

CONSERVATION EASEMENTS

EXEMPTION AND ASSESSMENT

**PRESENTED BY
CLAUDIA KEMP
Manager, Technical Unit
Property Tax Oversight Program
Florida Department of Revenue
April 22, 2010**

Conservation Lands

Constitutional Amendment

Article VII, Section 3, (f)

There shall be granted an ad valorem tax exemption for real property dedicated for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

Article VII, Section 4, (b)

As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character of use.

Conservation Lands in Florida

More than 9.5 million acres in state, federal, and local government conservation lands

- Federal—4,027,000
- State—5,282,000
- Local—408,197
- Private conservation organizations—175,661

Conservation Easements

Section 704.06, F.S.

Provides statutory authorization for conservation easements

Conservation easement is:

- Right or interest in real property which is appropriate to retaining land or water areas:
- In their natural, scenic, open, agricultural, or wooded conditions;
- Retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archeological, or cultural significance; or
- Maintaining existing land uses

Provides list of activities which must be prohibited or limited by the easement

Conservation easements:

- Perpetual, undivided interests in real property.
- Run with the land and are binding on all subsequent owners.
- Must be recorded in the public records.
- May be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will or other instrument executed by or on behalf of the property owner.
- May be acquired by any governmental body or agency or by charitable corporation or trust whose purposes meet the statutory purposes of a conservation easement.

Potential benefits of conservation easements:

- Federal income tax savings
- Federal gift and estate tax savings
- Internal Revenue Code provides requirements for a “qualified contribution” which must meet 3 requirements:
 - Qualified real property interest-must be the entire interest of the donor other than qualified mineral rights; a remainder interest; or a perpetual restriction on the use of the property.
 - Easement holder must be a qualified organization: governmental agency or a public charity with conservation goals.

Potential benefits of conservation easements: (cont.)

- Purposes must be clearly defined:
 - Preservation of land areas for outdoor recreation by, or the education of, the general public
 - Protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystems
 - Preservation of open space, including farmland and forest land, where the preservation is for the scenic enjoyment of the general public; or preservation meets a clearly delineated state, federal, or local governmental conservation policy and will yield a significant public benefit, or the preservation is of a historically important land area or a certified historic structure

Assessment of land subject to a conservation easement

Section 193.501, F.S. (based on Article VII, section 4(b), Florida Constitution)

- Provides for assessment of lands subject to a conservation easement under section 704.06, F.S.
- Environmentally endangered lands or;
- Lands used for outdoor recreational purposes or park purposes
 - When land development rights are conveyed or when conservation restrictions have been covenanted.

Assessment of land subject to a conservation easement (cont.)

If development rights are transferred for 10 years or more or;
When a conveyance or other covenant has been executed for 10 years or more;

- The property appraiser may consider no other factors other than present use as restricted by conveyance or covenant.

When the term is less than 10 years, the property must be assessed as provided in section 193.011, F.S. with recognition of the nature and length of time of the restrictions on the use of the land.

- Property encumbered by a conservation easement under section 704.06, F.S. is always assessed on the basis of current use because the easement is perpetual.

Land dedicated in perpetuity for conservation purposes - exemption

Section 196.26, F.S. (based on Article VII, section 3(f), Florida Constitution)

Provides for a complete exemption from ad valorem taxes to land:

- Dedicated in perpetuity for conservation purposes and;
- Used exclusively for conservation purposes

Also provides for an exemption equal to 50% of the assessed value to land:

- Dedicated in perpetuity for conservation purposes and;
- Used for allowed commercial purposes

Definitions

Conservation purposes

Retention of:

- The substantial natural value of the land, including woodlands, wetlands, water courses, ponds, streams, and natural open spaces
- Lands as suitable habitat for fish, plants or wildlife; or
- Lands' natural value for water quality enhancement or water recharge

Dedicated in perpetuity

- Land encumbered by an irrevocable, perpetual conservation easement as described in section 704.06, F.S.

Allowed commercial uses

- Commercial uses allowed by the conservation easement that encumbers the land that is exempt from taxation

Factors for exemption

- Must be at least 40 contiguous acres
- If less than 40 acres, land only qualifies for exemption if the Acquisition and Restoration Council, created in section 259.035, F.S., determines:
 - Land used for conservation purposes meets a clearly delineated state conservation policy; and
 - Yields a significant public benefit
 - Any land approved by the Council under the subsection must have a management plan and a designated manager responsible for implementing the plan.

According to Section 1 of HB 7157 (2009), the Acquisition and Restoration Council has a role in determining eligibility for a conservation exemption. Section 196.26, Florida Statute describes the role of the Acquisition and Restoration Council with respect to property tax exemptions. You may read more about the Acquisition and Restoration Council and its members on the Florida Department of Environmental Protections website at:

<http://www.dep.state.fl.us/lands/arc.htm>

Factors for exemption (cont.)

