

**White Paper:
Conservation Easements and Property Valuation on MDI
1970-1993**

March 1994

ACADIA

National Park • Maine

PREFACE

The Acadia National Park Advisory Commission has recently voiced concern about the acceptance of conservation easements by Acadia National Park, concern that is also expressed by town officials on Mount Desert Island (MDI). At issue is the possible negative impacts that conservation easements may have on local property tax revenues, the primary funding source for town government. Concerns are related to two primary topics: immediate or short-term impacts on valuation as a result of conservation easements, and long-term impacts on potential increases in property value that might have occurred in the absence of the easement. The advisory commission suggested that data be collected about conservation easements and property tax revenues in order to provide an objective base from which discussions can proceed.

In response to the commission's and towns' concerns, I contacted professionals in socio-economic studies to inquire if economists could study the potential impacts of conservation easements on property tax with any degree of certainty. Their advice was that such a study would be extremely speculative, at best, and therefore would not answer the concerns raised with any degree of certainty.

As advisory commission member Elmer Beal suggests, the question appears to be more philosophic rather than economic. Concerns are related to population growth, economic growth, cumulative impacts of development, environmental degradation, the vision local people have for the future of their towns, and the mission of the National Park Service.

Although we can not reliably predict economic impacts, we can look at the historical effects conservation easements have had on property tax revenues. It is my hope that this paper will provide a factual base that will move the discussion out of the emotional arena. Rather than ending with a "conclusion," the paper ends with a list of discussion points. The towns and the National Park Service must explore the economic, social, and environmental impacts of conservation easements in a systematic way in order to accomplish our mutual goals.

Robert W. Reynolds
Superintendent

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Protection Plan of March 1988**

INTRODUCTION

CONSERVATION EASEMENT PROGRAM

A conservation easement is a legal agreement between a landowner and a conservation organization or government entity; the agreement places permanent restrictions on the use of the landowner's property. Conservation easements usually limit the number and location of future structures, and specify what can be done to the surface of the land and its natural growth. These restrictions are binding not only on the current owner, but also on all future owners of the property. The conservation easement is a legally enforceable agreement recognized by state and federal law.

The National Park Service (NPS) has had authority to accept conservation easements since at least the 1920s. However, it wasn't until Maine passed state enabling legislation in 1970 (revised in 1985 as the Maine Uniform Conservation Easement Act: 33 M.R.S.A. Sec. 476 et seq.) that the first conservation easement was granted to Acadia National Park. Today the park holds 150 conservation easements, most donated in the 1970s. The 1986 Acadia National Park boundary legislation (Public Law 99-420) reaffirmed the authority to accept conservation easements and established criteria (see APPENDIX C).

Other holders of conservation easements on Mount Desert Island include:

- Department of Inland Fisheries and Wildlife, State of Maine
- Island Foundation
- Maine Coast Heritage Trust
- Town of Mount Desert

DATA COLLECTION

During January and February 1994 Acadia National Park volunteer Steve Perrin spent 170 hours researching the tax records of the four Mount Desert Island towns. The goal of his research was to gather information about properties subject to the 47 conservation easements granted to the National Park Service in MDI towns. Data was collected for each property starting the year before the conservation easement was donated through 1993. In some instances, records were not available for certain years or for certain properties. Data for a total of 42 conservation easements is presented in this paper:

- Bar Harbor—14
- Mount Desert—8
- Southwest Harbor—12
- Tremont—8

Anne Hogben, Acadia National Park Advisory Commission designee for Trenton, provided information about property tax trends in Hancock County. She also generously provided advice regarding the presentation of data collected on conservation easement properties.

CONSERVATION EASEMENTS AND PROPERTY VALUE

Local governments expenditures—and consequently property taxes—have increased in coastal Maine over the past 20 years. During the period 1970–1990, Mount Desert Island property tax commitment per Capita, or the amount that a town raises by property tax to fund operations in a given year per person, increased in each town as follows:

- Bar Harbor—306%
- Mount Desert—282%
- Southwest Harbor—341%
- Tremont—274%

By comparison, the property tax commitment per Capita in Surry and Trenton, two nearby coastal towns, increased by 335% and 336% respectively for the same period. (See Appendix A for data used in the calculations.)

Figures 1–4 show the total property taxes raised by each Mount Desert Island town (Total Tax Levy) for the period 1970–1993 in comparison to taxes raised from properties subject to National Park Service conservation easements (Easement Property Tax). A similar comparison is shown in figures 5–9 for total valuation in each town (Taxable Real Estate) and the valuation of properties subject to National Park Service conservation easements (Easement Properties).

Note: commitment books from which valuation and tax data was taken sometimes covered different fiscal years in different towns, and bore labels variously reflecting the start or end of the fiscal year. This inconsistency is the reason figures 2 and 6 run through 1993 while the rest run through 1994. 1993 in the figures for Mount Desert is the equivalent of 1994 in the other 3 towns.

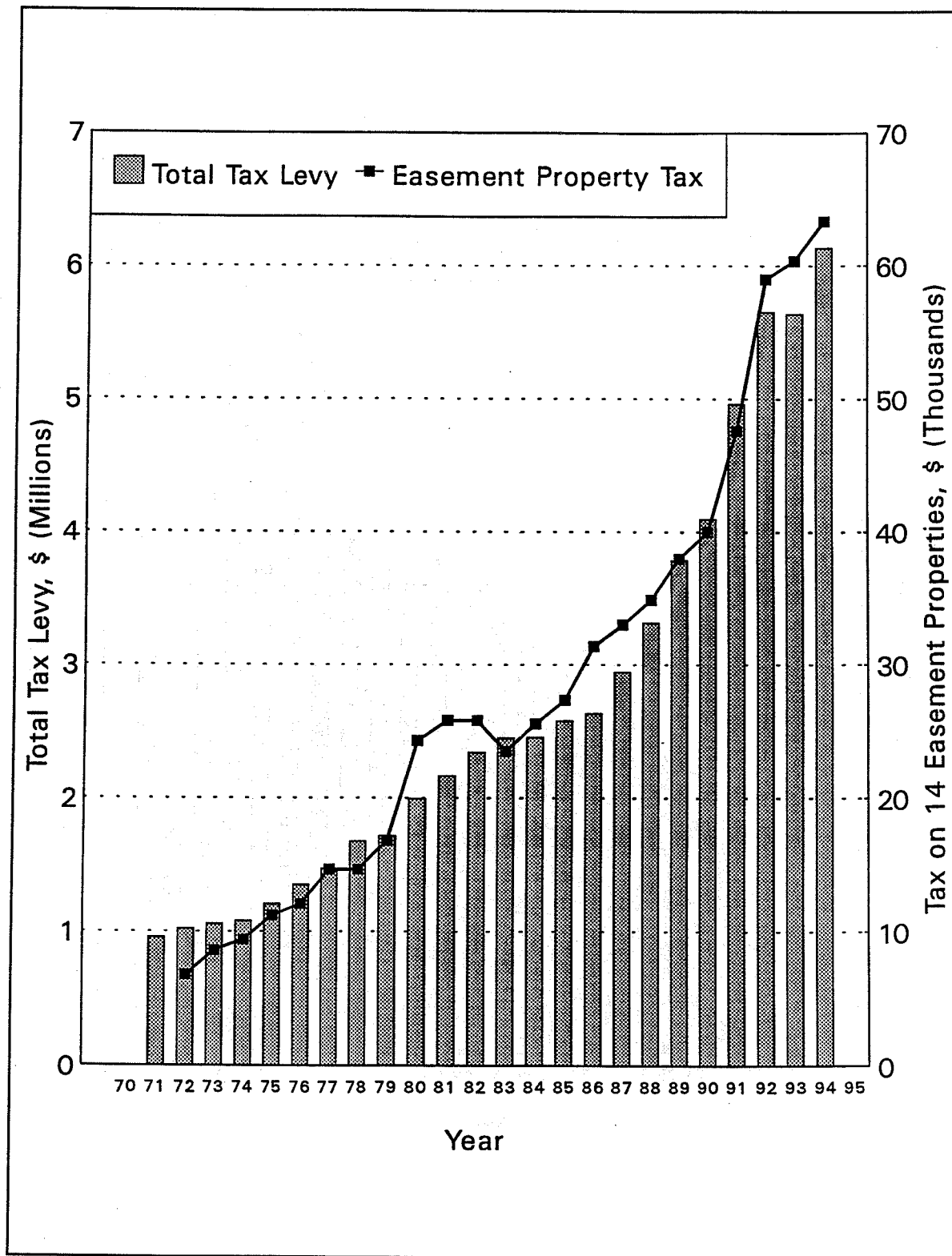


Figure 1 - Bar Harbor 1970-1993: Annual Real Estate Tax Levy and Tax on 14 Conservation Easement Properties

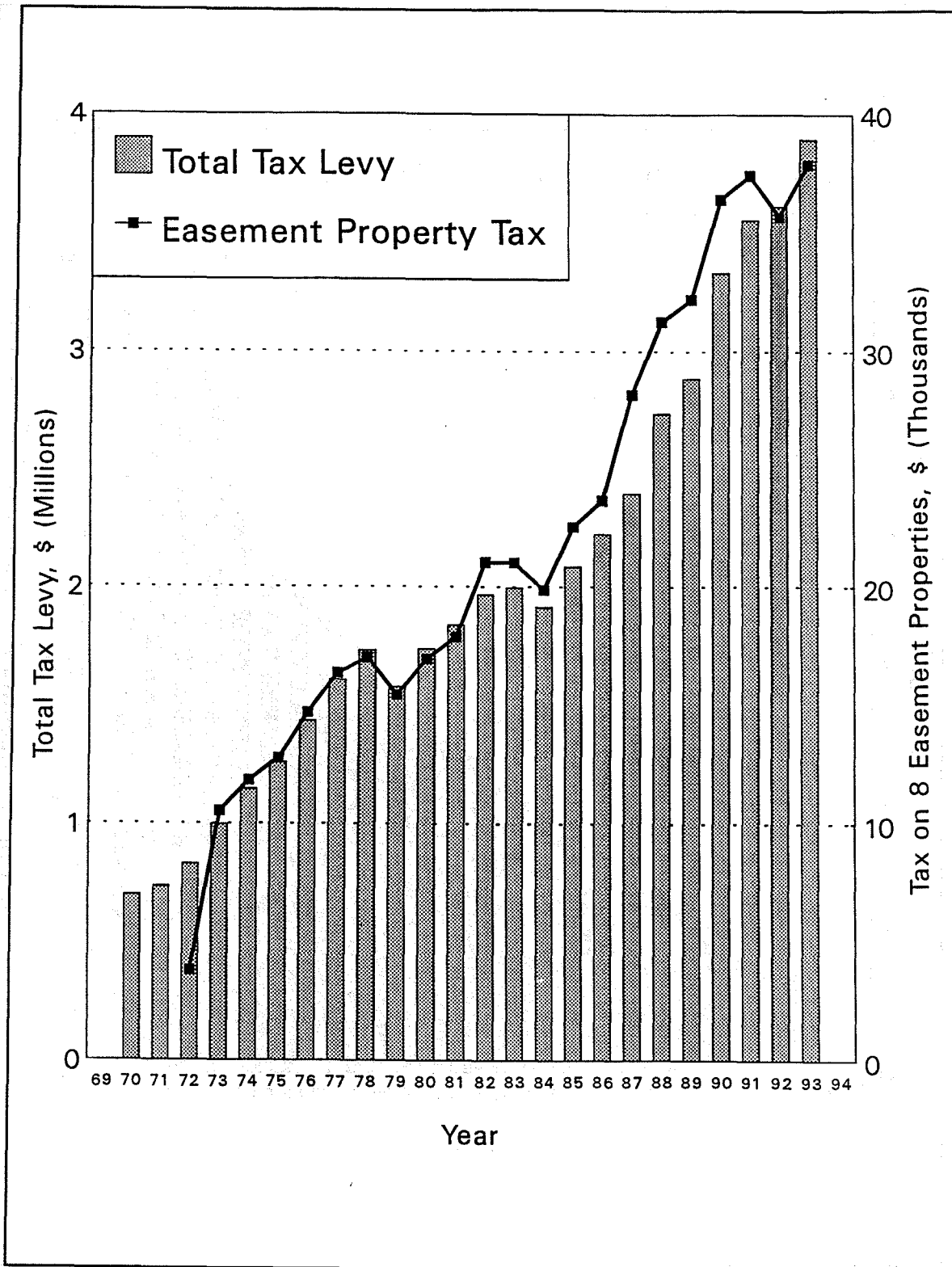


Figure 2- Mount Desert 1970-1993: Annual Real Estate Tax Levy and Tax on 8 Conservation Easement Properties

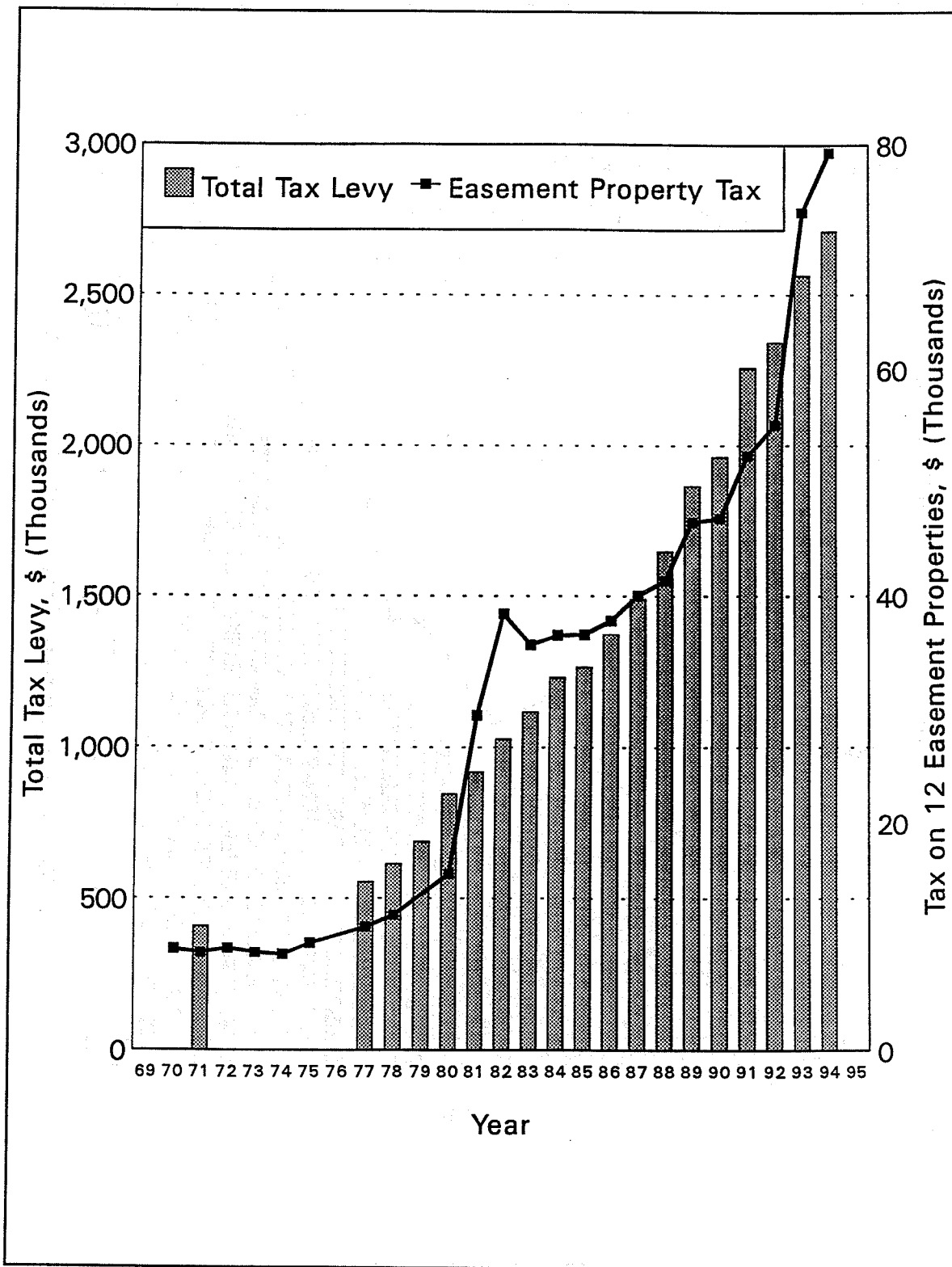


Figure 3 - Southwest Harbor 1970-1993: Annual Real Estate Tax Levy and Tax on 12 Conservation Easement Properties (town data not available 1972-1976)

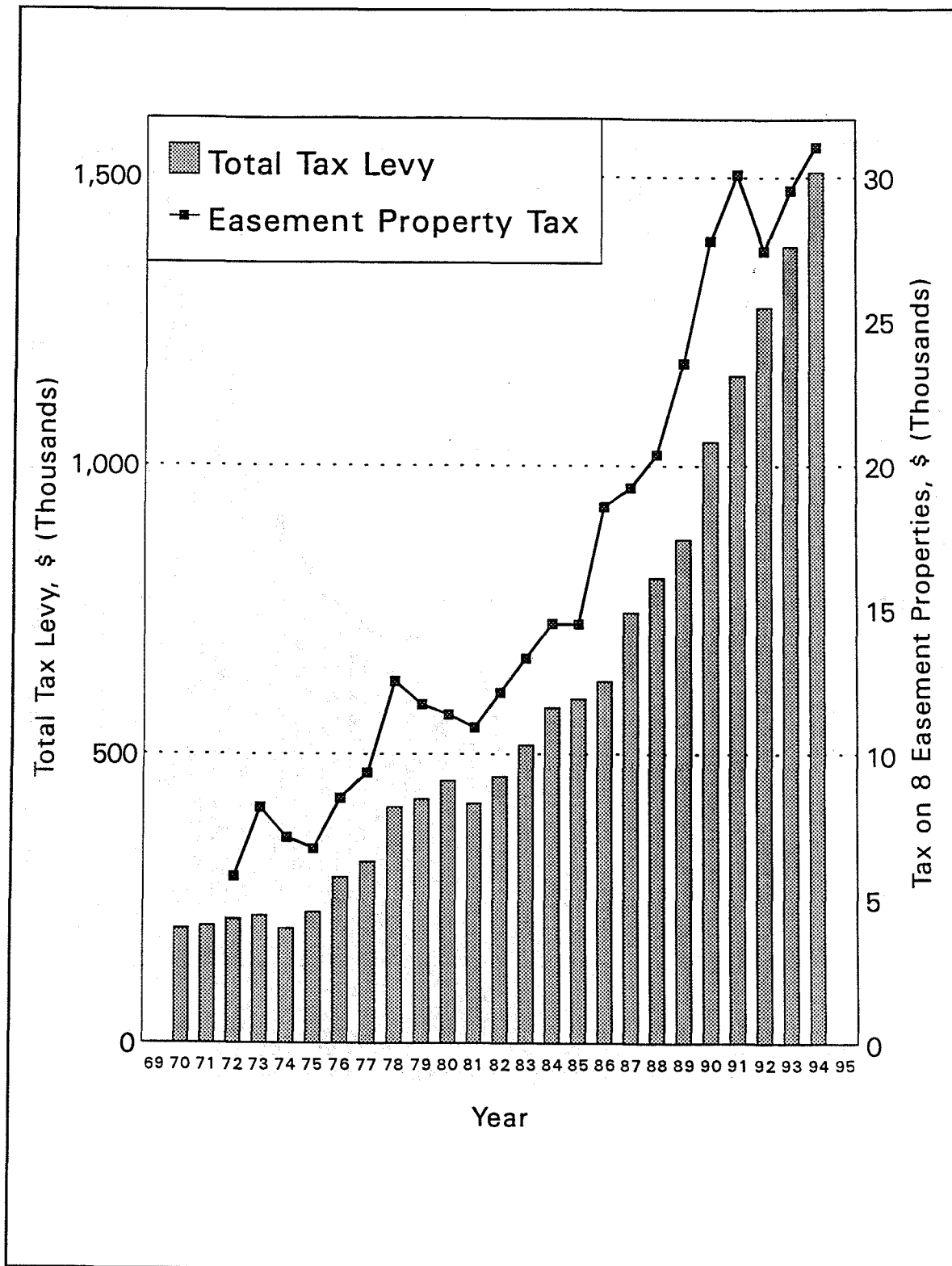


Figure 4 - Tremont 1970-1994: Annual Real Estate Tax Levy and Tax on 8 Conservation Easement Properties

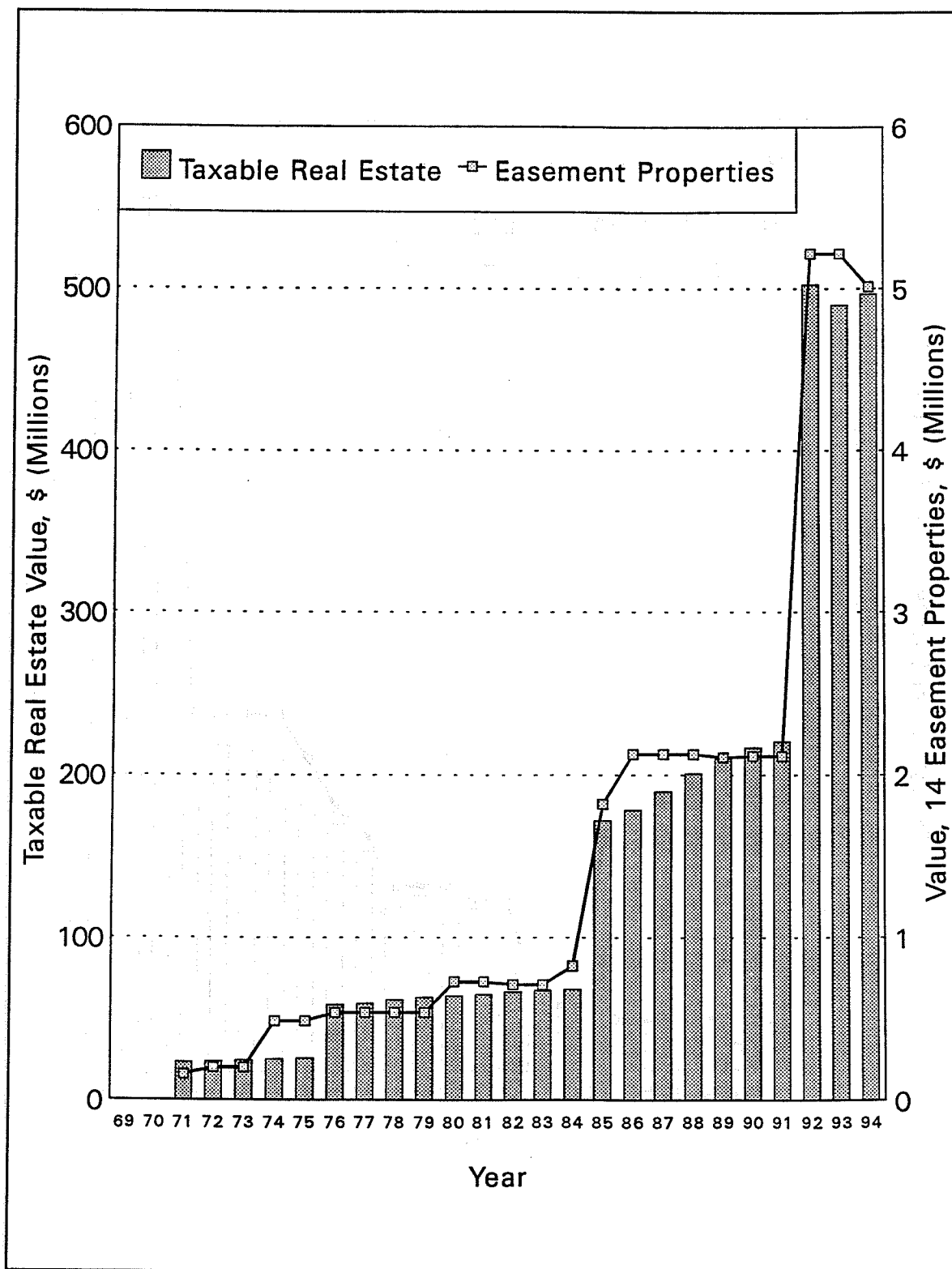


Figure 5 - Bar Harbor 1970-1993: Taxable Real Estate and 14 Conservation Easement Properties Compared (1988 data adjusted for change in fiscal year)

