization, _____ is qualified to perform this appraisal, including the valuation of the subject Conservation Easement Agreement for Historic Preservation.
- The appraiser understands that a substantial or gross valuation misstatement may subject the appraiser to civil penalty under §6695A of the Pension Protection Act of 2006.

- _____ has never been prohibited from practicing before the Internal Revenue Service under §330(c) of Title 31, U.S. Code.

- The appraiser, _____, is not the property owner or the taxpayer claiming the deduction, a party to the transaction in which the property is to be acquired, or a person employed by or related to the current or prospective property owner, a party to the acquisition transaction, or the easement holder.

- A statement as to your compensation for the assignment

- Your F.E.I.N., Social Security No., or similar specific identification

Assumptions and Limiting Conditions

The appraisal is subject to the following assumptions and limiting conditions:

- (12) Under Treasury Regulation Sect. 1.170A-14(h)(3)(i), the amount of the deduction for a conservation easement must be reduced in the event that certain enhancements or benefits accrue to the donor. The donor has attested to the following in a letter reproduced in the Addenda:
 - (i) neither the donor nor any family member (as defined in Sect. 267(c)(4) of the Internal Revenue Code, i.e., brothers and sisters by whole or half blood, spouse, ancestors and lineal descendants) or related persons (as defined in Sect. 267(b) or 707(b) of the Internal Revenue Code, referring to various familial, entity, and trust relationships) owns any other property in the vicinity of the subject property, and
 - (ii) other than potential federal, state, and local tax benefits, neither the donor nor any family member or related person has received or reasonably expects to receive any financial or economic benefit as a result of the donation of the subject easement.

Extraordinary Assumptions

- (1) We have reviewed the unsigned and unrecorded Conservation Easement Agreement for Historic Preservation reproduced in the Addenda. The analyses and conclusions in the appraisal specifically assume that the final signed and recorded easement document will contain substantially the same language and provisions as in the draft easement document. Any significant differences from the easement document in the Addenda to the easement document as signed and recorded may affect the highest and best use of the property and/or our analyses and conclusions. Therefore, we reserve the right to review our final opinions of fair market value accordingly.
- (2) California Civil Code §815, Treasury Regulations 26 CFR §1.170A-14, and the Internal Revenue Code¹ set forth certain mandatory requirements for a conservation easement and a qualified conservation contribution. Based upon our review of the draft easement document, the Codes, and the Regulations, the draft Conservation Easement Agreement for Historic Preservation appears to satisfy the necessary criteria, and our valuation analysis assumes that is the case.
- (3) For purposes of the appraisal we assume that the grantees of the Conservation Easement Agreement for Historic Preservation, Pinewood Heritage and the City of Pinewood, a municipal corporation chartered by the State of California, are *qualified organizations* that meet the requirements of a recipient organization for purposes of the provisions of §170(b)(1)(A) of the Internal Revenue Code and accompanying regulations including Treasury Regulation §1.170A-14(c) regarding the donation of preservation and conservation easements. We also assume that Pinewood Heritage and the City of Pinewood have the resources to properly monitor and enforce the provisions of the easement agreement. If this is not the case, it may affect our analyses and conclusions and, therefore, we reserve the right to review our final opinions of fair market value accordingly.
- (4) The subject property – 601 Milton Avenue, Pinewood – is currently a pending sale in escrow at a price of \$4.9 million (subject listing on the Multiple Listing Service is reproduced in the Addenda). The sale transaction is scheduled to close escrow prior to recording of the proposed Conservation Easement Agreement for Historic Preservation

¹U.S. Code Title 26, Subtitle A, Chapter 1, Subchapter 8, Part VI §170.

(reproduced in the Addenda), which is to be recorded by the buyer. The sale is taking place proximate to the value date of the appraisal; it is an arm's-length transaction that was listed on the Multiple Listing Service; our review of the sale documentation indicates that the buyer and seller knew all relevant facts; neither the buyer nor the seller had to act; and there has been no significant change in market conditions from the value date to the scheduled close of escrow. Therefore, we accept the purchase price as the fair market value of the property in "before condition", i.e., as unaffected by a conservation and historic preservation easement.

Also, we assume that escrow will close at the pending sale price. If the escrow does not close, or closes at a different price, it may affect our analyses and opinions and, therefore, we reserve the right to review our final opinions of fair market value accordingly.

- (5) The property's legal description identifies it as consisting of three lots: Lots 1, 2, and 3 of Manlius' Subdivision of Block 93 (see Page 2 of Preliminary Report 09-98103549-MM reproduced in the Addenda, quoted on Page 2.1 of the appraisal report). The recorded map referenced in the legal description, a survey by J.F. Byxbee Jr., City Engineer of Pinewood, dated November 21, 1904, is reproduced in the Addenda. At our request, Pinewood Land Title Company performed a title search which did not identify any documents of record merging the three lots. Accordingly, our valuation analysis assumes that the site consists of three legal lots of record. Should this not be the case, it would affect our highest and best use analysis and our conclusions and, therefore, we reserve the right to review our final opinions of fair market value accordingly.

Hypothetical Conditions

- (1) We are estimating the fair market value of the property subject to a conservation and historic preservation easement which has not been executed and recorded as of the value date of May 1, 2011. Therefore, we are appraising the property in “after condition,” i.e., subject to the easement, under the hypothetical condition that the easement agreement is in full force and effect as of the value date.

If the easement agreement is not executed and recorded, or if it differs significantly from the easement document reproduced in the Addenda, it may affect our analyses and opinions and, therefore, we reserve the right to review our final opinions of fair market value.

Definitions

The following terms are used in the appraisal report as defined below.

Easement

An interest in real property that conveys use, but not ownership, of a portion of an owner's property.¹

Conservation Easement

...”conservation easement” means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominately in its natural, scenic, historical, agricultural, forested, or open space condition.²

Fair Market Value

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.³

Floor Area Ratio (FAR)

The relationship between the above-ground floor area of a building, as described by the building code, and the area of the plot on which it stands; in planning and zoning, often expressed as a decimal, e.g., a ratio of 2.0 indicates that the permissible floor area of a building is twice the total land area.⁴

¹Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 2002), 4th ed., p. 90.

²California Civil Code §815.1.

³26 CFR §1.170A-1(c)(2).

⁴Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 2010), 5th ed., p. 82.

Gross Living Area (GLA)

The total area of finished, above-grade residential space excluding unheated areas such as porches and balconies; the standard measure for determining the amount of space in residential properties.⁵

Highest and Best Use

- (1) The reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of the appraisal
- (2) The reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value
- (3) The most profitable use

Implied in these definitions is that the determination of highest and best use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. An additional implication is that the determination of highest and best use results from the appraiser's judgment and analytical skill, i.e., that the use determined from analysis represents an opinion, not a fact to be found. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.⁶

In evaluating highest and best use, there are four stages of analysis:

- Possible use: Uses which are physically possible
- Permissible use (legal): Uses permitted by zoning and deed restrictions
- Feasible use: Possible and permissible uses which will produce a net return to the owner of the site or property
- Highest and best use: Among the feasible uses, that use that will produce the highest net return or highest present worth

⁵Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 1993), 3rd ed., p. 164.

⁶American Institute of Real Estate Appraisers, *The Dictionary of Real Estate Appraisal* (Chicago: 1984), p.152.