- Used exclusively for conservation purposes.
- May generate income as long as activities are consistent with management plan and when income is used to: Implement, maintain, and manage the plan.
- Land otherwise eligible for exemption but used for allowed commercial uses receives a 50% exemption from the assessed value of the land.
- Buildings, structures, and other improvements on land receiving the exemption and land area immediately surrounding the above must be assessed separately according to Chapter 193.
 - If used for auxiliary purposes, are exempt to the same extent as the underlying land.
- Land qualifies for exemption and the commercial uses include agricultural use—must comply with best management practices if adopted by rule by the Department of Agriculture and Consumer Services.

Recent questions and answers on implementation of the conservation easement assessment and exemption. These have been posted to the internet for public comment.

1. What use codes can the Property Appraiser use to distinguish land that is assessed based on use for conservation purposes or has received a conservation exemption?

Response: Counties are required to assign the Department's 3 digit use code in field 5 of the NAL file. The use code assigned should reflect the actual use of the property irrespective of whether it has a conservation assessment or exemption. A 2 digit code is available in field 6 of the NAL file for the property appraiser's use in further delineating the use of a parcel. This 2 digit code would be available to the Property Appraiser for distinguishing land that receives a conservation assessment or exemption. The Department will not currently analyze or use this 2 digit field.

2. What use codes should be used for property that receives a conservation assessment but is used for agricultural purposes?

Response: The 3 digit use code recorded in field 5 of the NAL file should reflect the actual use of the property. Portions of the property receiving a conservation assessment should be identified in fields 25 and 26 and portions receiving an agricultural assessment should be identified in fields 21 and 22.

3. Will the Department include land that is assessed as used for conservation purposes but also used for agricultural purposes in its in-depth study of agricultural assessments?

Response: In responding to this question, it is important to distinguish between land granted the conservation exemption and land assessed as used for conservation purpose. Land receiving a 50% conservation exemption can be used for certain allowed commercial uses, one of which is agriculture. Such land may also receive a 100% exemption if the income from the property is used to implement the management plan. Land classified and assessed as agricultural will be included in the in-depth study even if it has a conservation exemption. The basis for assessment of such land should be its agricultural use. With regard to land assessed as used for conservations purposes, the Department has not yet determined whether such property used for agriculture will be part of the 2011 in-depth study.

4. The difference between just and assessed value is used in determining the tax loss figures reported for the fiscally constrained county distribution. Is the department providing any guidance on how the just value or the assessed value of land subject to a conservation easement should be determined?

Response: The just value of land encumbered by conservation easements or restrictions should be estimated in accordance with section 193.011, Florida Statutes, and the Florida Real Property Appraisal Guidelines. If qualified for classified use assessment under section 193.501, Florida Statutes, the assessed value of land subject to conservation easements or restrictions should be estimated in accordance with that section.

5. Does the 10% assessment increase limitation apply to property assessed as conservation lands or lands receiving the 100% or 50% conservation exemption?

Response: The 10% assessment increase limitation is not applicable to property with either an agricultural assessment or a conservation assessment. Such cross application is specifically excluded in the constitution and statute. This exclusion, however, may not be true for land having either a 50% or 100% conservation exemption. There is no requirement that land receiving a conservation exemption also be assessed as agricultural or conservation lands. While unlikely, the conservation exemption can be applied to land which receives no assessment limitation. If this is the case, the 10% assessment increase limitation would be applicable.

6. How should property appraisers identify and assess the different portions of a parcel that are subject to different assessment methods? For example, a parcel which contains a homestead, a conservation easement and a commercial building site? Do Property Appraisers have the authority to split out these various portions of a property into separate parcels for assessment purposes?

Response: Portions of parcels with different assessment criteria should be separately identified within each parcel. This should not be a new issue. Parcels with, for example, a homestead and an agricultural assessment have had different assessed values applied to specific portions of the property. The issue has become more complicated with the advent of the 10% cap, conservation assessments, and the conservation exemption, however. Like the difference between homestead and agricultural uses, it is necessary to treat each portion of a parcel used for different purposes differently.

Response: (cont.) It is not recommended that new parcels be created for each assessment difference. If legal descriptions, with recorded documentation of the source, do not exist for the newly created parcels potential legal issues could be created. This could impact tax certificates, tax deeds, financing, as well as business decisions of property owners and purchasers. Section 472.003, Florida Statutes, states that property appraisers are given the authority to prepare maps for property appraisal purposes, but only to the extent that they perform mapping services which do not include surveying activities. The preparation of descriptions for use in legal instruments of conveyance of real property and property rights is a surveying practice as defined in section 472.005(b), Florida Statutes. If a tax certificate or tax deed were sold on a property where the legal description was written by the Property Appraiser, a conflict with the statutes would occur and there would be potential legal ramifications for the property appraiser.

7. Does an agricultural classification qualify as an allowed commercial use and therefore only allow an exemption to the extent of 50% of the assessed value of the land? If so, would the exemption apply to the assessed value rather than the just value? And if so, would it therefore benefit the property owner to not apply for an agricultural classification so they could get the full exempt amount on the property under the conservation easement?