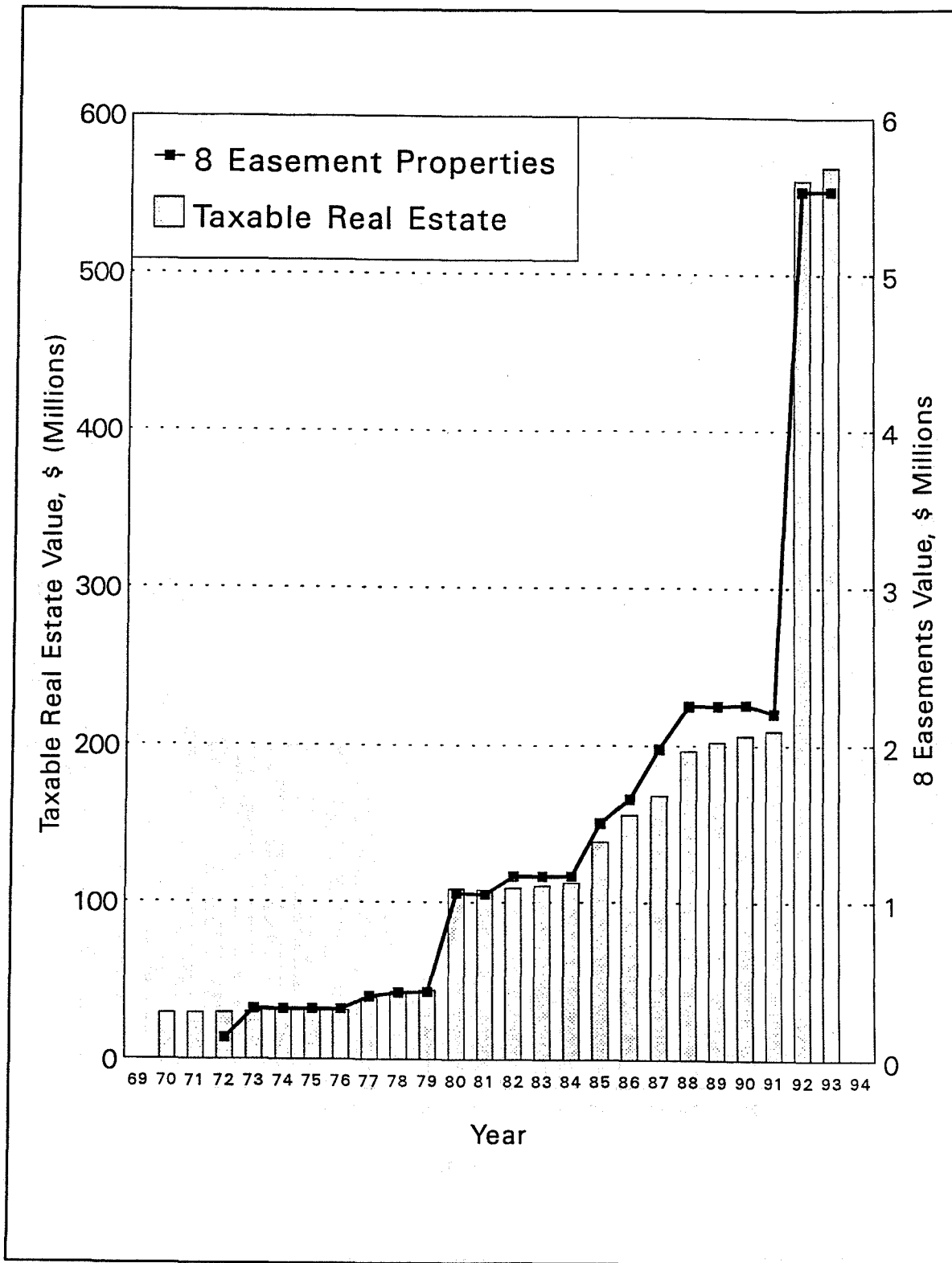


Figure 6 - Mount Desert 1970-1993: Taxable Real Estate and 8 Conservation Easement Properties Compared

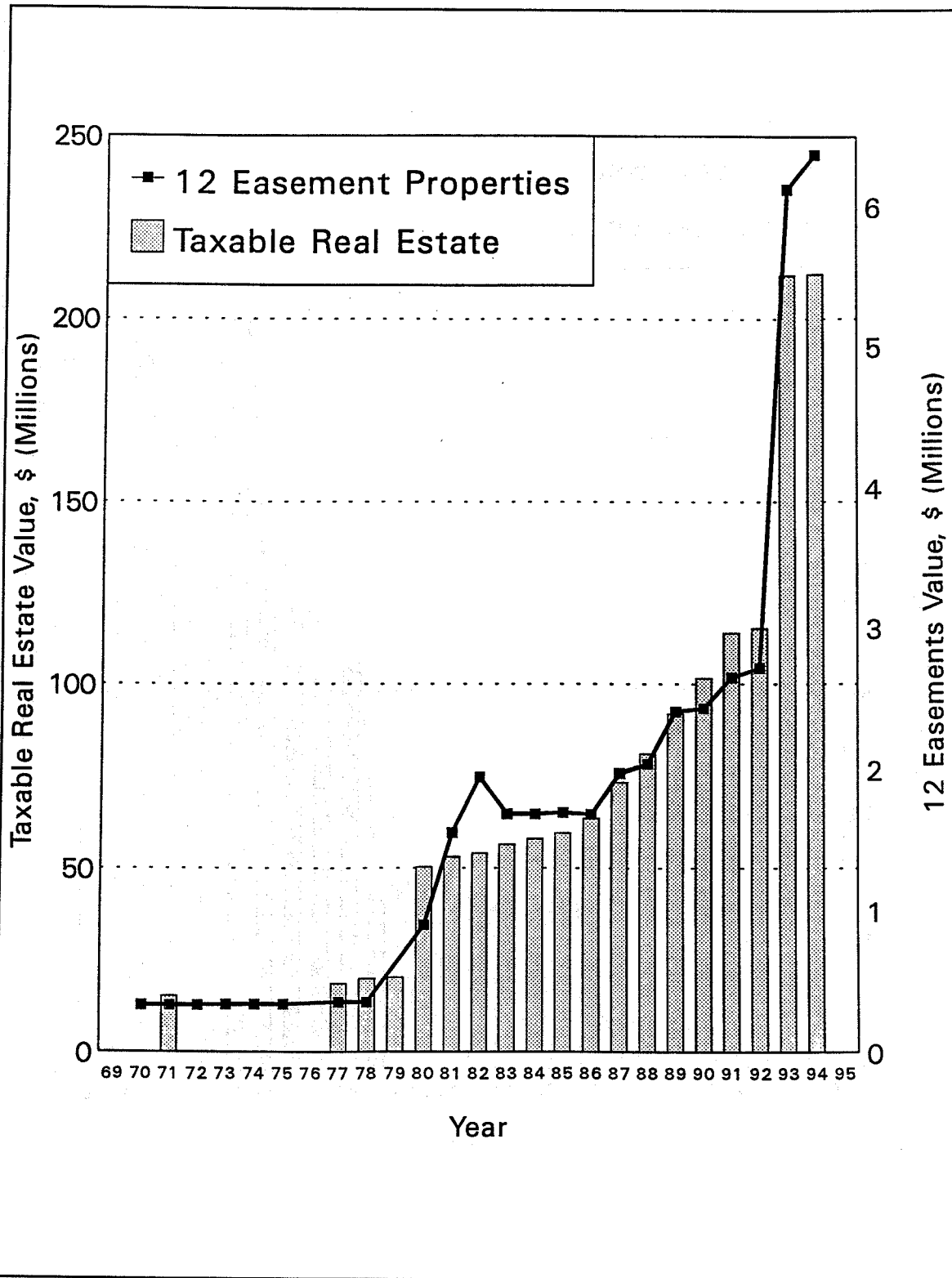


Figure 7 - Southwest Harbor 1970–1993: Taxable Real Estate and 12 Conservation Easement Properties Compared (eas. prop. data not available 1976 & 1979; town data not available 1972–1976)

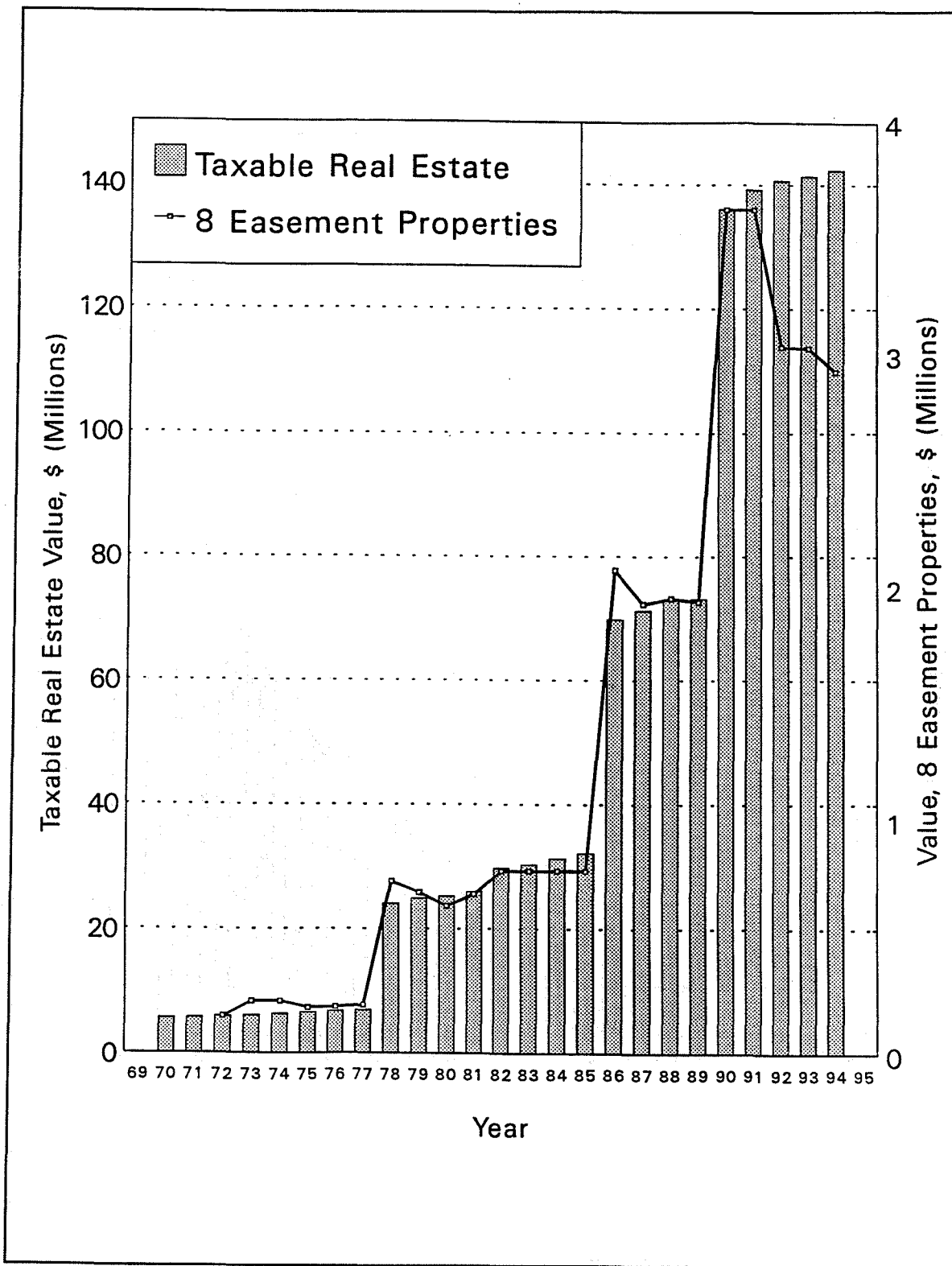


Figure 8 - Tremont 1970-1993: Taxable Real Estate and 8 Conservation Easement Properties Compared

Every conservation easement is individualized to address the specific property and the conservation values being protected. There are no "typical" conservation easements, however they can be grouped into the broad categories of "no development" and "limited development" easements. The majority of conservation easements granted to the National Park Service in the Mount Desert Island towns are in the latter category; that is, they allow residential use and, in many cases, future development. A conservation easement donated in 1974 to the National Park Service in the town of Mount Desert (here referred to as easement M-3) provides a point of departure for discussion about the effects of granting easements. In this case, the conservation values of the property have been protected, the property has continued on the town tax rolls, and it remained in the real estate market (still subject to normal transactions such as subdivision and sale). The property history is described in Table 1 and valuation data is shown in figure 9.

TABLE 1

Conservation easement (M-3) donated on 4.48-acre property (map 20, lot 31) to Acadia National Park, January 2, 1974, affirms the right of the public to view the property from offshore in its natural, scenic, open and wooded condition.

Structures:

- 2 single family residences, with garages
- woodshed
- well house
- dock
- studio

Covenants:

- no commercial or industrial use, or mining
- no apartments, motels, hotels, or multi-family units
- no unnatural surface alterations
 - except: personal gardens, excavations in connection with existing structures, road maintenance, foot trails, and 1 garbage pit per dwelling
- no billboards, trailers, mobile homes, bridges or causeways, aircraft landing sites
- no cutting of standing timber, except:
 - to clear and restore naturally damaged forest
 - to gather or remove dead wood
 - to prune or selectively thin trees for views & firewood
 - to maintain presently open fields and meadows
- no discharge of waste into fresh or salt waters that will affect purity of said waters

Timeline:

- 1974—Easement granted by owner #1
- 1980—Property Subdivided into lots A and B by owners #2 and #3
- 1984—Lot B sold to owner #4
- 1989—Lot B sold to owner #5

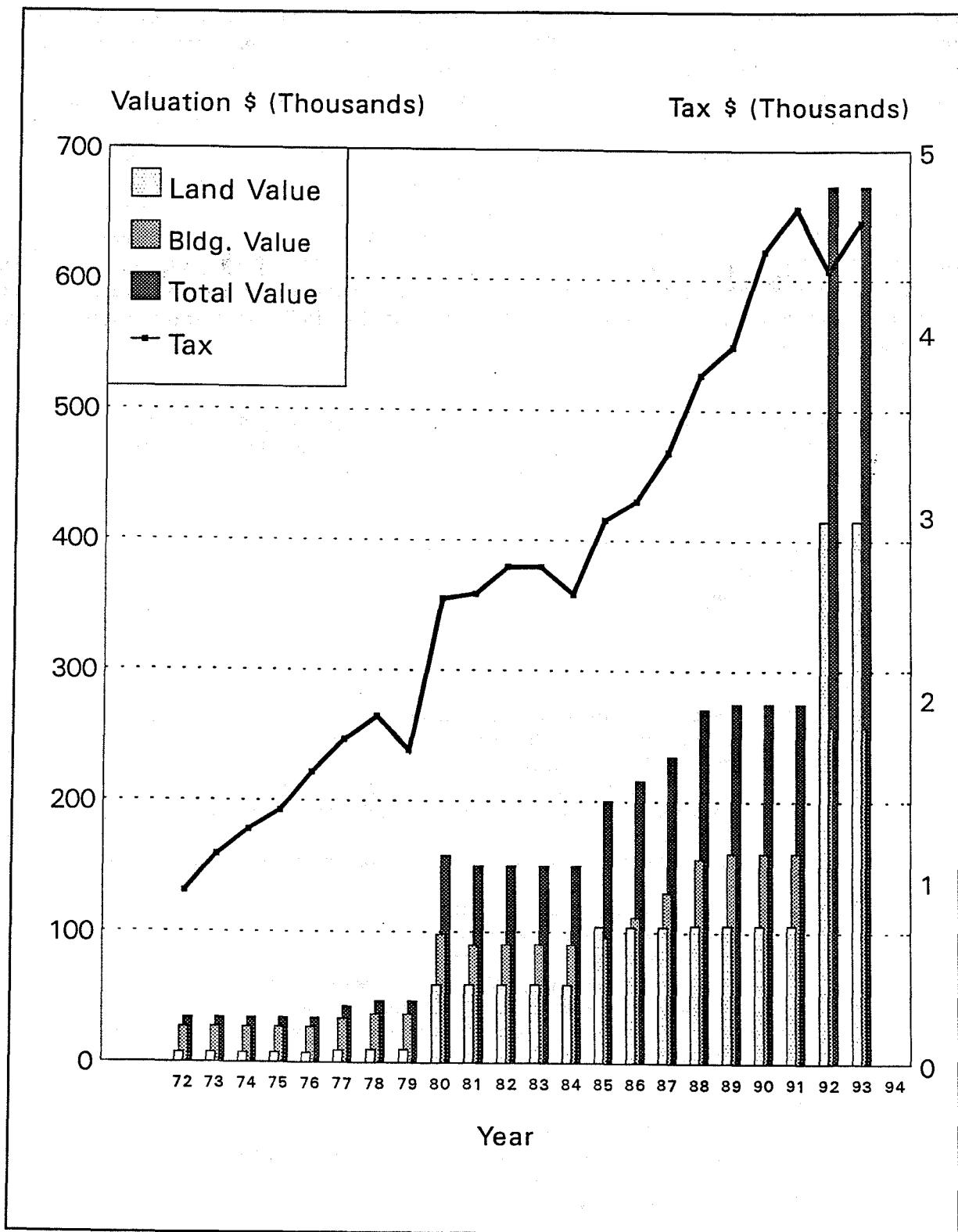


Figure 9 - Easement Property M-3 donated January 1974

Another conservation easement (T-1), located in the town of Tremont, provides a case to compare the effects of a conservation easement and tree-growth on property taxes. Figure 10 shows the town valuation and taxes paid on the property. The valuation was unaffected by the grant of the conservation easement in 1973. There was a substantial reduction in valuation in 1980, the year that the property was placed in tree-growth. Details about the property are shown in table 2 and figure 10. Figure 11 shows a similar situation for a conservation easement property in Mount Desert (M-1).

TABLE 2

Conservation easement (T-1) donated on 56-acre property (map 1, lot 2) to Acadia National Park on June 8, 1973, affirms the right of the public to view the property from offshore in its natural, scenic, open and wooded condition. Property to be maintained as an open space and a predominantly natural area.

Structures (5 when easement donated):

- cabin
- 2 sleeping shacks
- outhouse
- toolshed

Covenants:

- property to be used for residential or conservation purposes only; no commercial, industrial, or mining activities
- no additional structures, except:
 - 2nd single-family dwelling
 - temporary maintenance structures
 - small sheds and other accessory structures
 - second well
- no structures in excess of 18 feet in height
- no surface alteration, except for farming or gardening, excavation for structures and services, foot trails, and one pit for personal dumping
- no trailers, mobile homes, bridges, causeways, or billboards, except:
 - posting property to control unauthorized use
 - temporary for-sale or for-rent signs
- no cutting of standing timber, except:
 - to clear land for approved uses above
 - to restore forest damaged by natural causes
 - to gather, use, or remove dead wood
 - to prune or selectively thin trees for firewood or
 - to maintain views from dwellings
- no discharge of raw sewage into fresh or salt water
- no alteration of terms of easement without joint consent of both owner and grantee

An active osprey nest is located in the southeast section of the property.

Property placed under Maine's Tree Growth Program in 1980.

