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## **Economic land use depends on your viewpoint**

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We at Prospectus, consult a fair amount in the land conservation arena, specifically appraisals of conservation easements and gifts. It's a fun area because we often work on magnificent land holdings which really deserve protection. Since we also consult on the potential development of land, I feel we take a very balanced and knowledgeable approach to the preservation of those properties.

On this subject, I was in a continuing education class last week which addressed the concept of federal funding (or taking) of properties. Because it's the federal government, they have a separate set of appraisal rules for determining value before and after a conservation effort. The special rules are called "The Yellow Book."

In the Yellow Book, there are guidelines to determine the highest and best use before the restriction, the highest and best use after the restriction, with the net value being the value of the restriction. The Yellow Book specifically states that the highest and best use of property cannot be valued for a public interest or government use. They have determined that the public interest is a non-economic use and therefore cannot be the basis for valuation. This includes conservation, preservation or other use that requires the property to be withheld from economic production in perpetuity.

I disagree with that concept, but the point of this article is not to try to argue these regulations. Rather, I was struck by peoples' views, in this case the Federal Government, that conservation is a non-economic use. In the class, my mind drifted to other uses of properties that over the years people thought were valueless and/or inconsequential because they didn't seem to have any particular "economic use." The obvious one was swamps (even the name connotes useless land), and everybody thought we should fill them in. This has changed. Other areas that were once considered valueless were rivers where we dumped, groundwater recharge areas which we paved, etc., etc. Perhaps future areas which are no longer deemed valueless might be excessively windy areas, underground areas barren of minerals, air rights to the sun. (Think alternative energy)

What has happened over the years is that we have turned "non-productive areas" into productive areas, or maybe our perception has changed. Not only have our best "productive areas" decreased, we also have been creative in thinking about new uses for "non-productive areas." We have turned swamps into wildlife resources, coastal marshes into shellfish fisheries, windy areas into electrical generation.

I believe the federal government will ultimately accept these conservation areas as highest and best uses. In effect, there are probably few places on earth that don't have some economic benefit to

mankind. While economic use may not be obvious for real estate, most of these areas will be important on a primary source basis, or for their symbiotic secondary benefit. They will be used as buffers, enhancers, trade-offs, or general supplements to other more obvious economic uses. One way or the other, they will be important to us for our continued existence and, as such, have economic use.

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