Response: Pursuant to s. 196.26, F.S., land dedicated in perpetuity for conservation purposes but used for allowed commercial purposes can receive a 50% exemption of the assessed value of the property. Land used exclusively for conservation purposes can receive a 100% exemption of the assessed value. To qualify for either exemption the land must be encumbered by an irrevocable, perpetual conservation easement as described in s. 704.06, F.S.

Response: (cont.) With regard to the 50% exemption, allowed commercial uses are those allowed by the conservation easement. Retaining the land in its agricultural condition is one of the allowed uses under a conservation easement in s. 704.06, F.S. With regard to the 100% exemption, subsection 196.26(2), F.S., states that the term exclusive use "does not preclude the receipt of income from activities that are consistent with a management plan when the income is used to implement, maintain, and manage the management plan."

Based on the above, land under a qualified conservation easement but classified for assessment purposes as agricultural could qualify for the 50% exemption. If the income from the property was used to implement, maintain, or manage the management plan, the land could qualify for the 100% exemption. In either case, pursuant to s. 196.26, F.S., the exempt amount would be calculated as a percentage of the assessed (classified agricultural use) value.

Not classifying the land as agricultural for assessment purposes would not appear to benefit the property owner. Taking the 50% exemption against the classified use value would result in a lower taxable value than 50% of the just value. However, depending on how the property would be assessed under s. 193.501, F.S., as land used for conservation purposes, it may or may not be to the benefit of the property owner to apply for the conservation assessment rather than the agricultural assessment.

8. Section 196.26, F.S., provides a 100% exemption of property dedicated in perpetuity for conservation purposes and used exclusively for such purposes. A 50% exemption is provided for such property that is used for allowed commercial purposes. If, for example, timber is harvested for profit from a property that in the past received a 100% exemption but for the year the timber is harvested applied for and received a 50% exemption, is there any provision for collecting back taxes and penalties for the years when the property was 100% exempt?

Response: While the conservation easement on which a conservation exemption is based is permanent, eligibility for the exemption is determined on an annual basis. If the owner anticipates that in one year the requirements for the 100% exemption will not be met, there appears to be nothing in the law to prevent the owner from applying for a 50% exemption for the year in question. As long as the requirements for the 100% exemption were met in the year the exemption was applicable, no back taxes or penalties would be due.

9. Forms DR-418C: *Real Property Dedicated In Perpetuity for Conservation – Exemption Application* and DR-482C: *Land Used for Conservation – Assessment Application* state that the applicant may be required to apply for the exemption or assessment annually and that they should check with the property appraisers. Under what circumstances would applicants not have to apply annually?

Response: Exemption application—Under s. 196.011(6)(a), F.S., once the original application for the exemption is granted, the property appraiser will mail a renewal application by February 1. The applicant must certify that the use of the property still complies with the statutory requirements for the exemption. The exemption will not be renewed if the application is not returned to the property appraiser. However, the county may waive the requirement for annual renewal at the request of the property appraiser and by a majority vote of the governing body. Those provisions are in s. 196.011(9)(a), F.S.

Assessment application—Under s. 193.501(8), F.S., the landowner may reapply on a short form. The county may waive the requirement at the request of the Property Appraiser and by a majority vote of the governing body.

10. Will the Department promulgate a renewal application form for the conservation assessment or exemption separate from the original application forms?

Response: Yes. Those forms are ready to go through rulemaking. Form DR-482CR: *Land Used for Conservation – Assessment Reapplication* is currently posted on our forms for use at:

<http://dor.myflorida.com/dor/property/forms/> under Agricultural and Use Classification Forms. The renewal form for the conservation exemption will be posted soon.

11. Form DR-482C: *Land Used for Conservation – Assessment Application* lists four criteria relevant to eligibility for the assessment and states that “all that apply” should be checked. What combination of these criteria needs to be fulfilled in order for the property to be eligible? Is it sufficient that only one of the criteria be met or is more than one required?

Response: It would appear that in most instances a landowner would only need to check one of the criteria. We are looking at changing the wording on the form so it does not cause any confusion.

Questions and Comments

- We encourage comment and questions on the implementation of the provisions on conservation easements.
- Please use the DOR/PTO email portal, call staff or send them directly to me at:
kempc@dor.state.fl.us

Property Tax Oversight Technical Staff

Claudia Kemp, Technical Supervisor (850) 617-8895

Kama Monroe, Senior Attorney (850) 617-8889

Robert Speirs, Senior Attorney (850) 617-8888

Kathy Henley, Intradepartmental Projects Administrator (850) 617-8890

Daryl O'Connor, Intradepartmental Projects Administrator (850) 617-8892

Janice Forrester, Tax Law Specialist (850) 617-8886

Ed Parker, Tax Law Specialist (850) 617-8881

Steve Remke, Tax Law Specialist (850) 617-8884

Keith Swinehart, Tax Law Specialist (850) 617-8885

Robert Blick, Tax Law Specialist (850) 617-8879

Dianne Porter, Operations Analyst II (850) 617-8880

Melanie Malone, Operations Analyst I (850) 617-8878

Linda Dupree, Administrative Assistant II (850) 617-8883

Shirley Austin, Staff Assistant (850) 617-8894