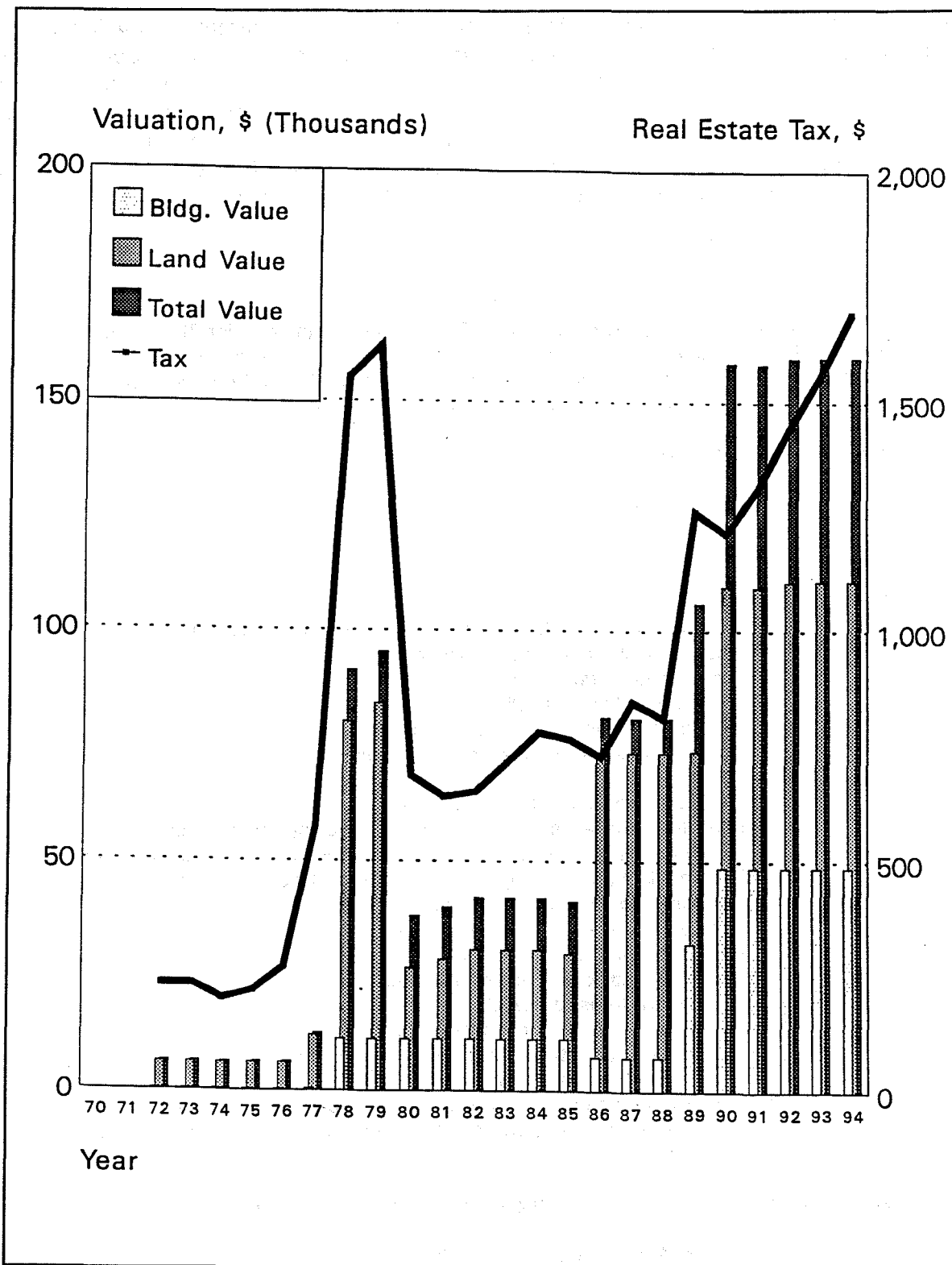


Figure 10 - Conservation Easement Property T-1 donated in June 1973 (placed in Maine tree-growth program 1980)

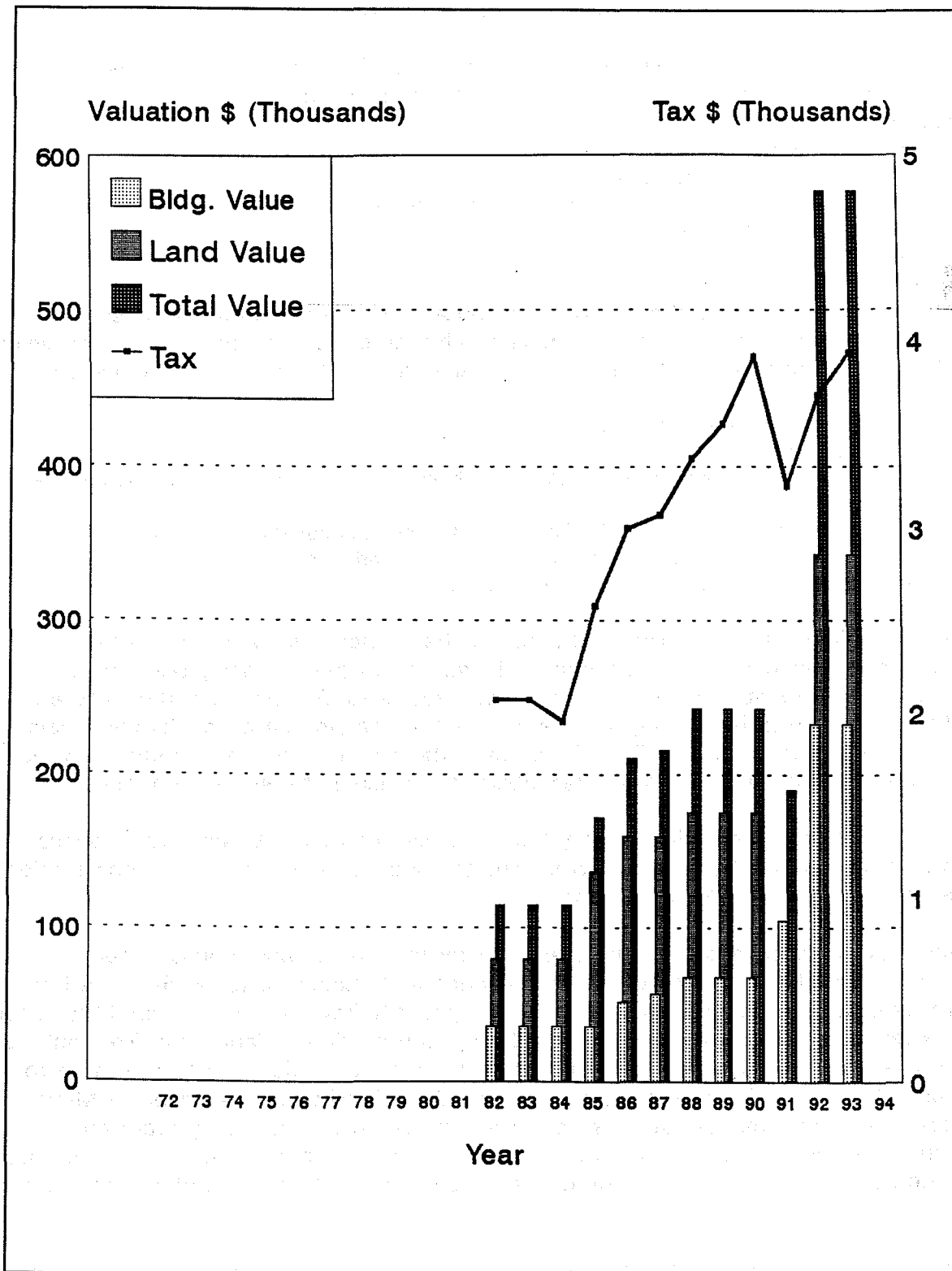


Figure 11 - Conservation Easement Property M-1 donated in December 1984 (placed in Maine tree-growth program 1991)

TEN DISCUSSION POINTS

One. The 1986 Acadia National Park boundary legislation identified the types of property appropriate for protection by conservation easements to the National Park Service as:

- important scenic resources
- important ecologic resources
- important cultural resources (including historic and archeologic resources)
- important island shorefront
- important entire islands

The legislation established that a proposed conservation easement must possess at least one of the above qualities to be accepted by the park. Furthermore, in determining whether to accept a qualified conservation easement, the National Park Service will consider:

1. resource protection benefits
2. public benefit
3. significance in relation to the planning objectives of local government and regional and state agencies.
4. economic impact on local livelihoods, activities, and government revenues
5. proximity of the parcel to the boundary of the park and to other parcels under conservation easement to Acadia National Park

As stated in item #4 above, NPS will consider the economic impacts of proposed conservation easements. Potential economic impacts include property tax considerations but also take into account livelihoods and activities. For instance, the closure of tidal flats to shellfish harvesting may be affected by the amount of residential development on Mount Desert Island. The character of the island outside of the park may also affect tourism-related jobs and the desirability of the island for seasonal homes.

Two. The rate of increase in property tax per Capita on Mount Desert Island is less than that for two nearby coastal towns: Trenton and Surry. There are no conservation easement properties in Surry or Trenton.

Three. The trend of valuation and taxes paid for properties under conservation easement is similar to the trend of total valuation and taxes paid for each of the four MDI towns in total. Conservation easements appear to have had no, or very little, effect on tax revenues to the towns. Gretchen Strong, former Town Manager of Tremont, said recently she did not know of a single case where a conservation easement in that town influenced valuation for property tax purposes. John Brushwine, Assessor for Mount Desert, says that often landowners do not inform the town when they grant an easement on their property. In the vast majority of cases, lower property taxation has not been a factor in seeking to protect the conservation values inherent in a parcel of land.

Four. In talking about conservation easements, two types of value come up: market value and conservation value. The first is measured in terms of real estate valuation or potential sale price. The second is measured on less-concrete scales such as scenic benefit to the public, or natural-resource protection benefitting wildlife habitat. It is extremely difficult to switch from one scale of value to the other, placing dollars-and-

cents value on scenery, habitats, or wildlife, say, or environmental value on a given parcel of real estate.

Yet the granting of conservation easements rests on the widely-held conviction that easements protect real property values, and that those values benefit not only the property owner, but the general public as well. The difficulty converting between market and conservation values does not imply that one scale is less valid than the other. In their respective domains, both are equally real and meaningful.

Five. Just as proximity to Acadia National Park is advertised by real estate brokers as having a positive effect on real estate, so, too, does proximity to property protected by a conservation easement. This effect is not reflected so much in town valuation for tax purposes as it is in the going market price of real estate in the area. If the effect is intangible, it is nonetheless real.

Six. The effect on property valuation of placing a parcel under Maine's Tree Growth or Open Space Programs has been far greater than that of granting a conservation easement. Town records for past years show that easements have been largely a separate issue from tree growth and open space, and that in the few instances they overlap, the impact of enrolling in one of the state programs has had a decidedly greater effect on property taxes than the granting of an easement.

Seven. It has often been stated that the concern about the effect of conservation easements on property tax revenues is focused on the future, rather than the past. The question is, what will be the effect of easements be 20 or 30 years from now?

Eight. By a maximum-buildout scenario, each town on MDI would be subdivided to the maximum degree, down to the smallest buildable lot. Thus each town would be as crowded as its minimum-lot-size allowed. The buildout map for the island prepared by MDI Tomorrow in 1991 showed that 13,800 more lots could be built on MDI under existing zoning and state regulations. This prospect would have profound implications for the quality of life of MDI residents and visitors.

Nine. Maine's Growth Management Law of 1988 asked every town in the state to identify rural lands essential to the well-being of local communities, and to encourage growth in other areas that could successfully support it. In a sense, conservation easements are a tool enabling towns to protect valuable open space on a voluntary basis, without the need for zoning restrictions or land-protection ordinances.

Ten. Numerous studies have shown that the tax revenues derived from residential development do not pay for the increased services required. For instance, a new report by the American Farmland Trust summarizes two years of research in three Massachusetts communities on the comparative economics of preservation and residential development. The report finds that farm and open lands absorb only 33 cents in government services for every dollar in taxes they generate. Residential development, on the other hand, reverses the flow of funds, requiring \$1.12 in services for every dollar generated. The town of Trenton recently enacted an impact fee for new residential development in an attempt to partially recoup the expense to the town of new development.

In the past residential development of MDI, particularly shorefront property, has been the province of seasonal residents. These taxpayers generally do not require the most expensive of services that towns provide—schools. There is no guarantee that individuals subdividing MDI property in the future will be seasonal residents, demanding relatively few services. With the development of the "information highway" in concept and fact, urban refugees will easily be able to reside on the island and commute to work electronically, sending their children to local schools.

APPENDIX

- A: Data Used in Calculating Each Town's Increase in Property Tax Commitment per Capita from 1970 to 1990
- B: Properties Subject to Conservation Easements held by Acadia National Park in the Four Mount Desert Island Towns
 - Bar Harbor—14 properties
 - Mount Desert—8 properties
 - Southwest Harbor—12 properties
 - Tremont—8 properties
- C: Acadia National Park easement criteria as set out in (PL-99-420) and the Land Protection Plan of March 1988

APPENDIX A

DATA USED IN CALCULATING EACH TOWN'S
INCREASE IN PROPERTY TAX COMMITMENT PER CAPITA
FROM 1970 TO 1990

<u>Town</u>	<u>Population</u>		<u>Property Tax Commitment</u>		<u>Property Tax per Capita</u>	
	1970	1990	1970	1990	1970	1990
Surry	623	1004	\$ 107,000	\$ 749,500	\$ 172	\$ 747
Trenton	392	1060	74,000	872,000	189	823
Bar Harbor	3716	4443	1,061,000	5,156,000	286	1160
Mt. Desert	1659	1899	713,000	3,121,500	430	1644
Southwest Hrbr.	1657	1952	448,000	2,326,000	270	1192
Tremont	1003	1324	212,000	1,044,000	211	789

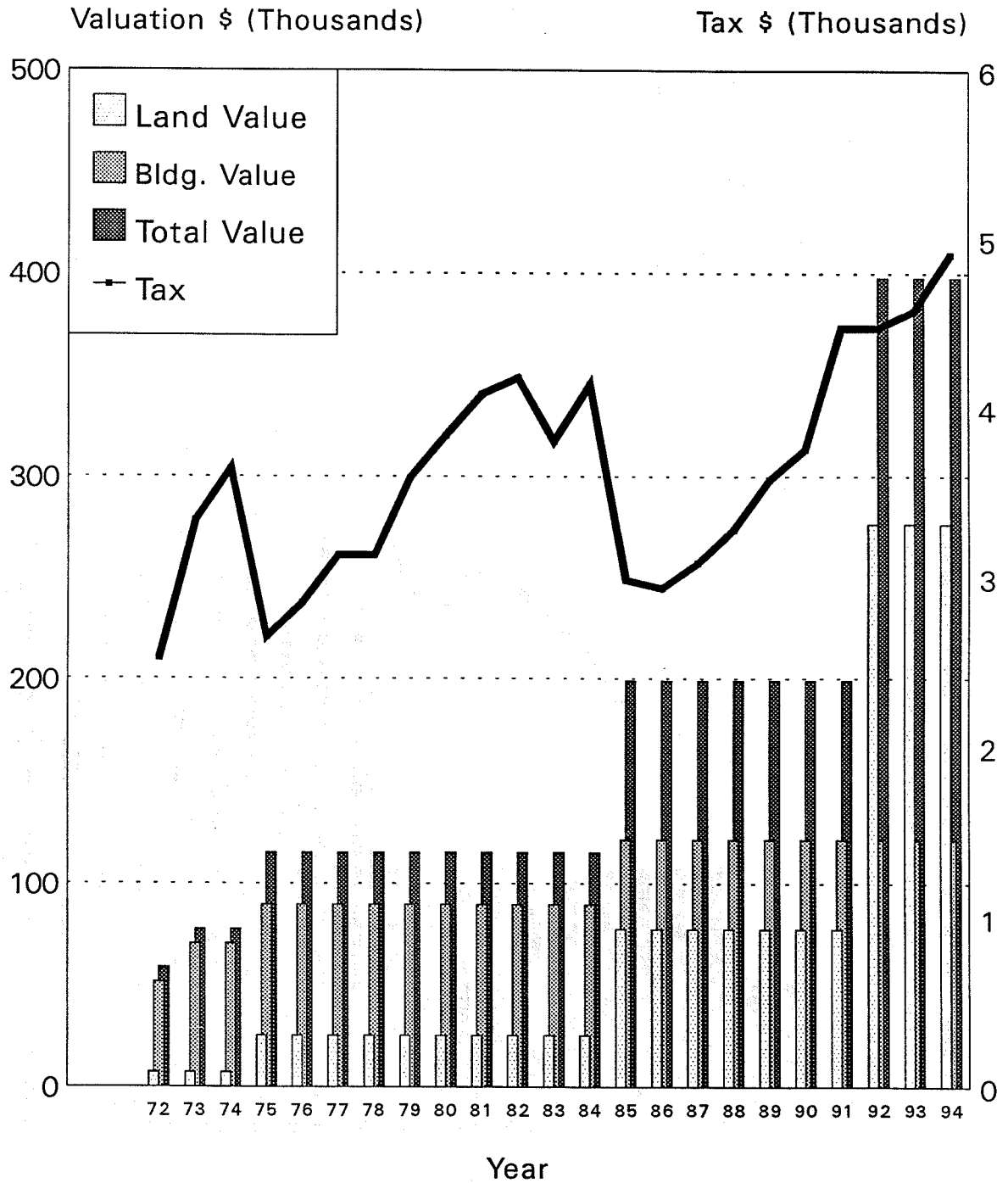
Source for 1970 Population figures: Hancock County Planning Commission.

Source for all other figures: Overview '92, a supplement to the Jan. 30, 1992 Ellsworth American. For Surry and Mt. Desert only, the 1990 Property Tax Commitment figures therein are for the calendar year. Those two figures were adjusted to fiscal year basis to make them comparable to those of the other four towns.

APPENDIX B

Easement Property B-1

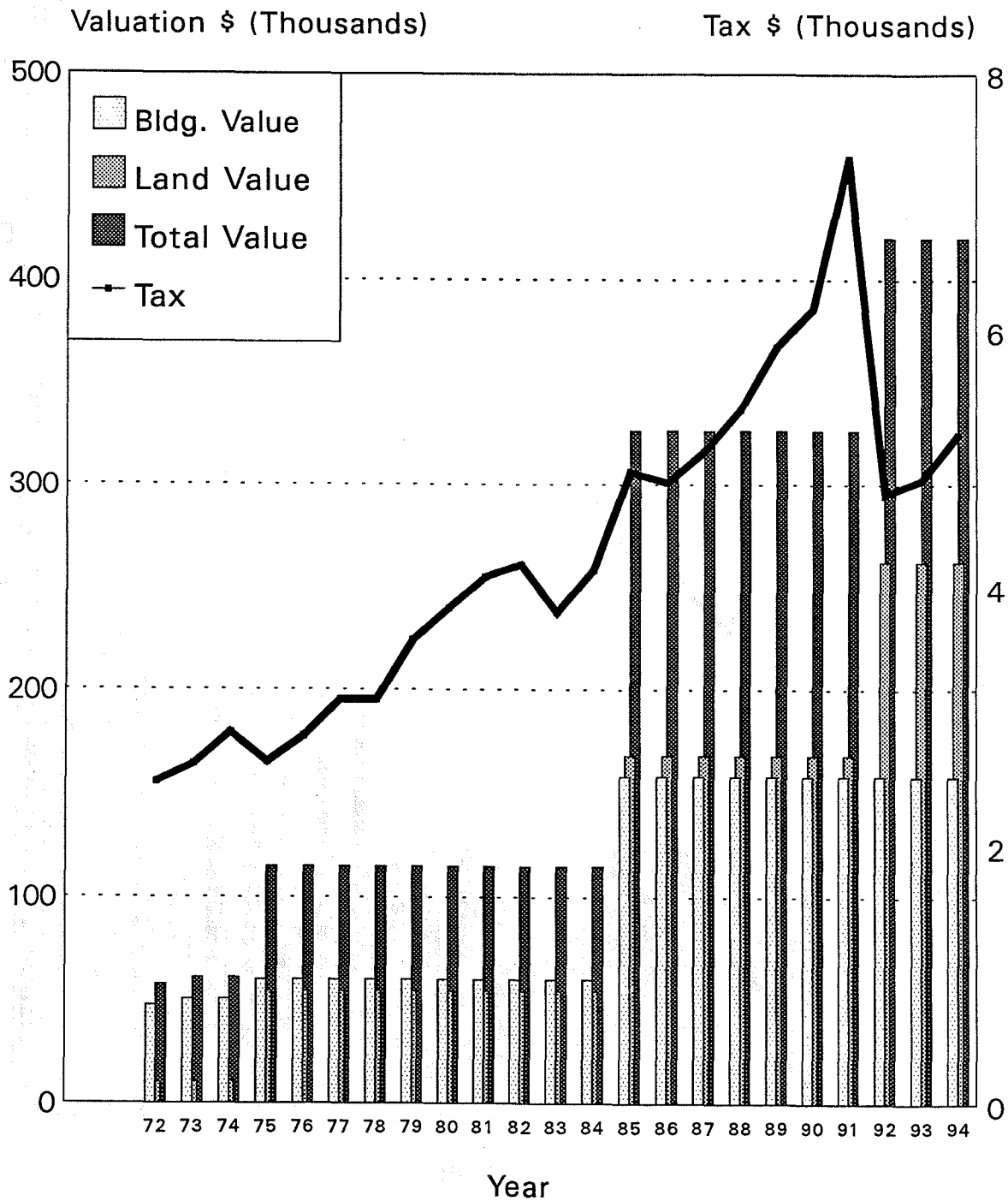
Donated January 1975



1983 tax adjusted for change in fiscal year

Easement Property B-2

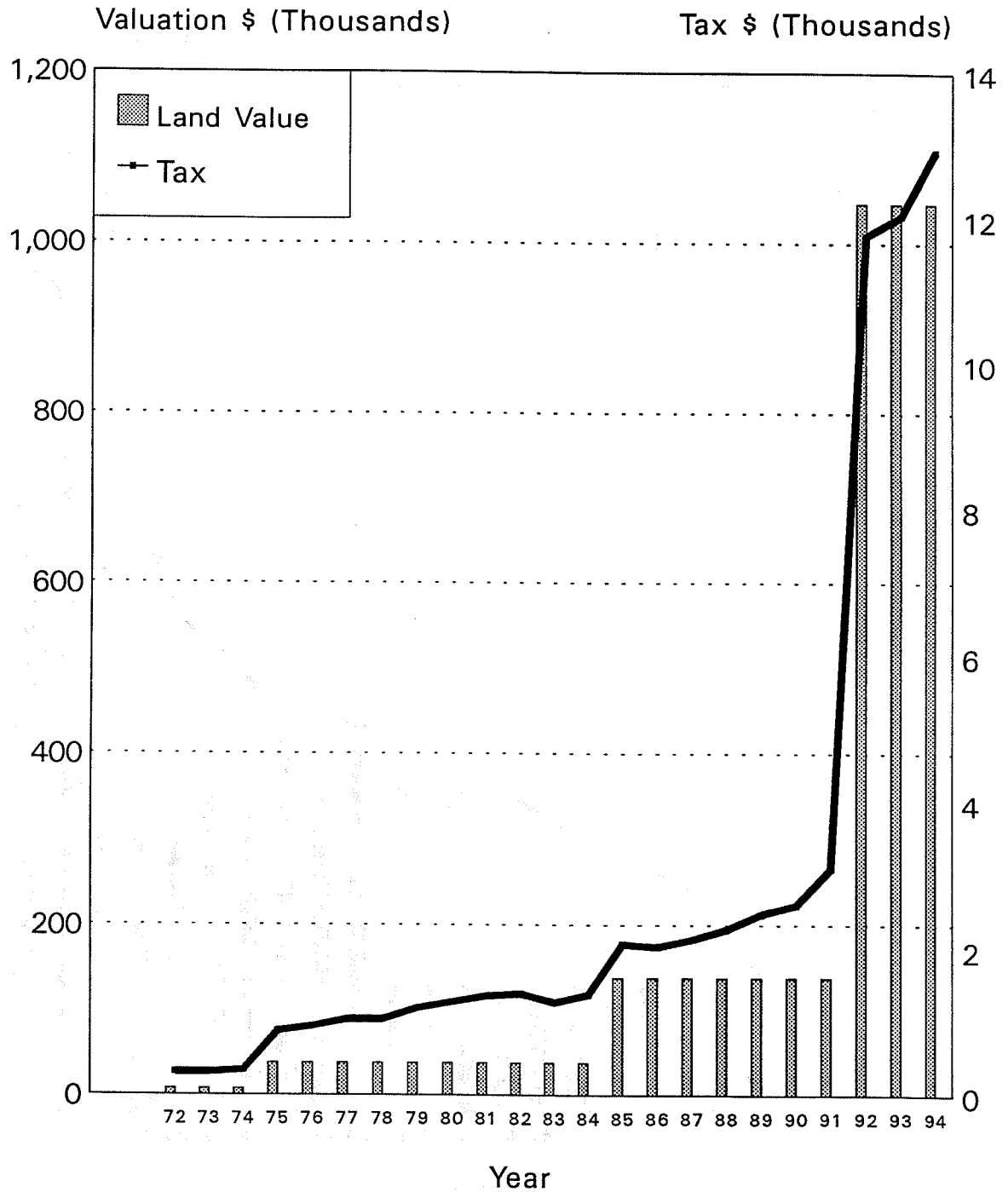
Donated August 1973



1983 tax adjusted for change in fiscal year

Easement Property B-3

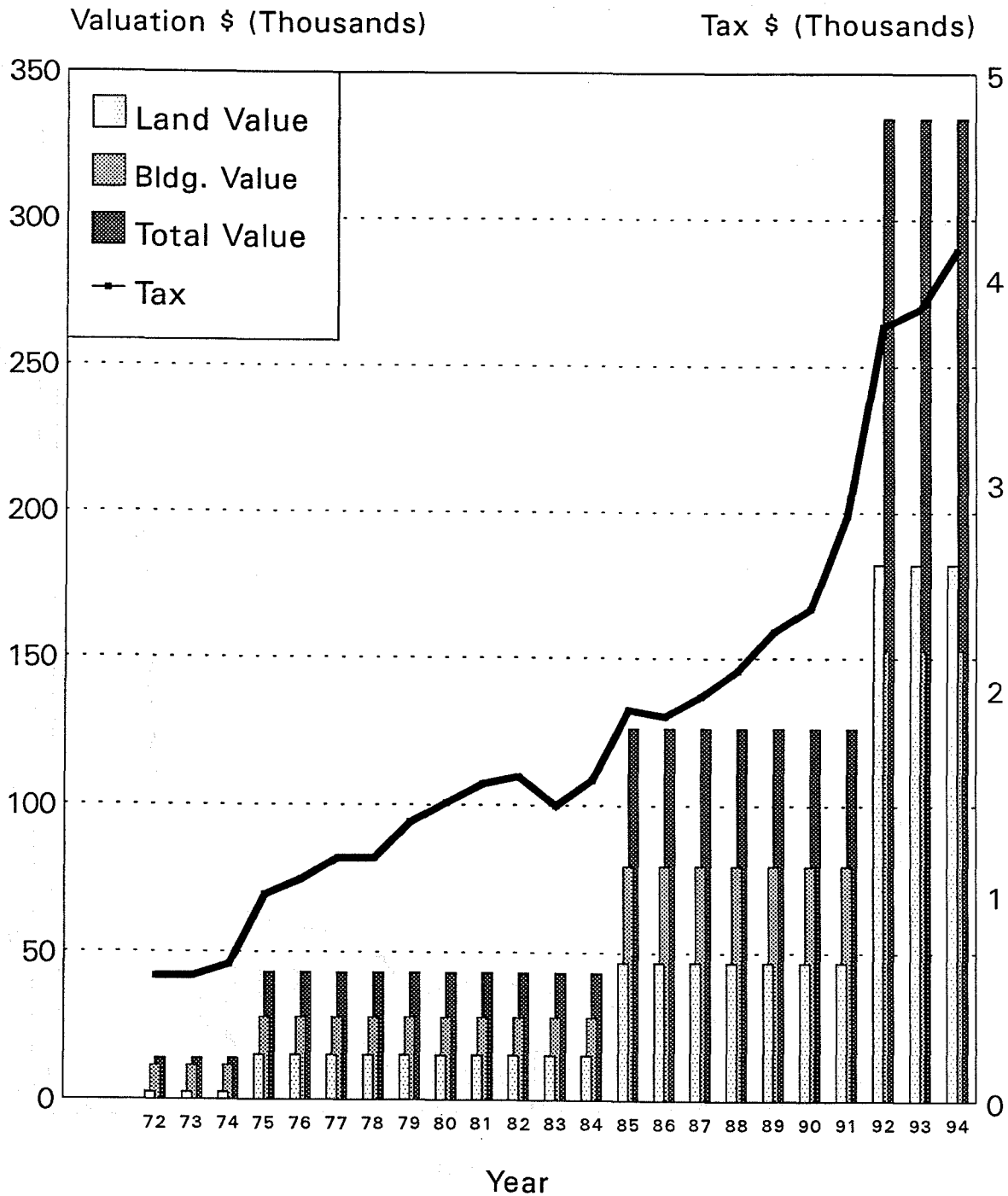
Donated August 1973



1983 tax adjusted for change in fiscal year

Easement Property B-4

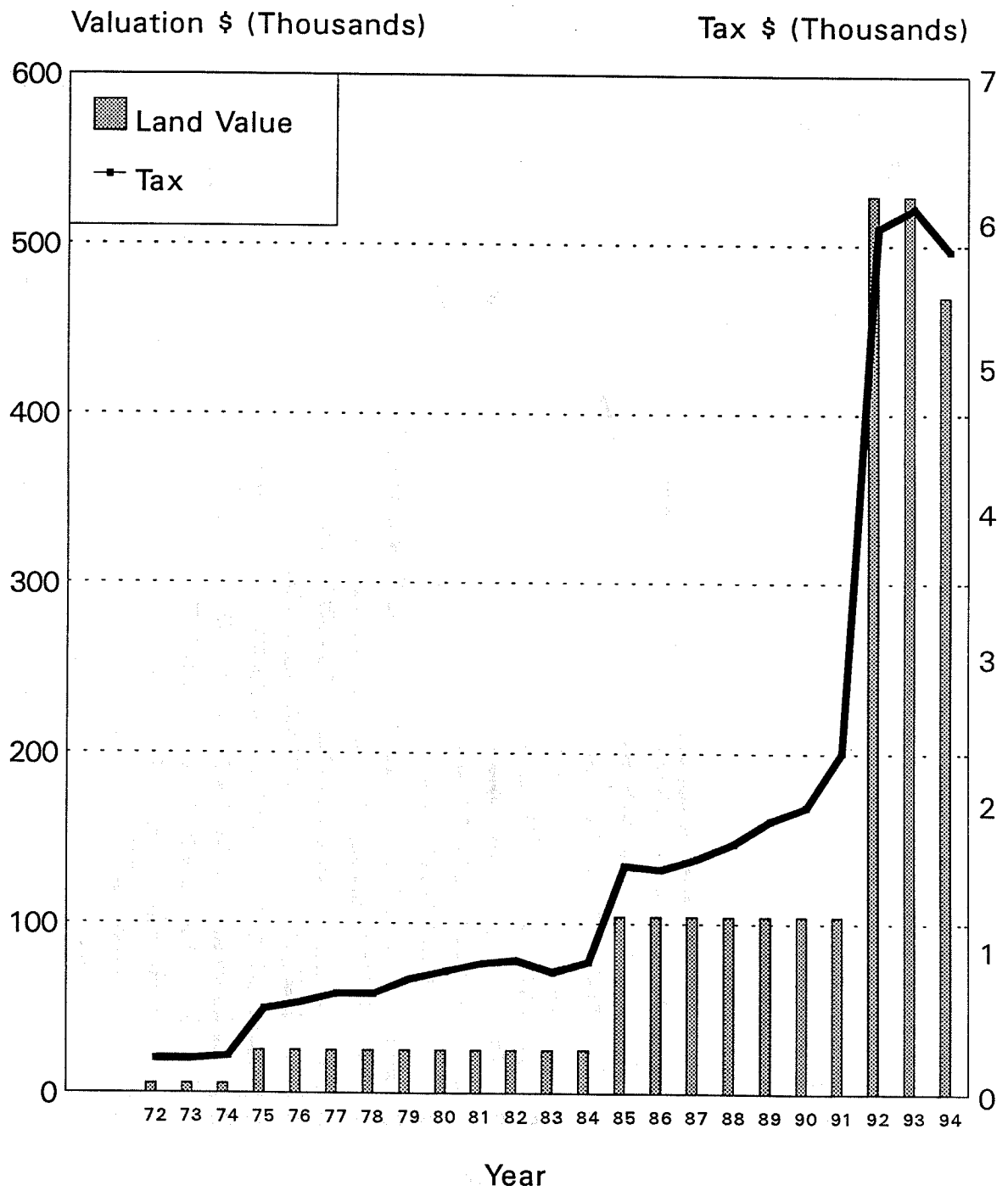
Donated August 1973



1983 tax adjusted for change in fiscal year

Easement Property B-5

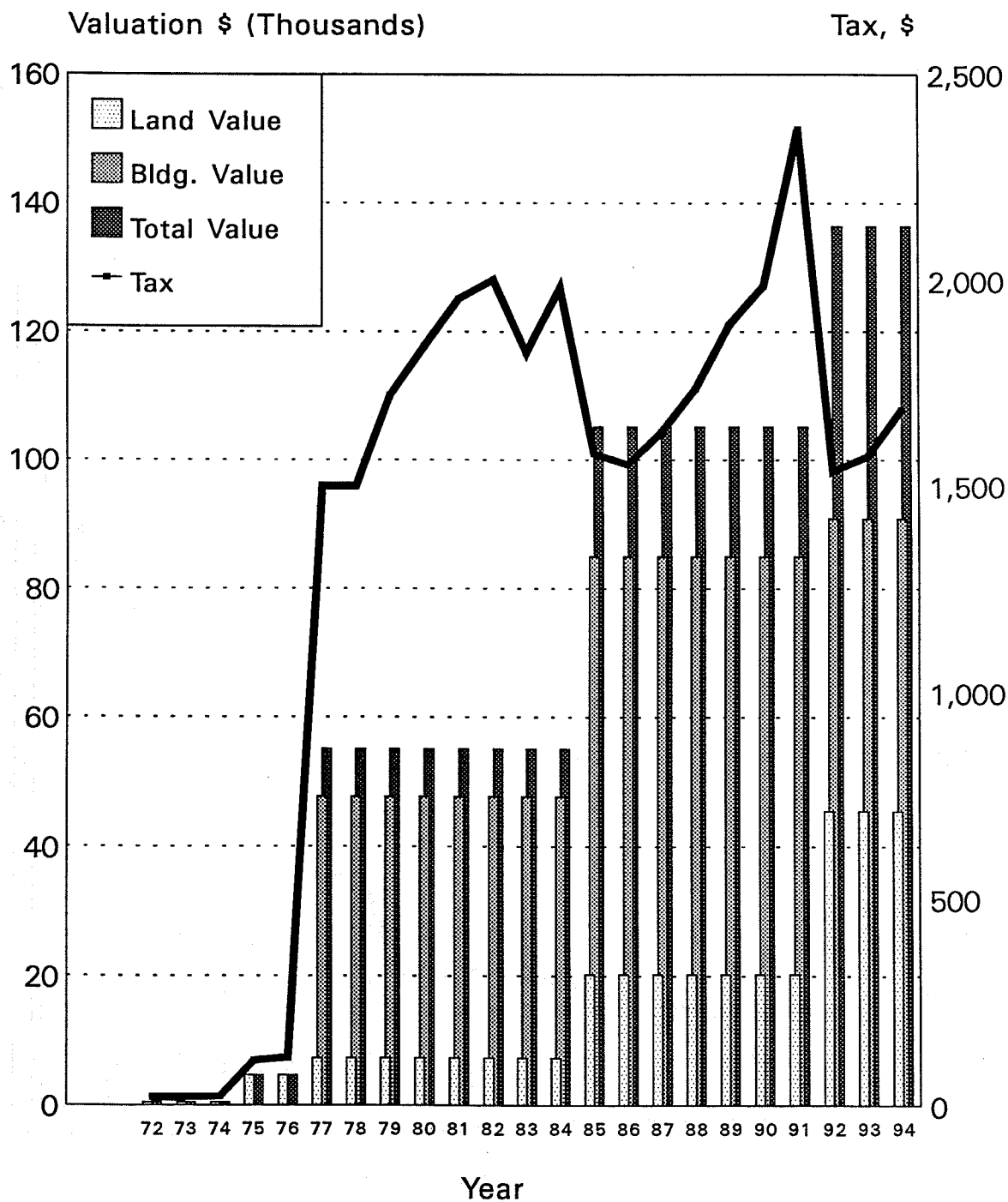
Donated August 1975



1983 tax adjusted for change in fiscal year

Easement Property B-6

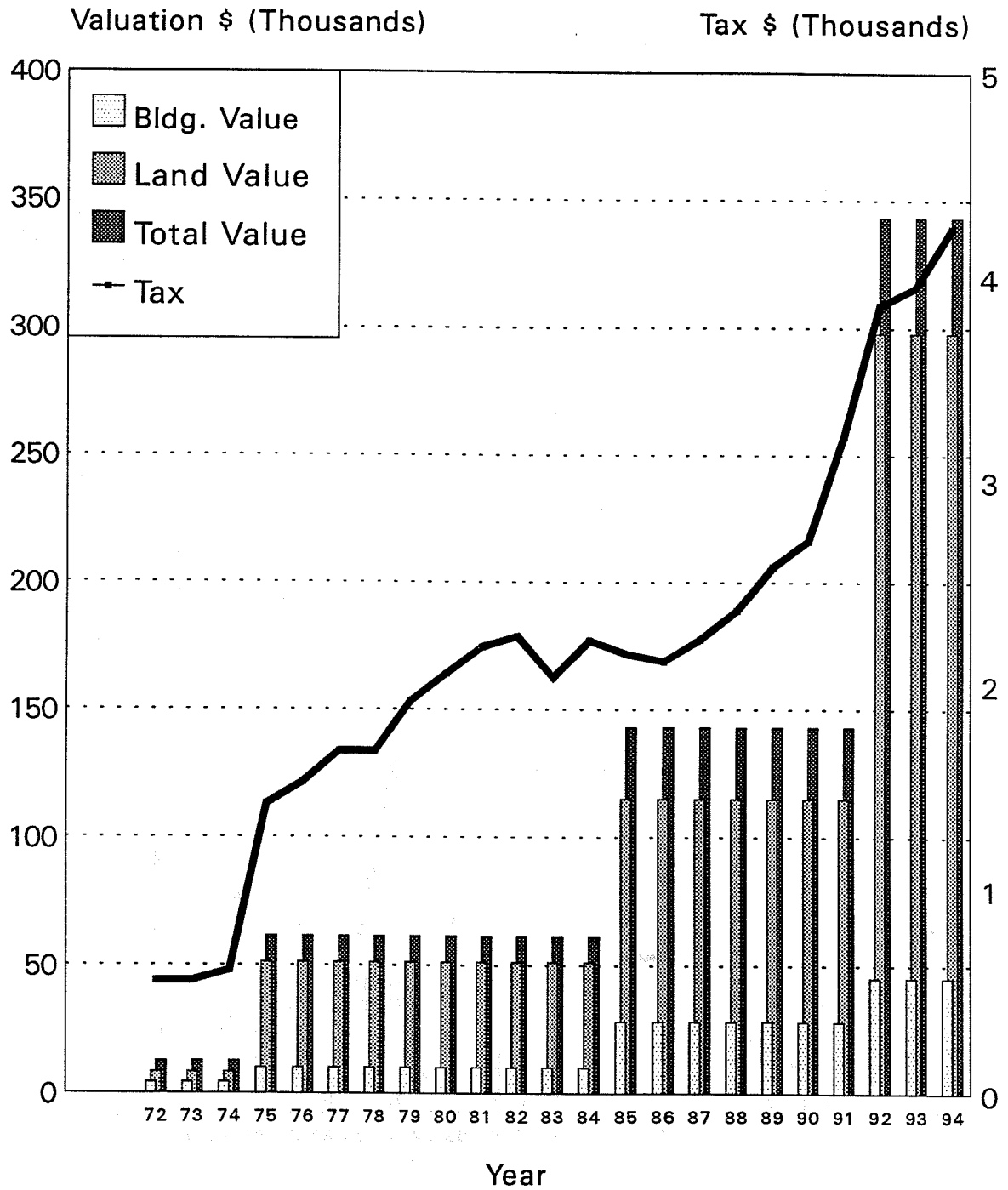
Donated August 1973



1983 tax adjusted for change in fiscal year

Easement Property B-7

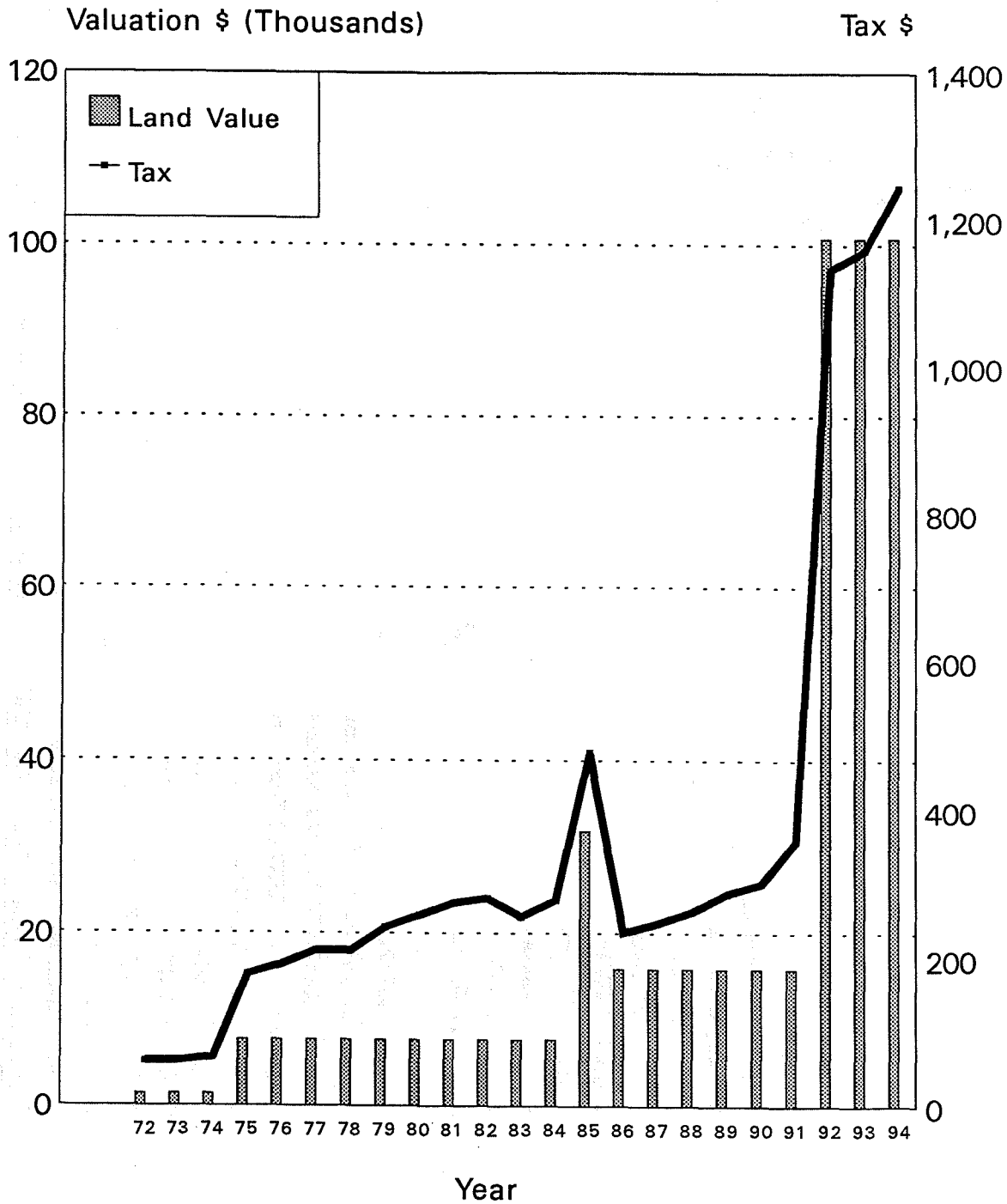
Donated October 1973



1983 tax adjusted for change in fiscal year

Easement Property B-8

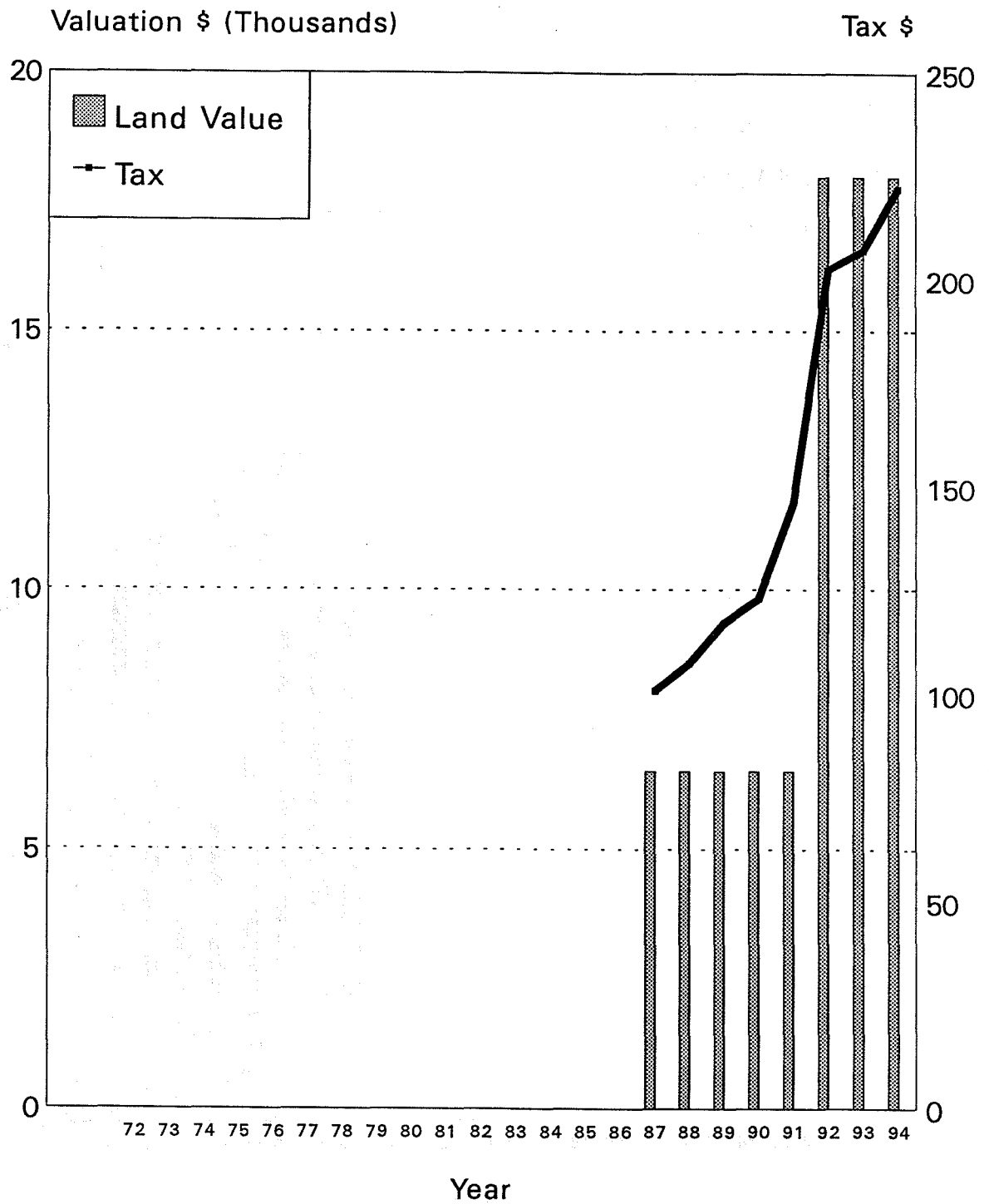
Donated October 1973



1983 tax adjusted for change in fiscal year

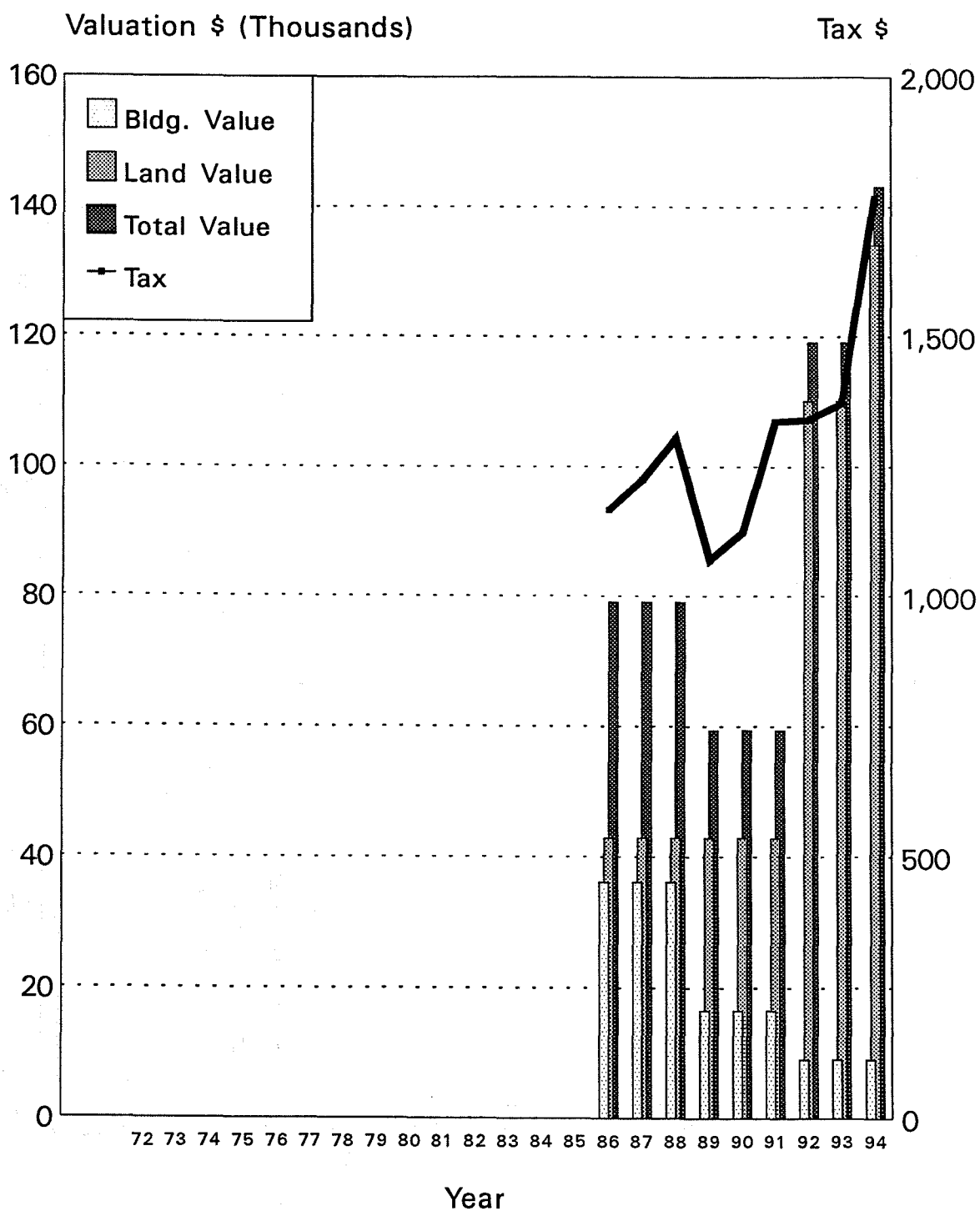
Easement Property B-9

Donated January 1989



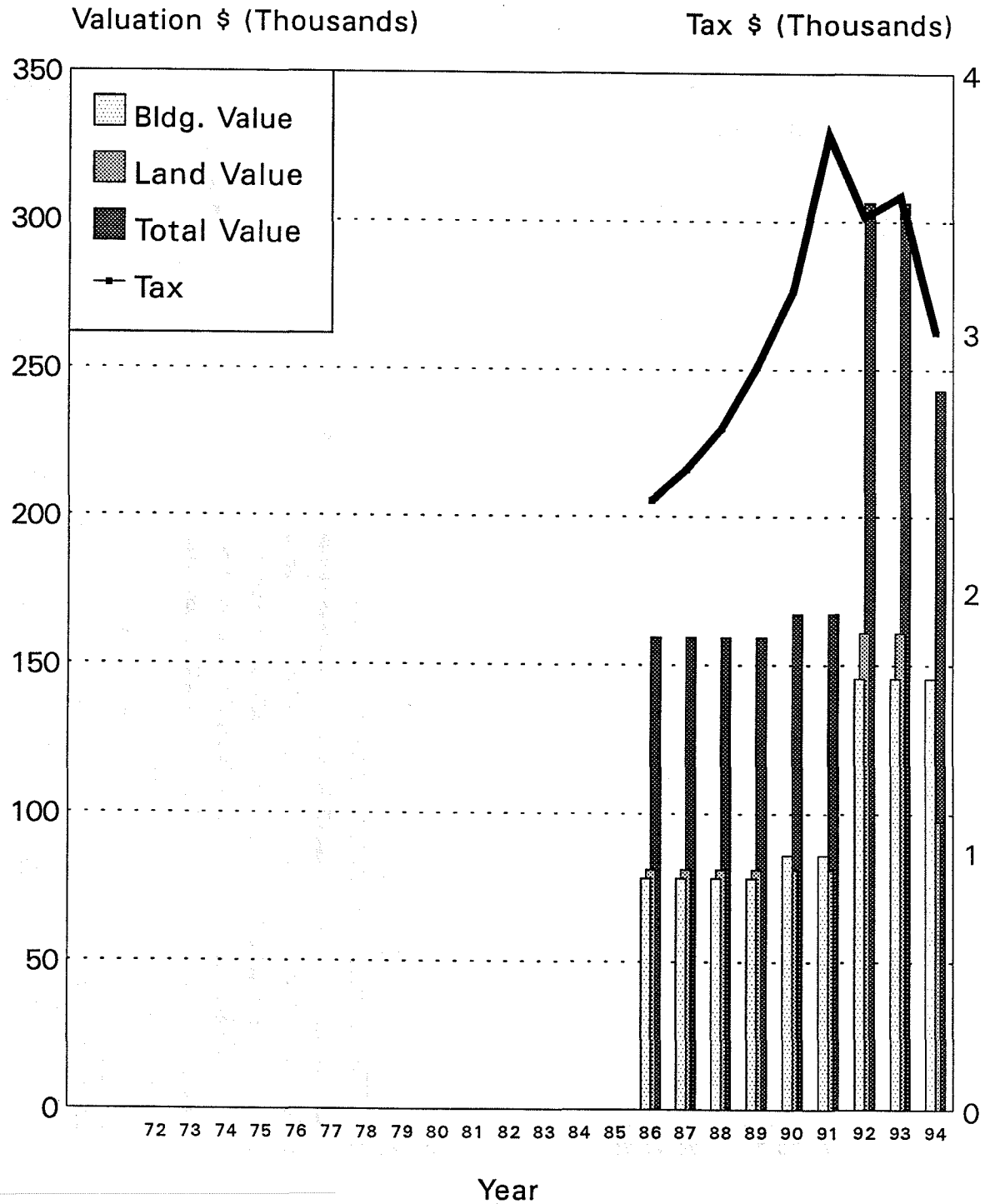
Easement Property B-10

Donated January 1989



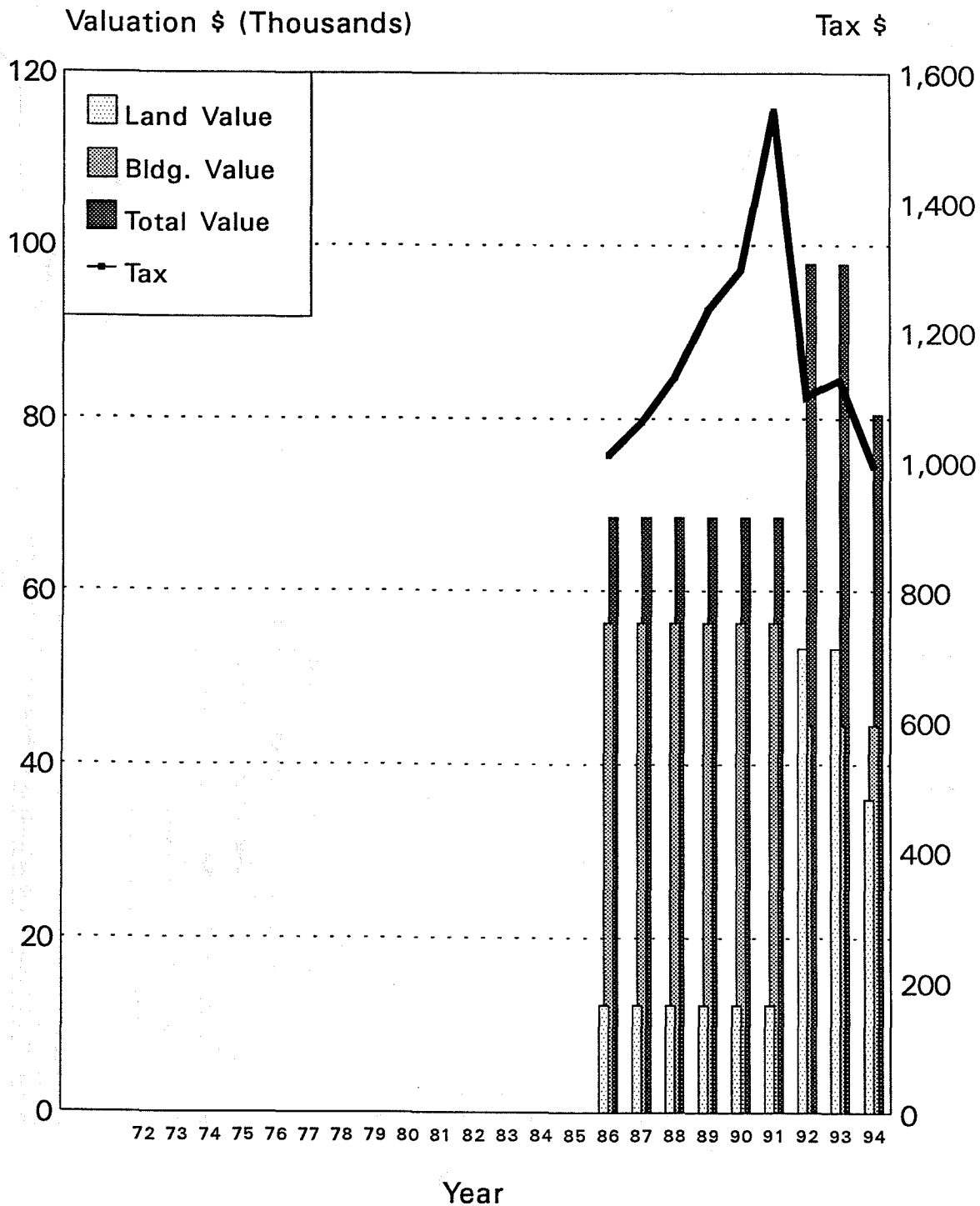
Easement Property B-11

Donated January 1989



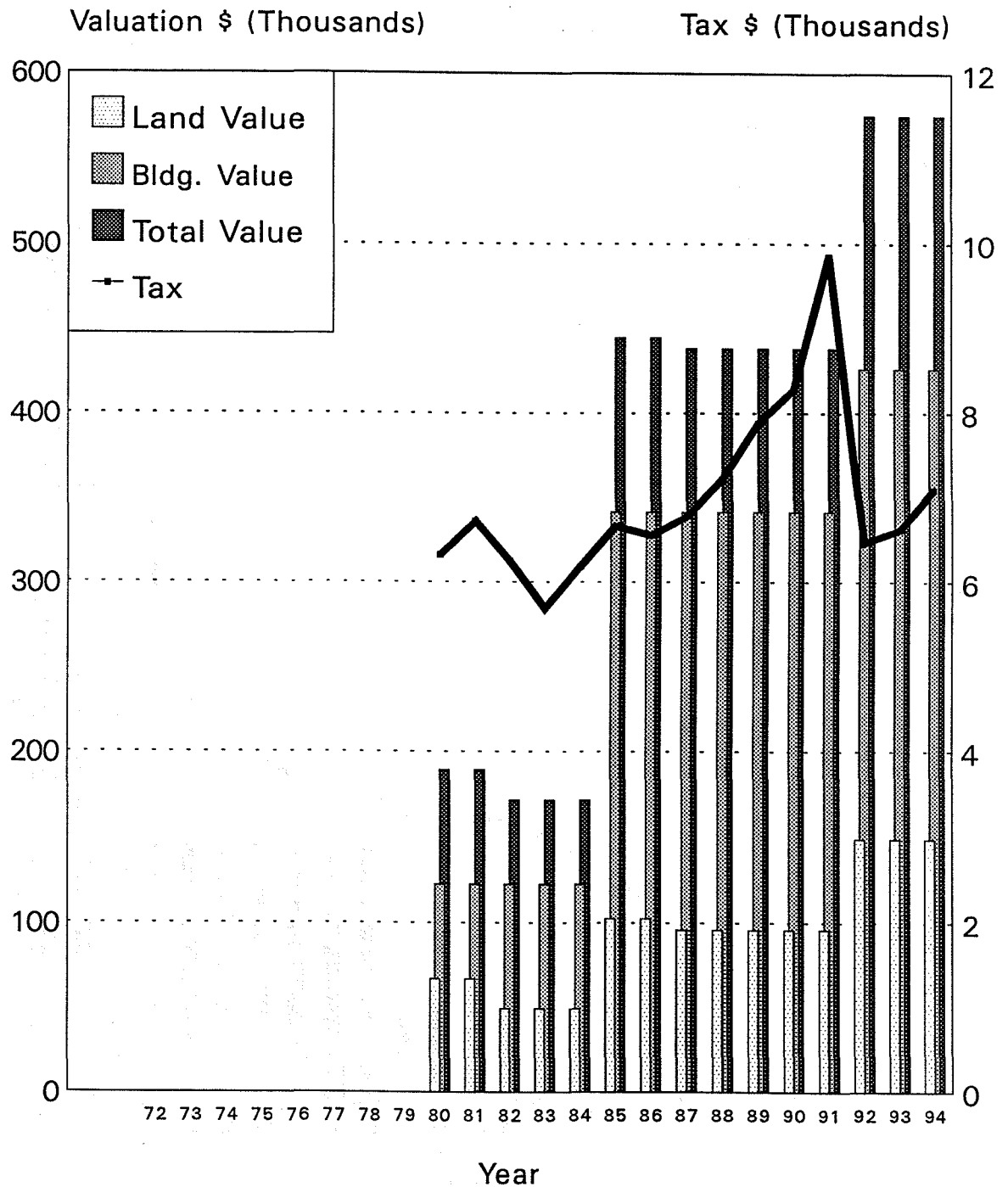
Easement Property B-12

Donated January 1989



Easement Property B-13

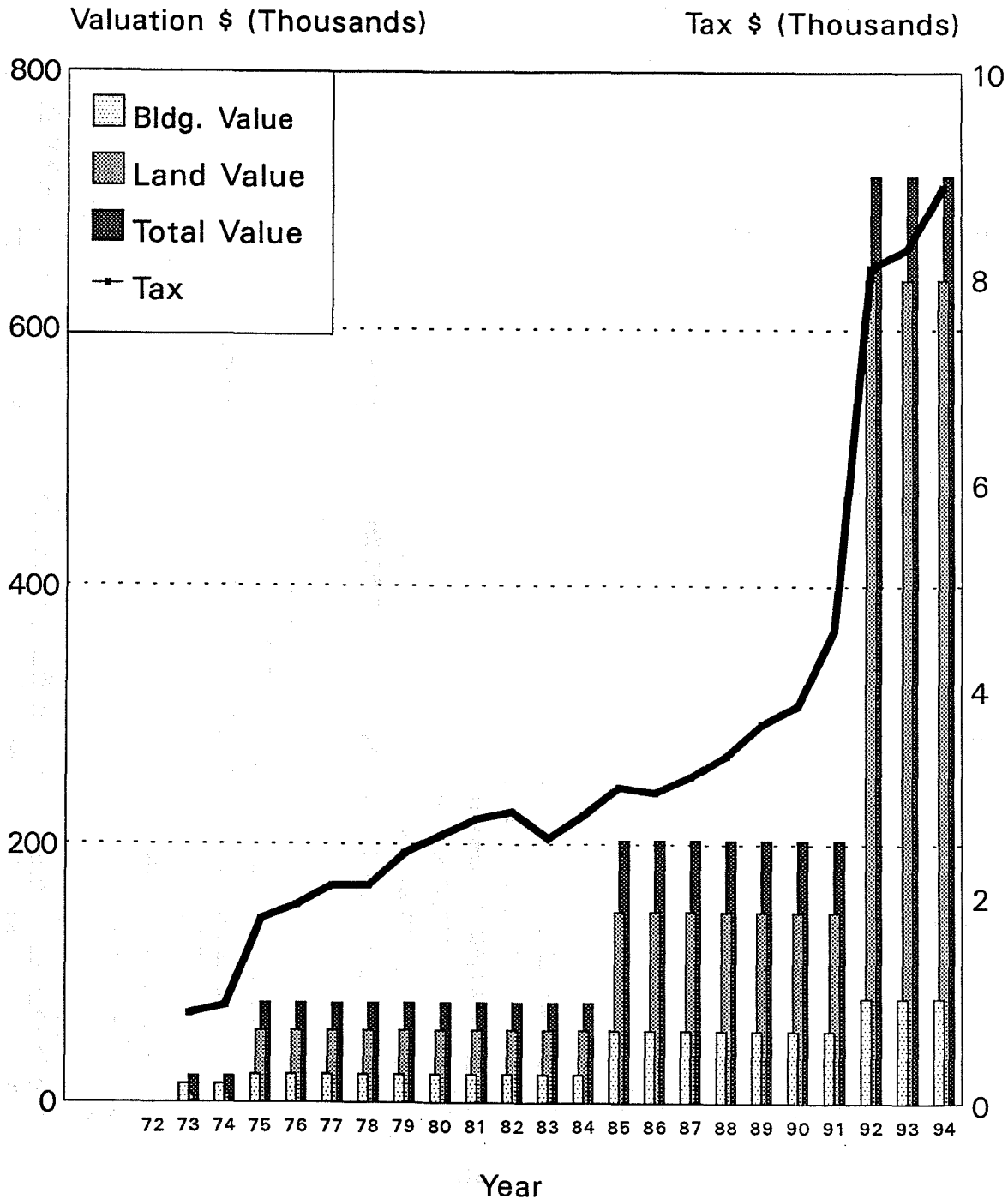
Donated December 1981



1983 tax adjusted for change in fiscal year

Easement Property B-14

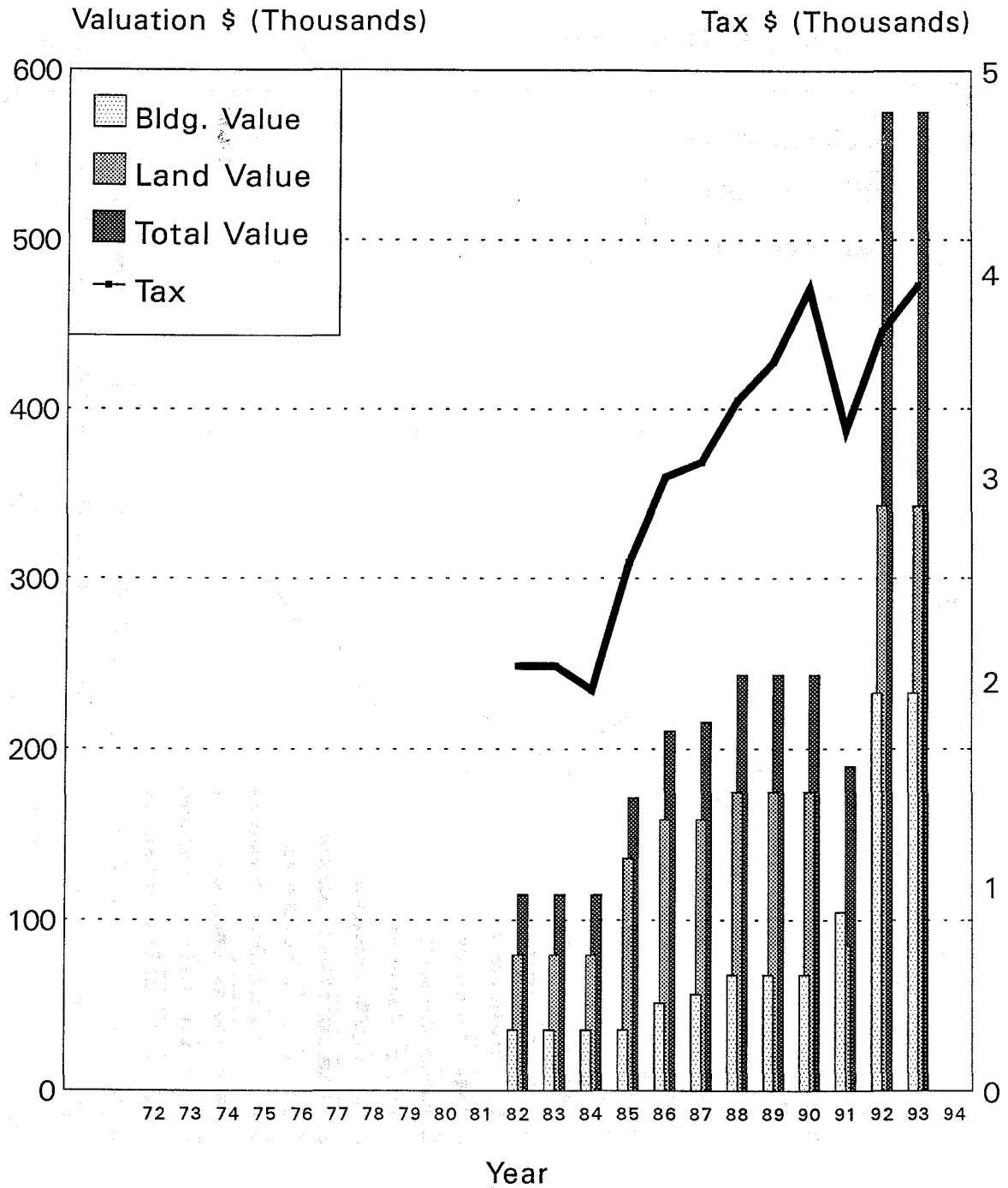
Donated September 1976



1983 tax adjusted for change in fiscal year

Easement Property M-1

Donated December 1984



Placed under Maine Tree Growth Program, 1991

Easement Property M-2

Donated March 1976

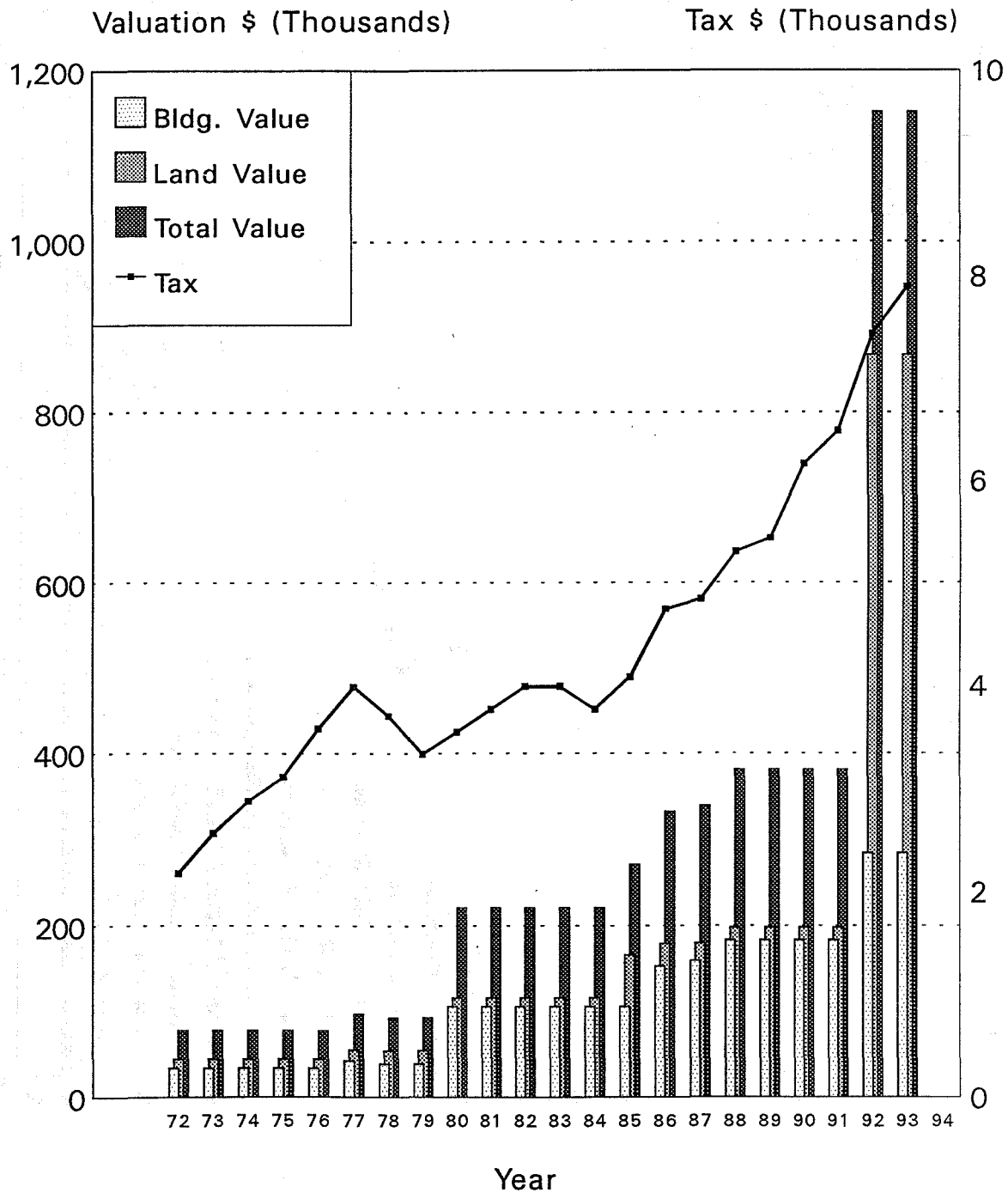


Chart includes data for both lots after 1978 subdivision

Easement Property M-3

Donated January 1974

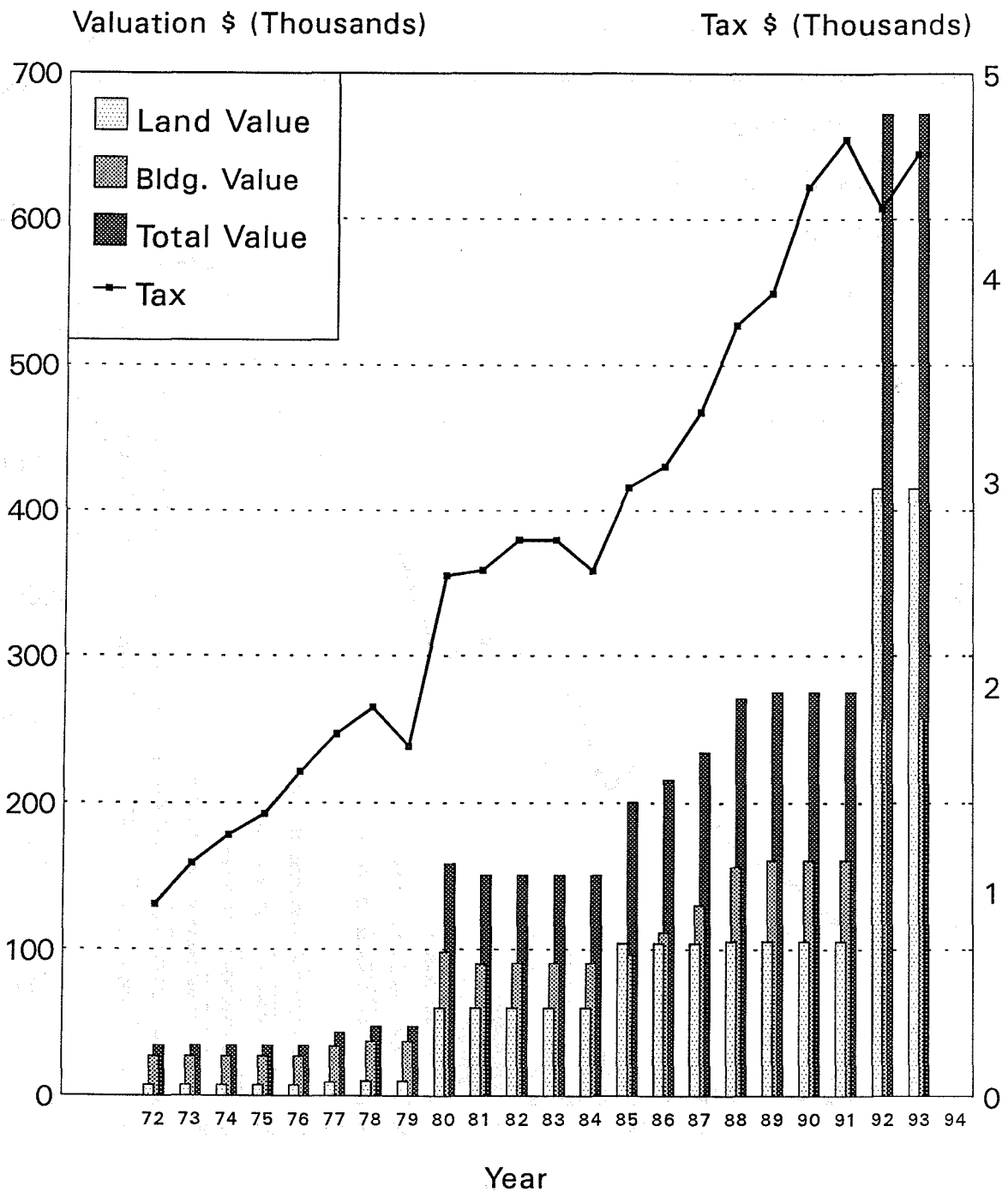
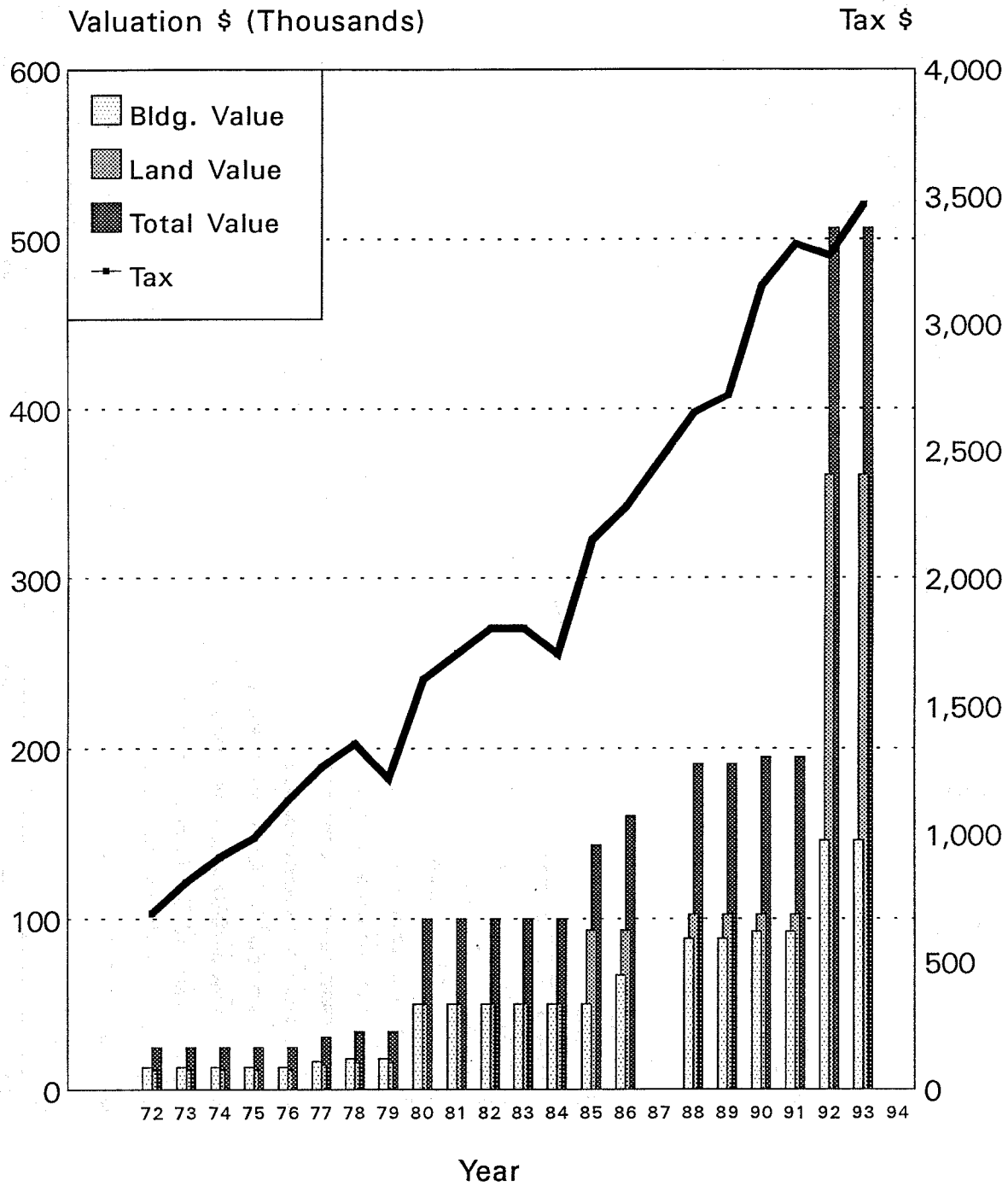


Chart includes data for both lots after 1980 subdivision

Easement Property M-4

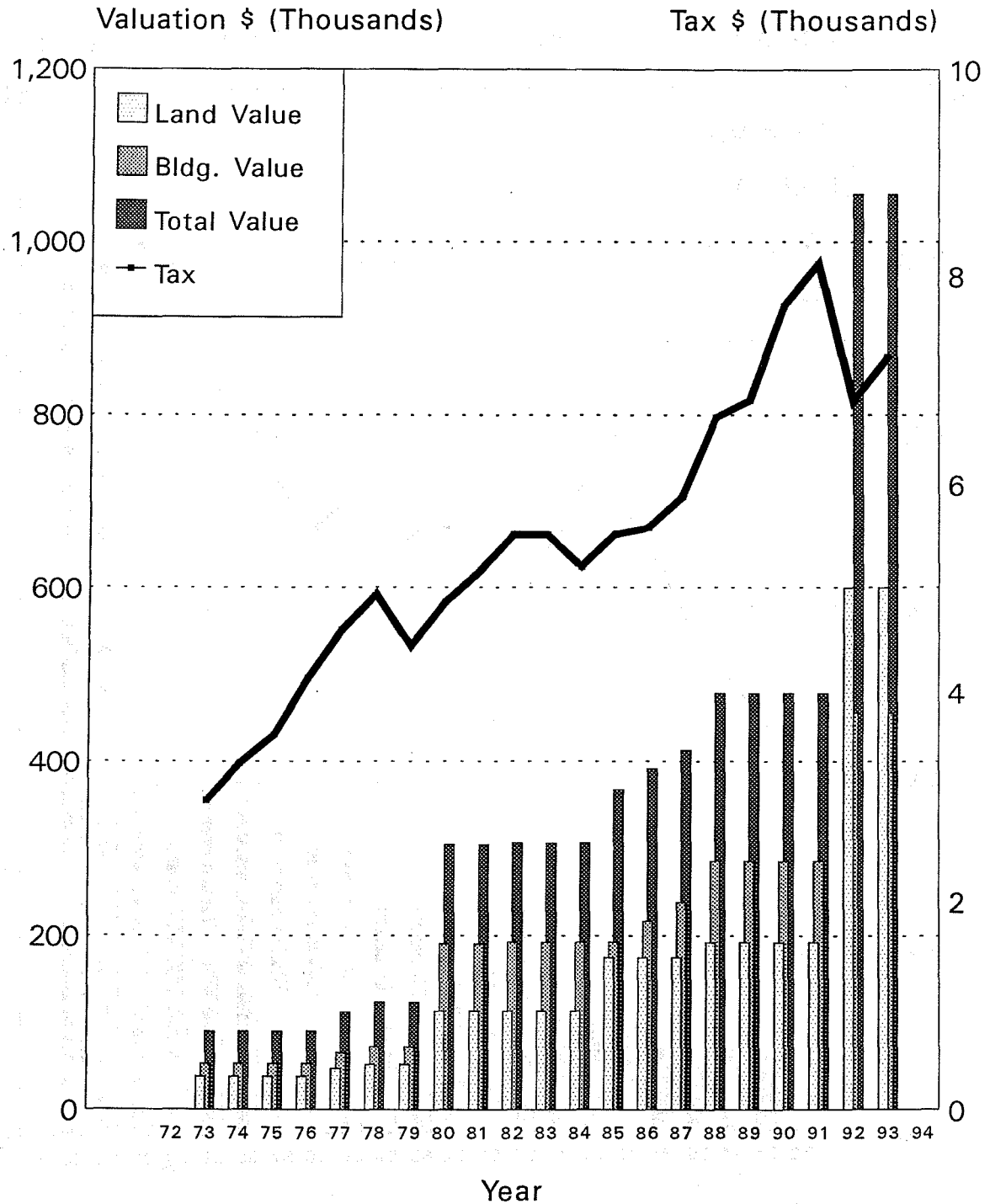
Donated August 1973



[1987 taxes not posted in town valuation book]

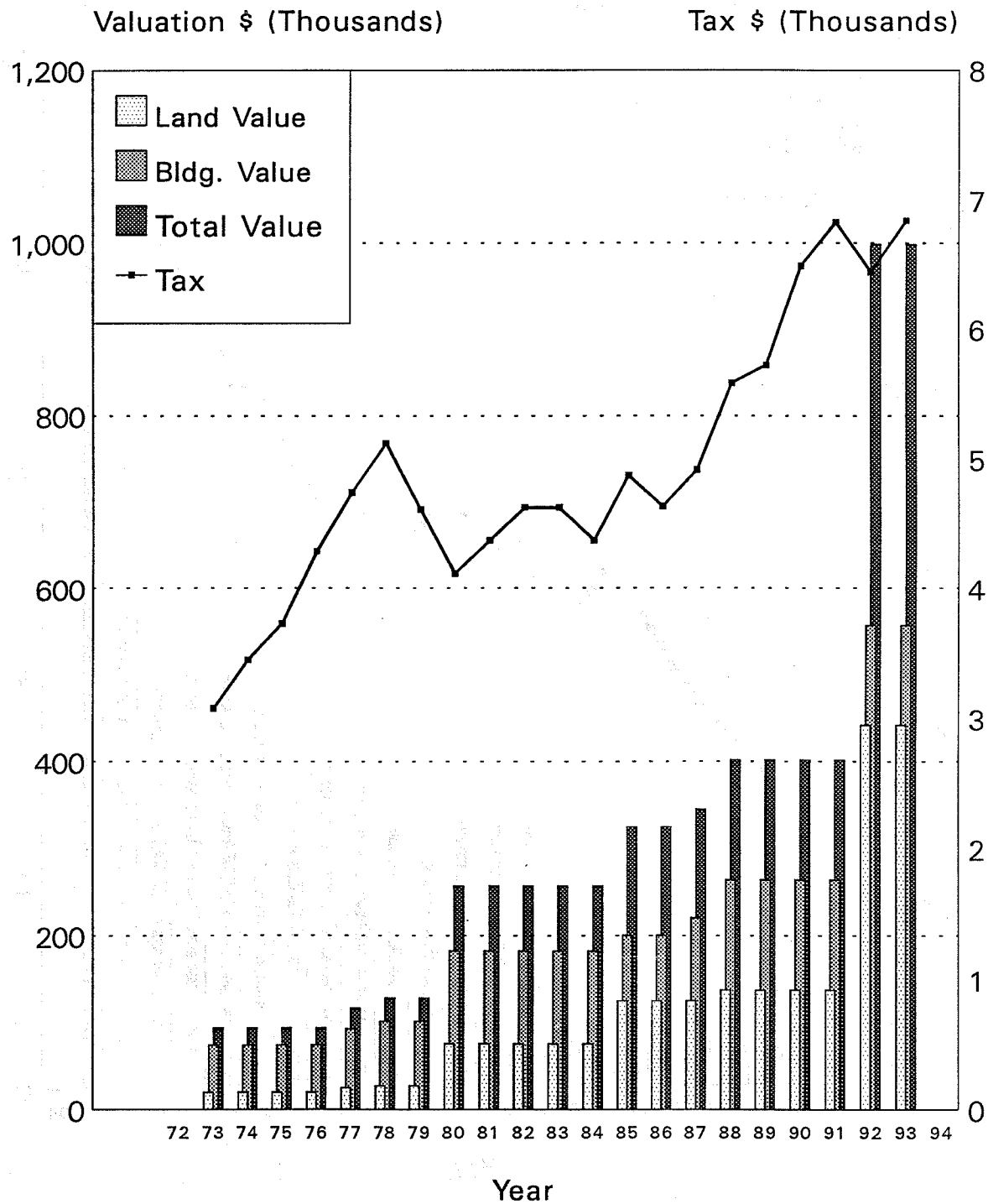
Easement Property M-5

Donated December 1974



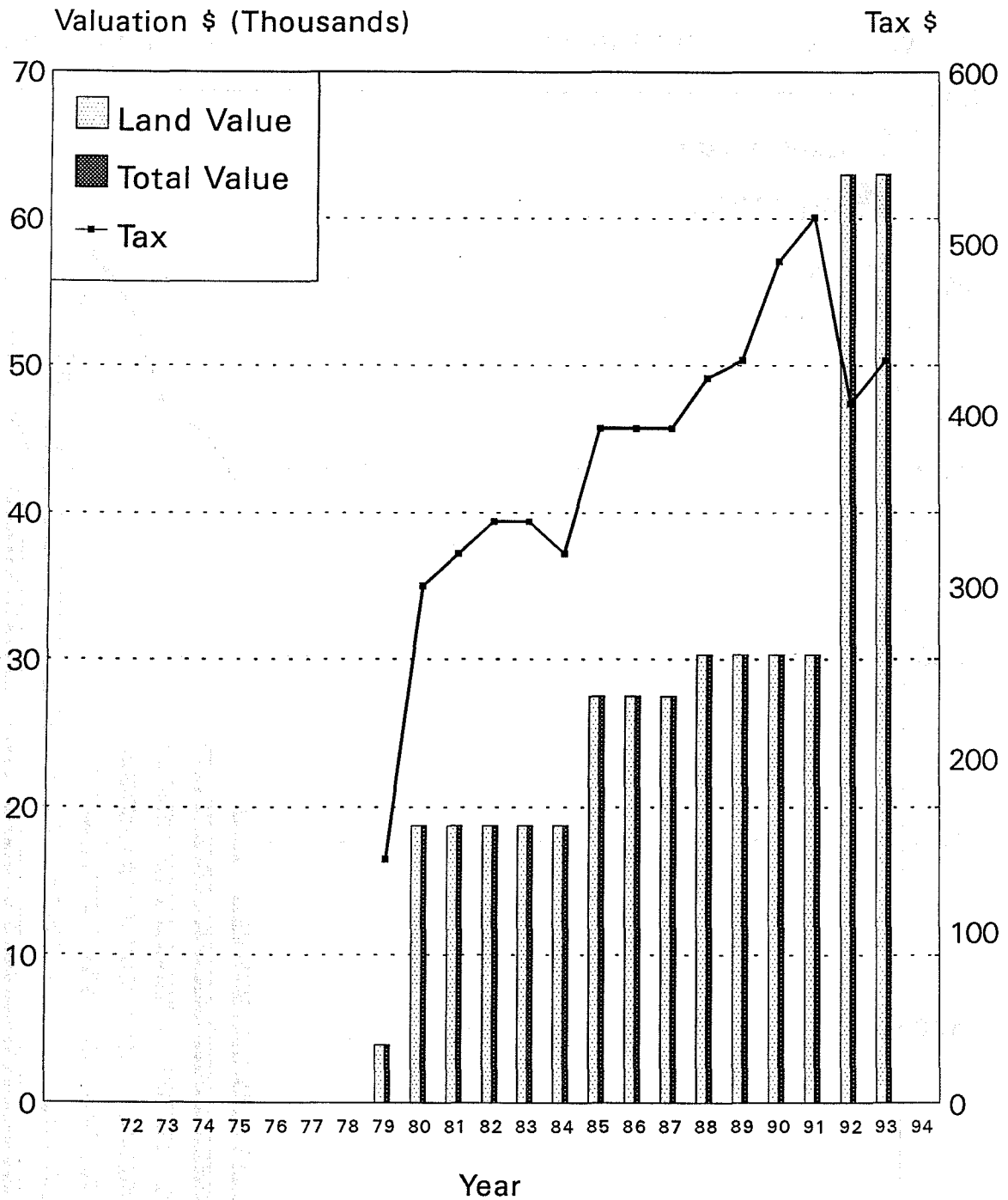
Easement Property M-6

Donated July 1974



Easement Property M-7

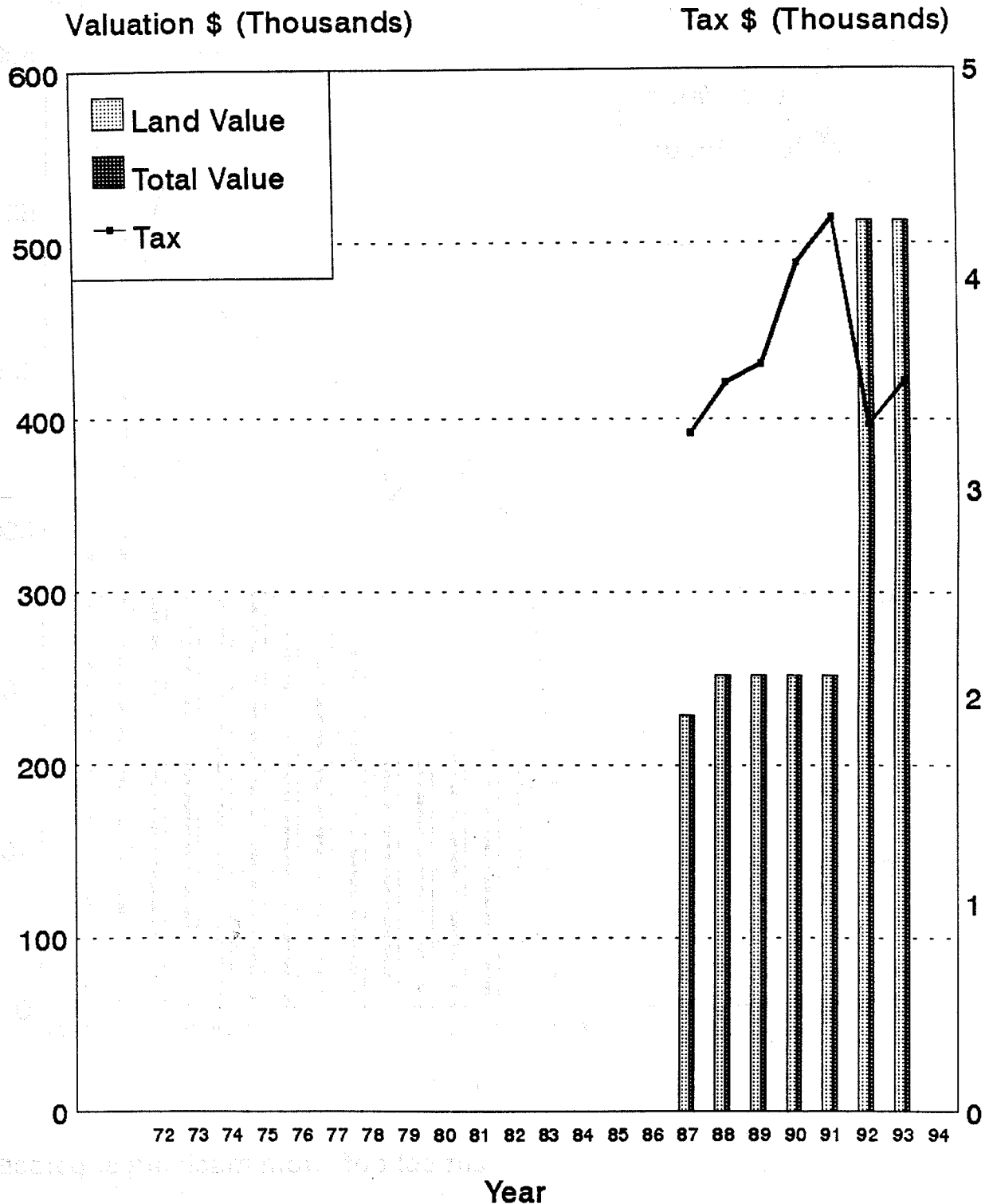
Donated November 1978



Lot split off from much larger parcel in 1979

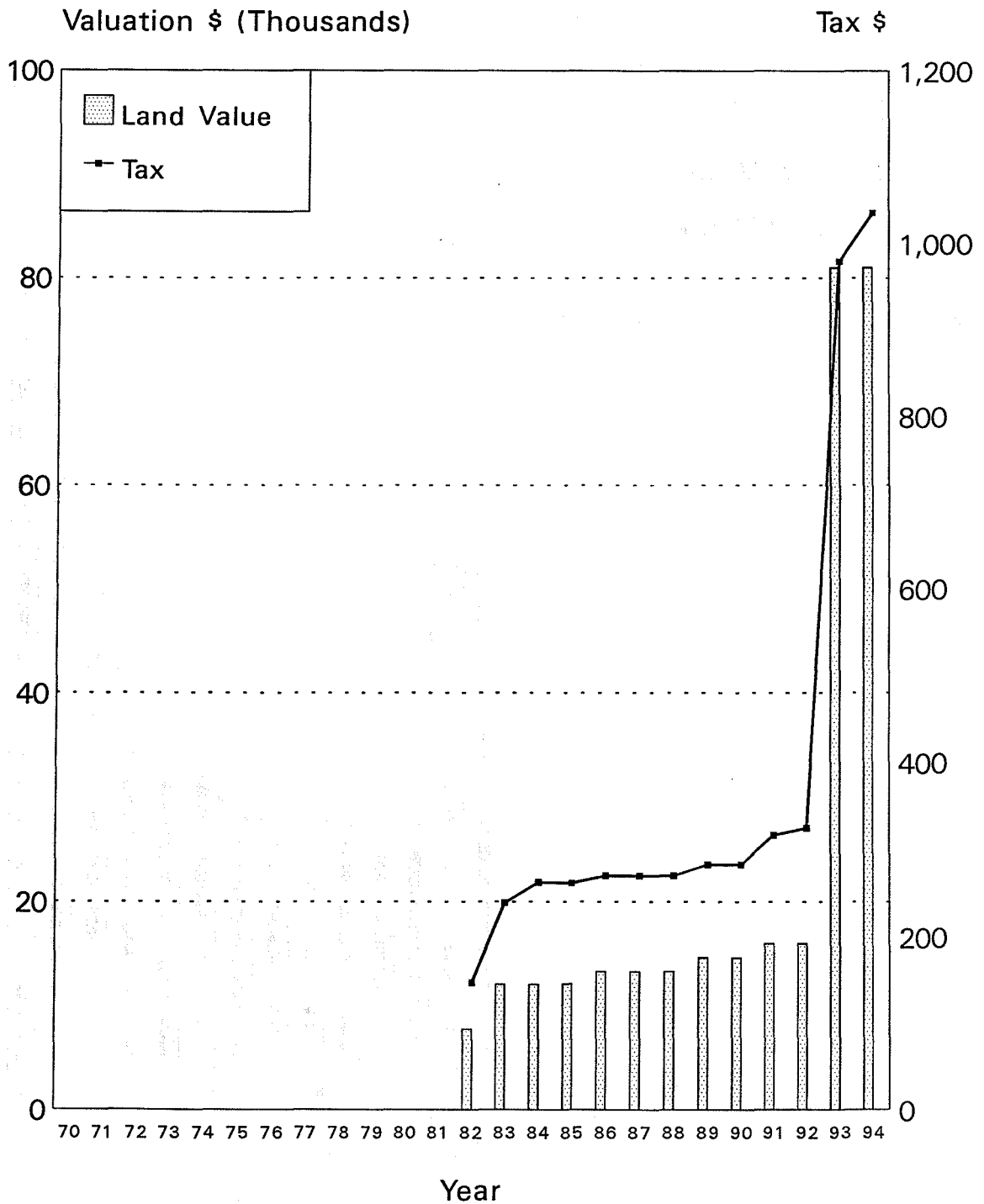
Easement Property M-8

Donated June 1992



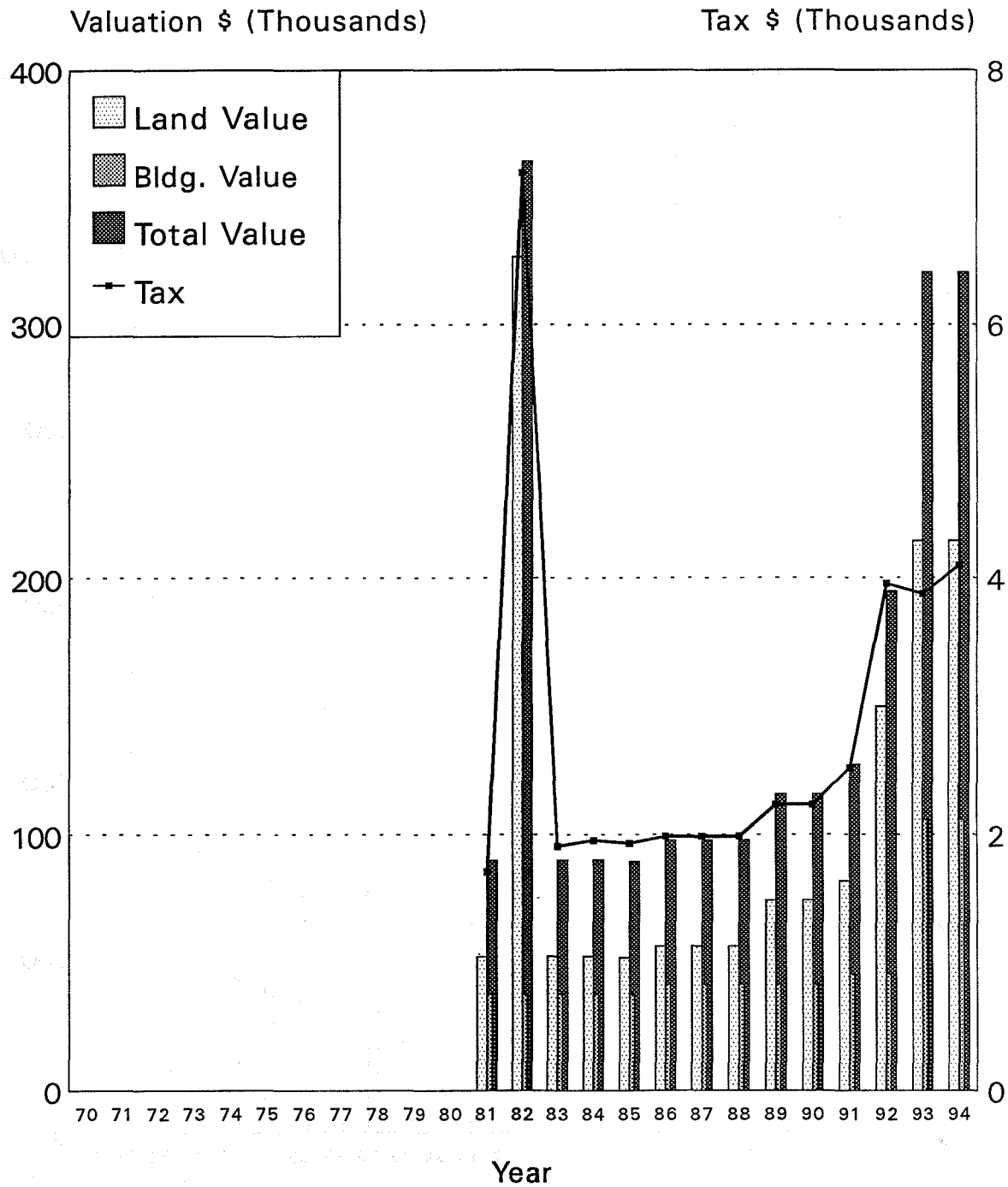
Easement Property S-1

Donated December 1982



Easement Property S-2

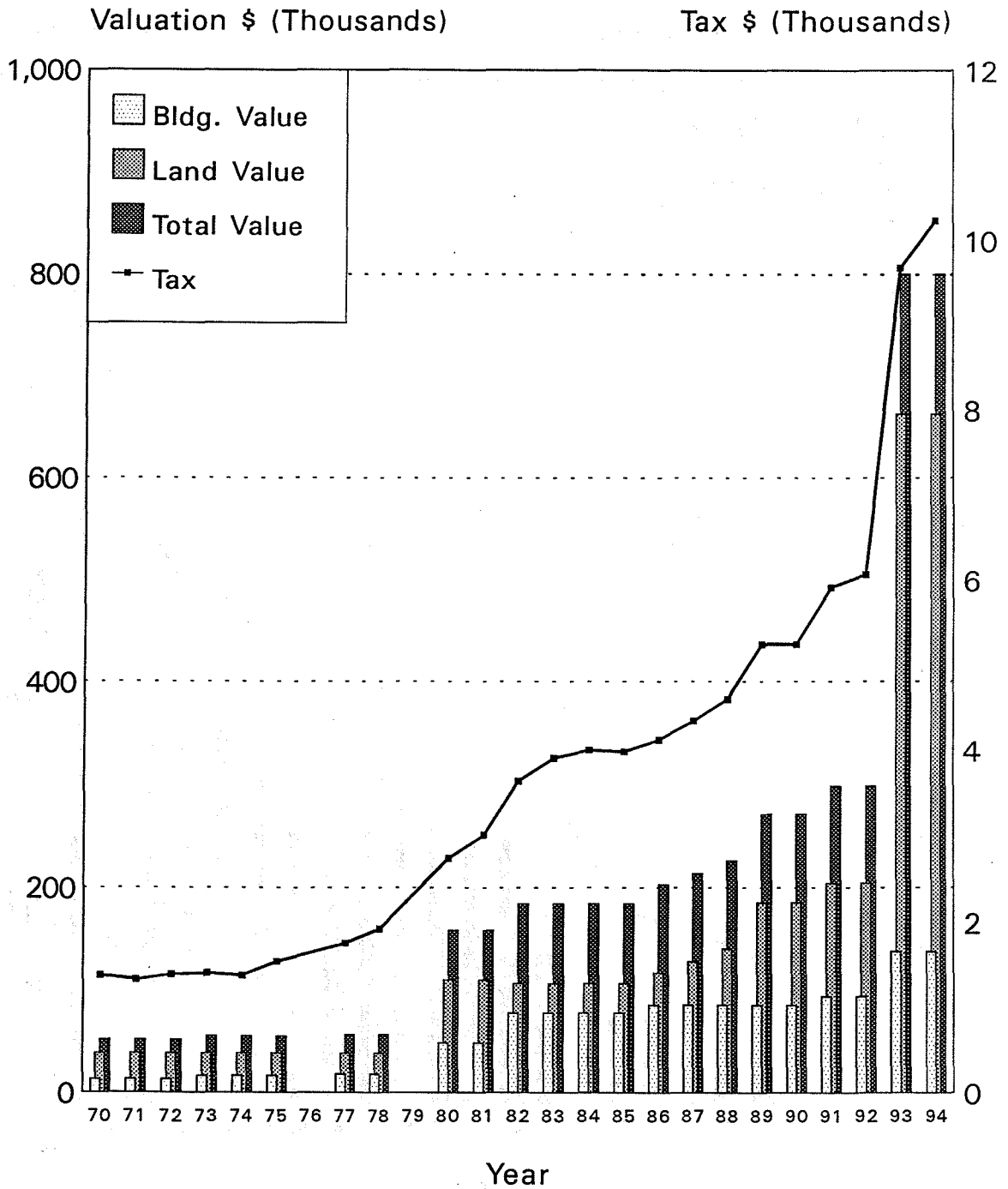
Donated March 1981



1990: placed under Maine Tree Growth Program

Easement Property S-3

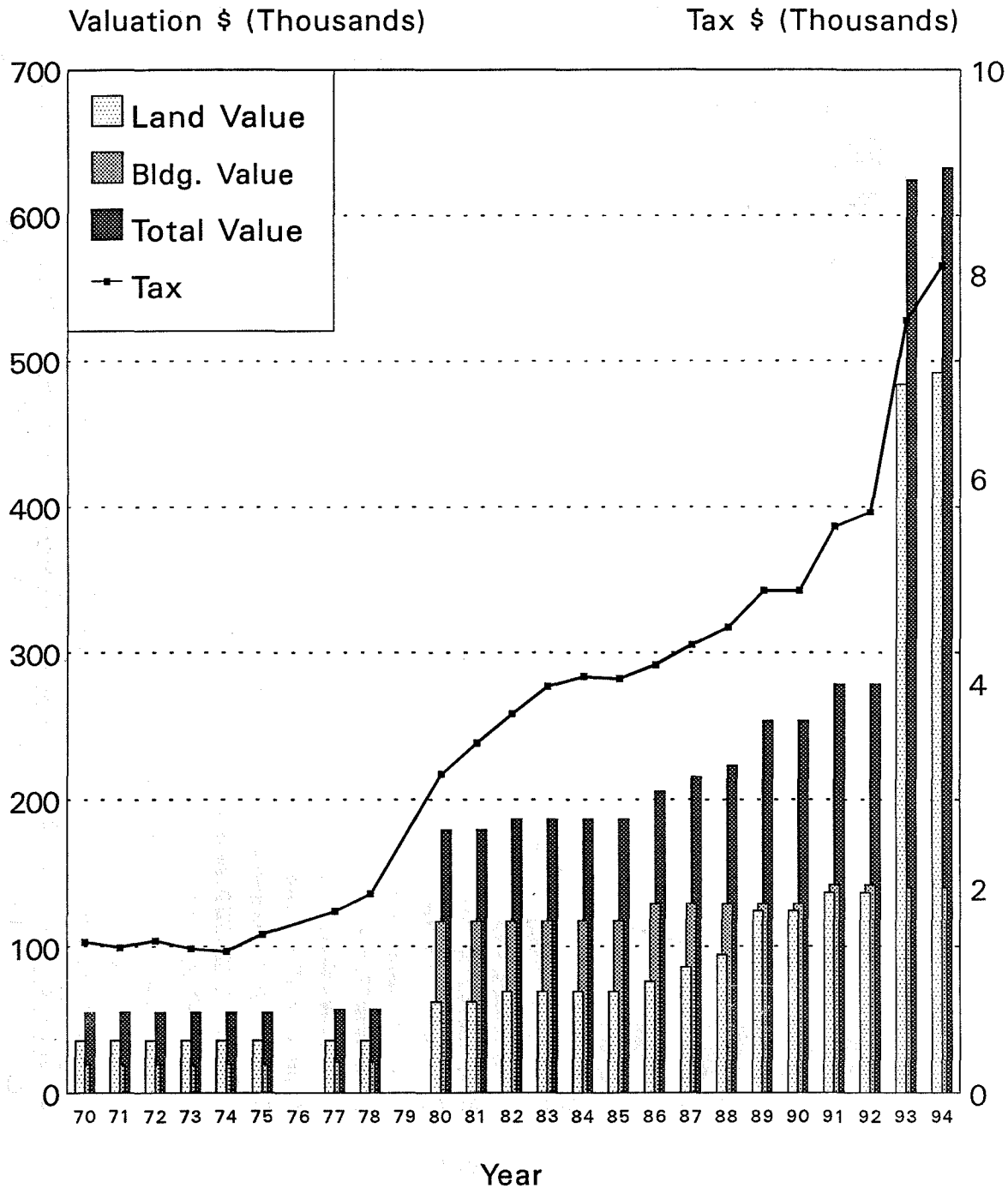
Donated August 1971



Valuations and Real Estate Taxes not listed for 1976 & 1979

Easement Property S-4

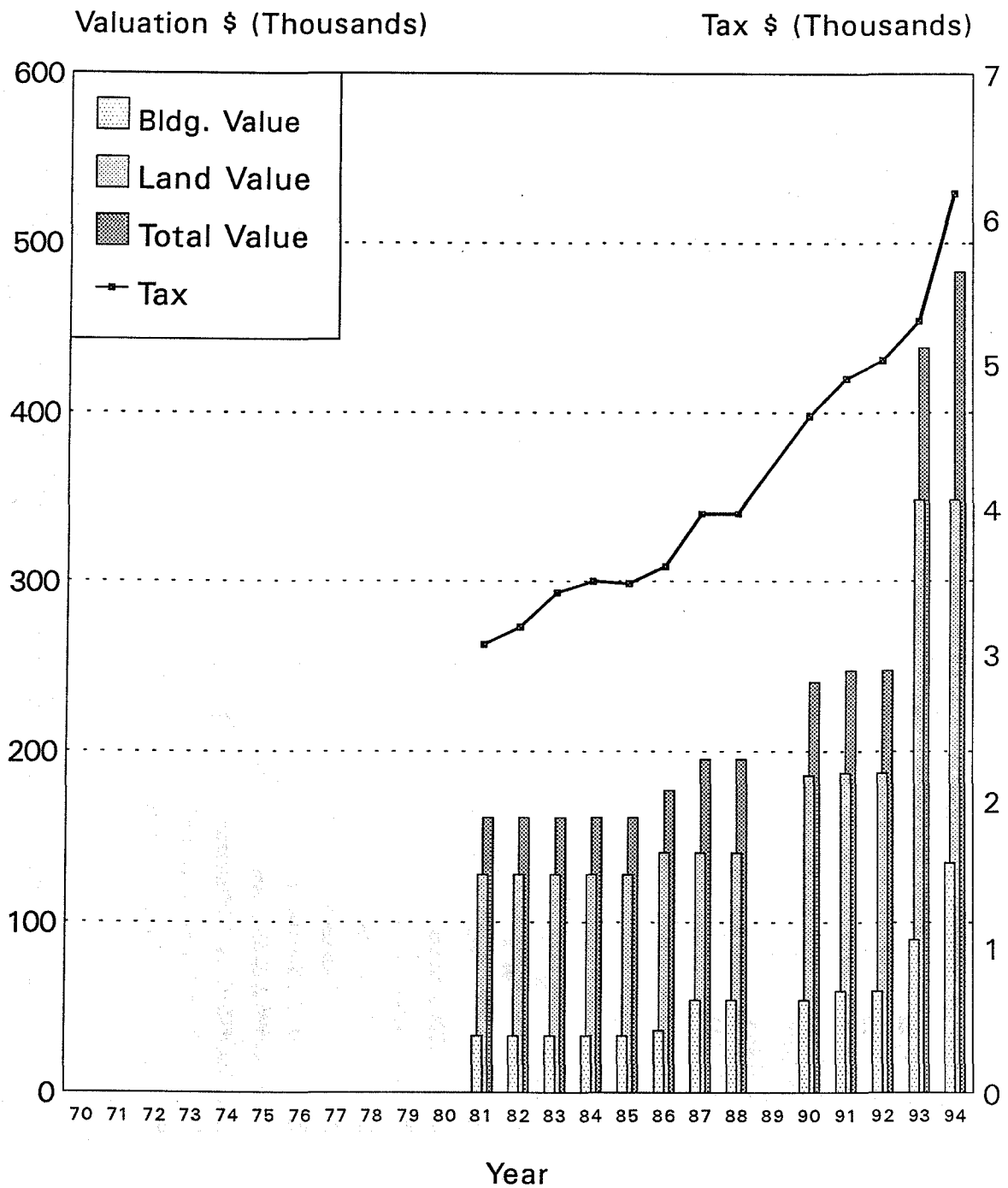
Donated August 1971



Valuation and Tax data not available for 1976 & 1979

Easement Property S-5

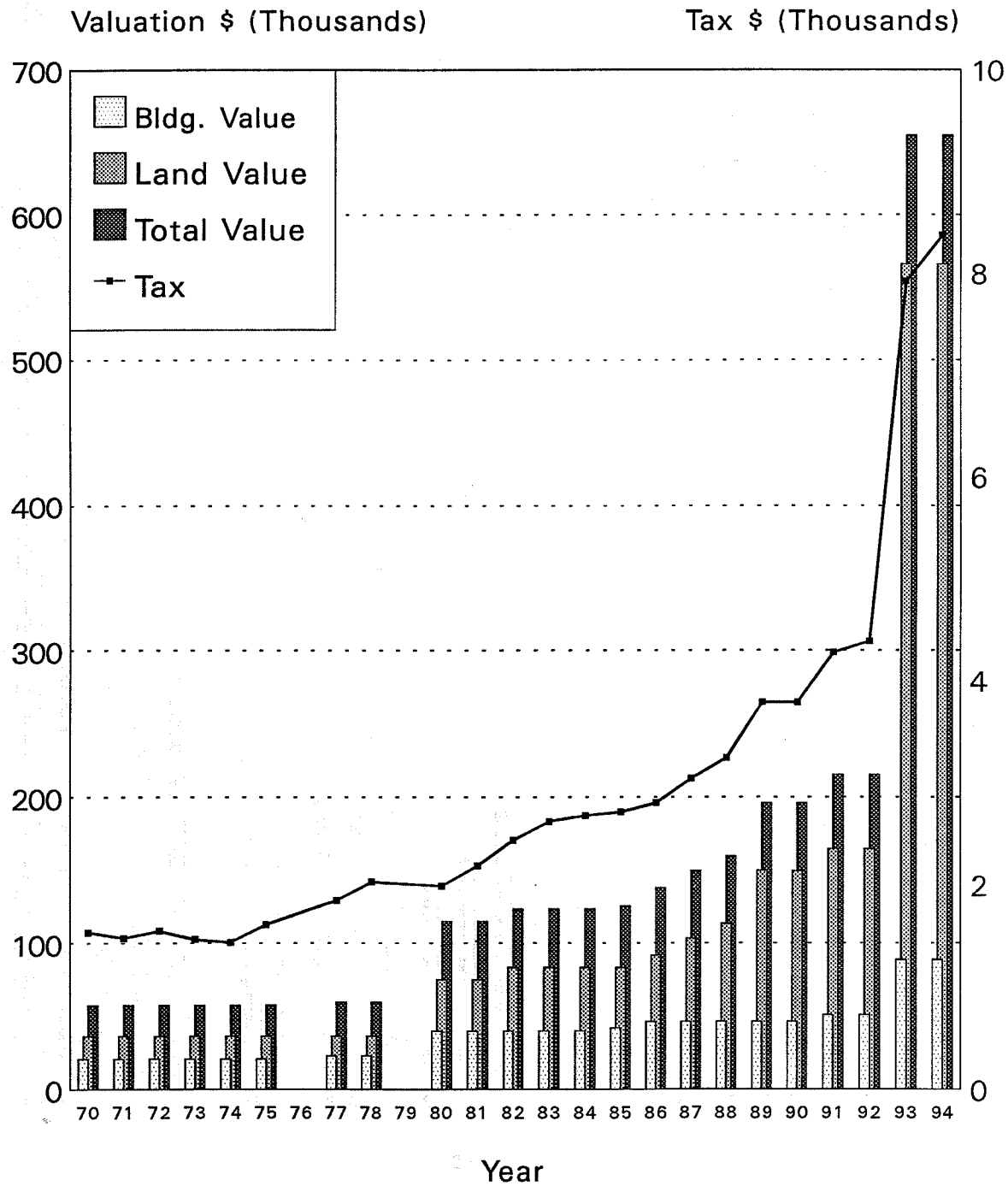
Donated March 1981



Valuation and Tax data not included for 1989

Easement Property S-6

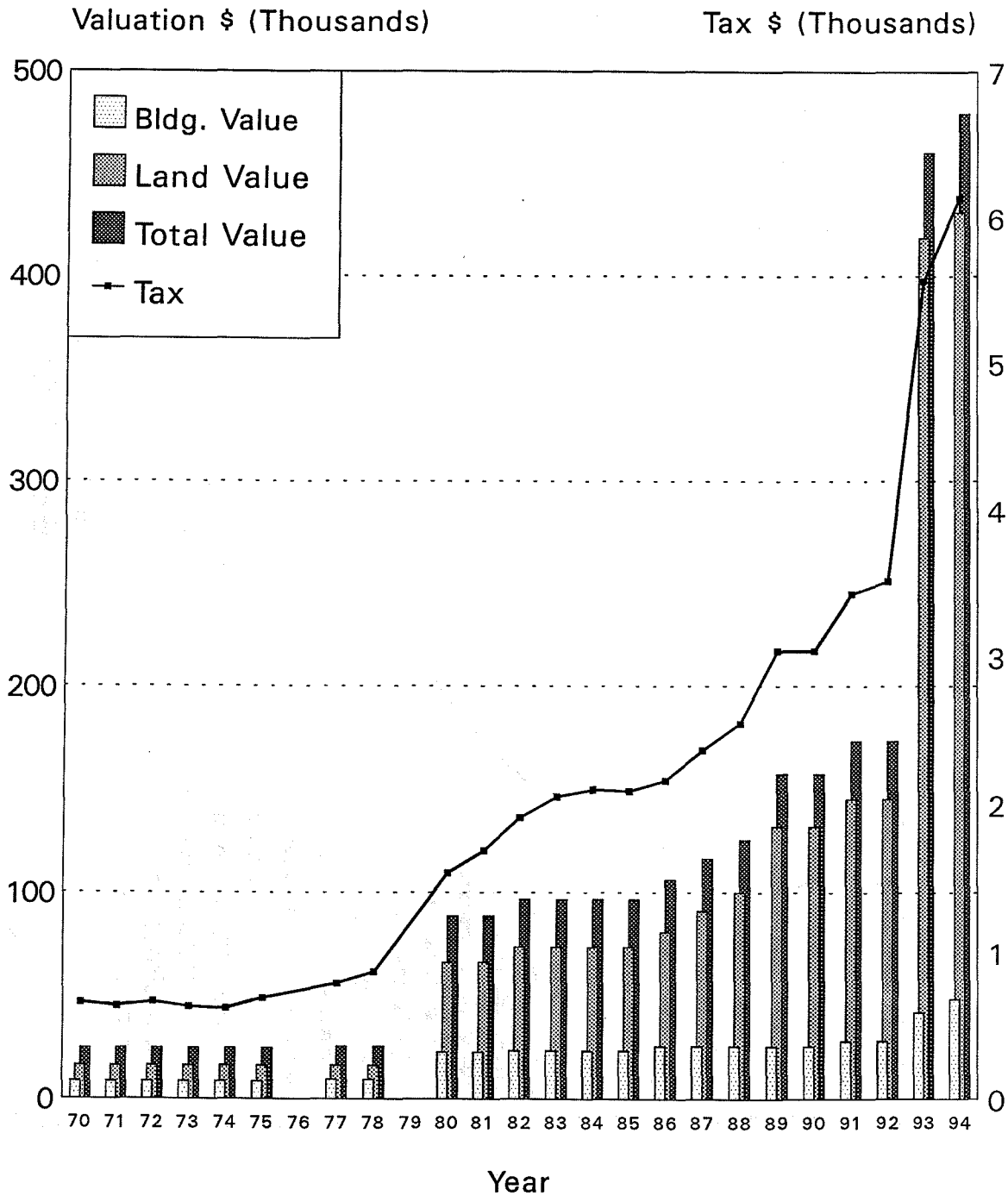
Donated August 1971



Valuation and tax data not available for 1976 & 1979

Easement Property S-7

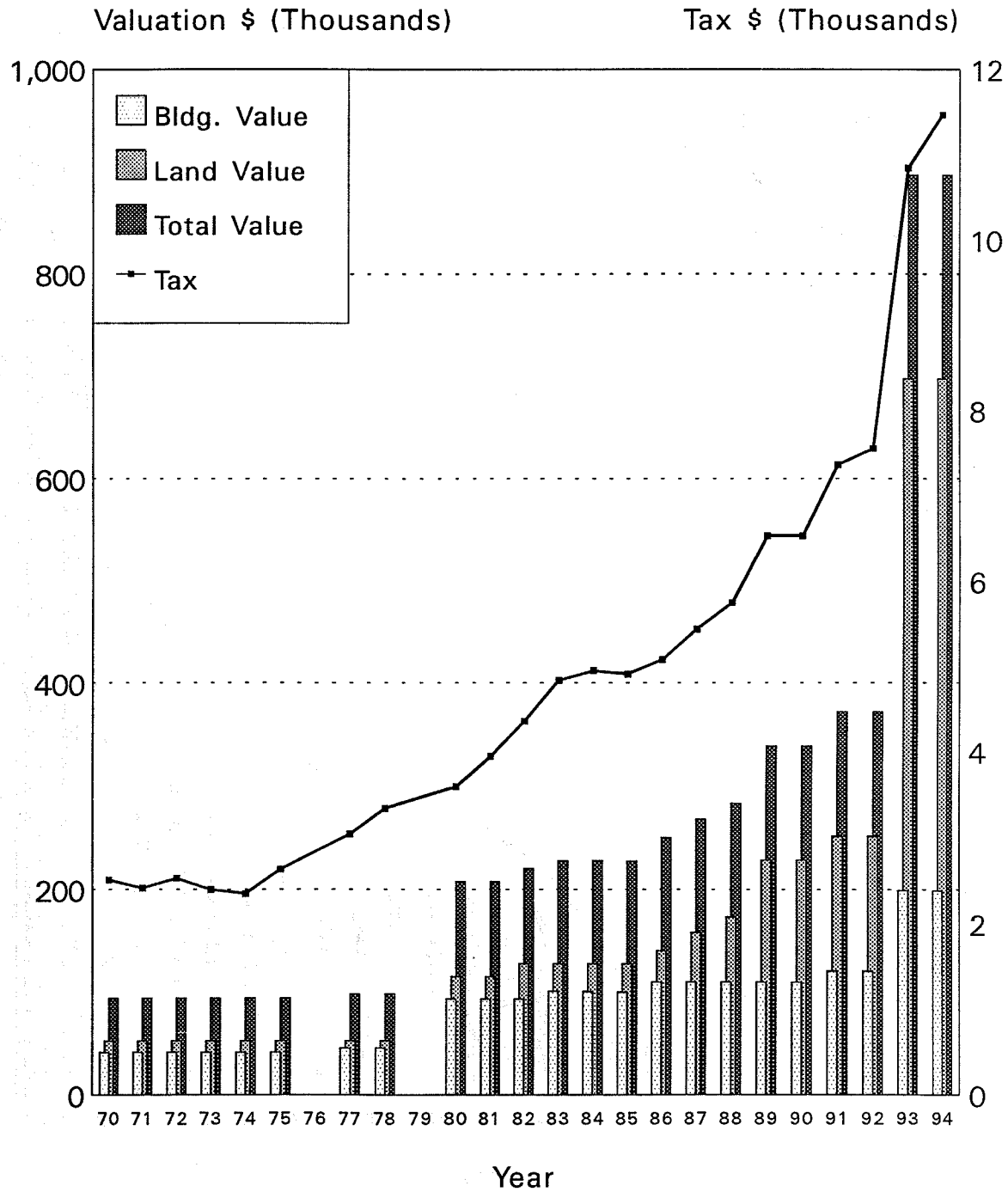
Donated October 1972



Valuation and tax data not available for 1976 & 1979

Easement Property S-8

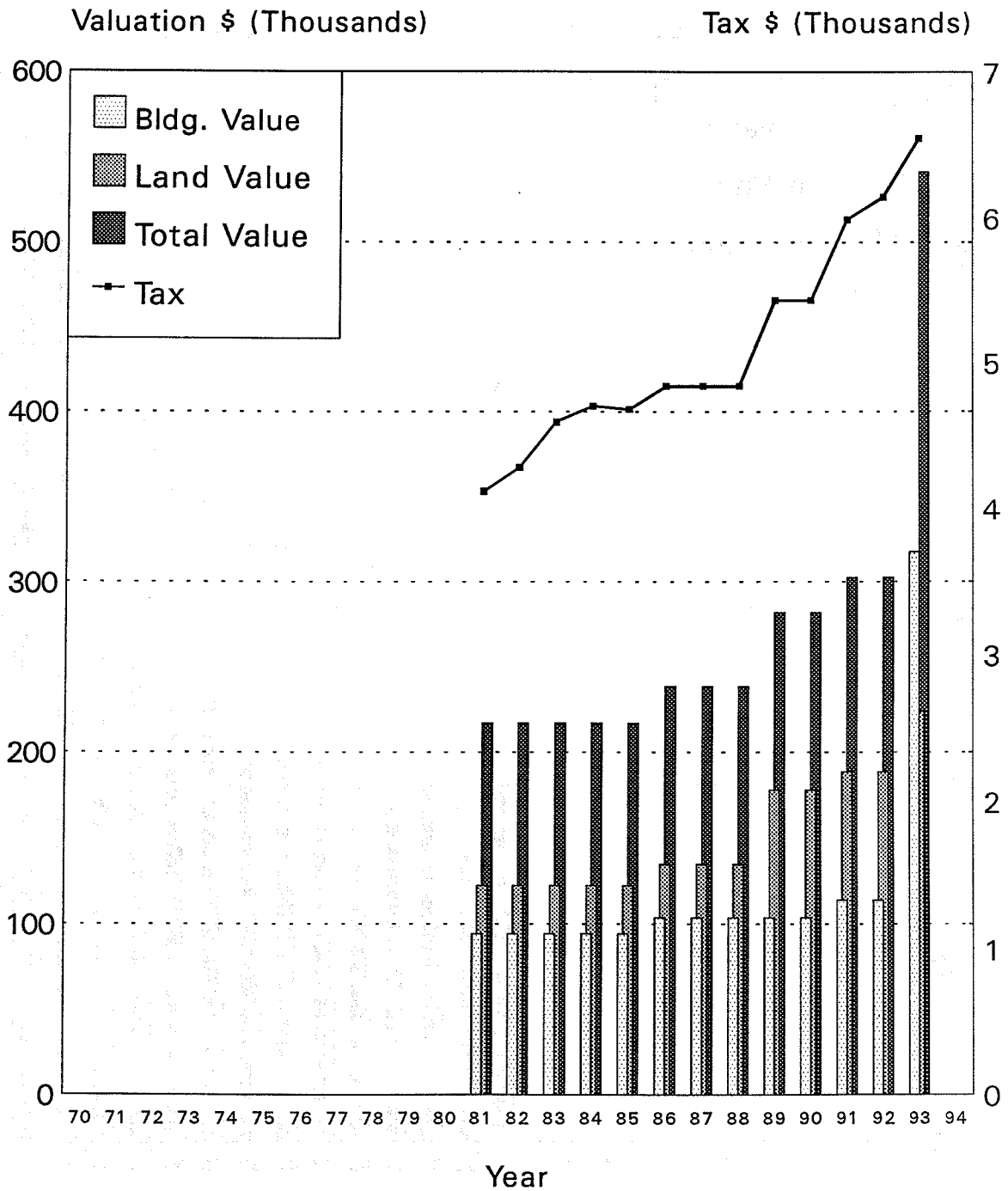
Donated August 1971



Valuation and tax data not available for 1976 & 1979

Easement Property S-9

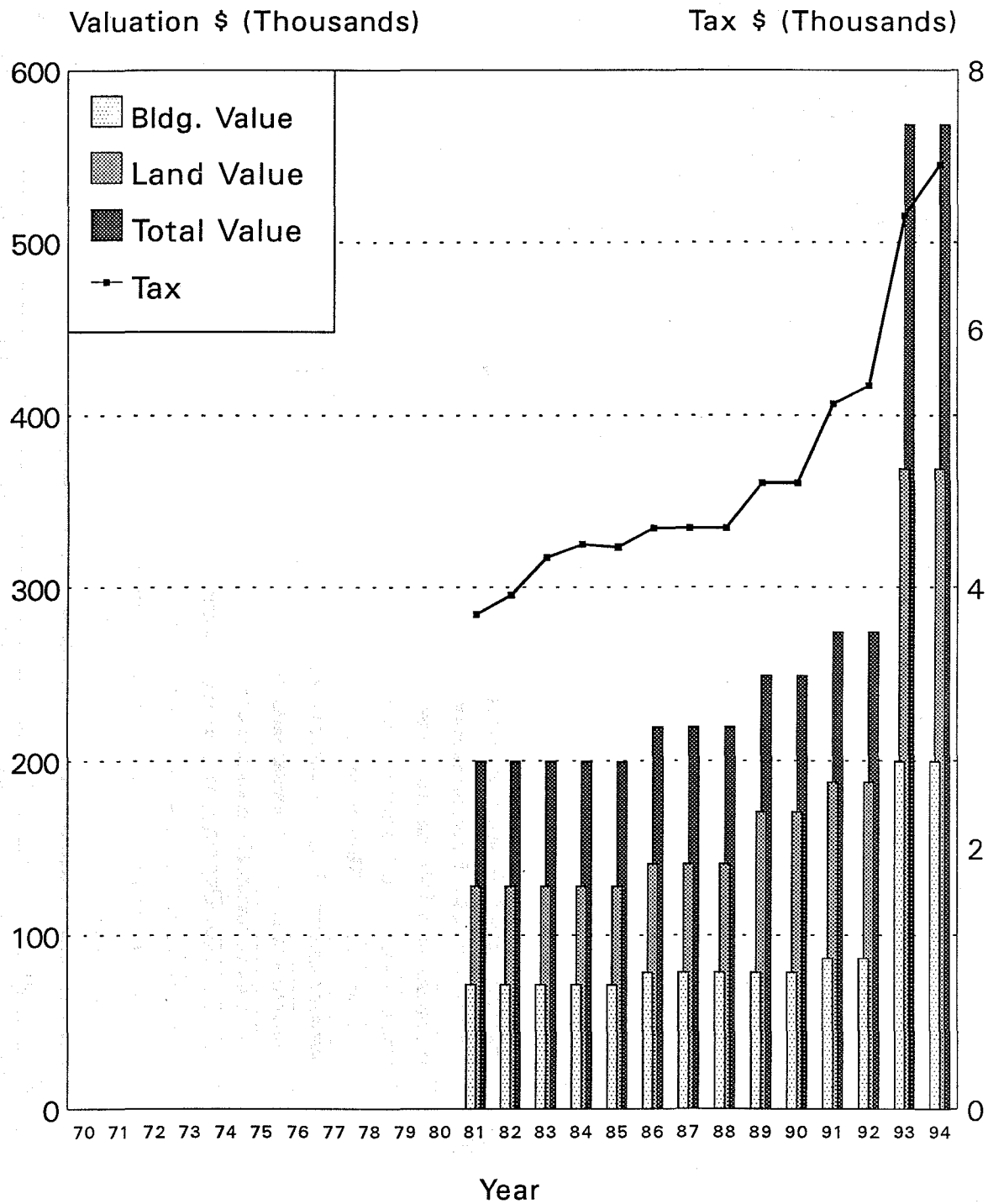
Donated March 1981



Property merged with adjoining lot in tax-year 1994

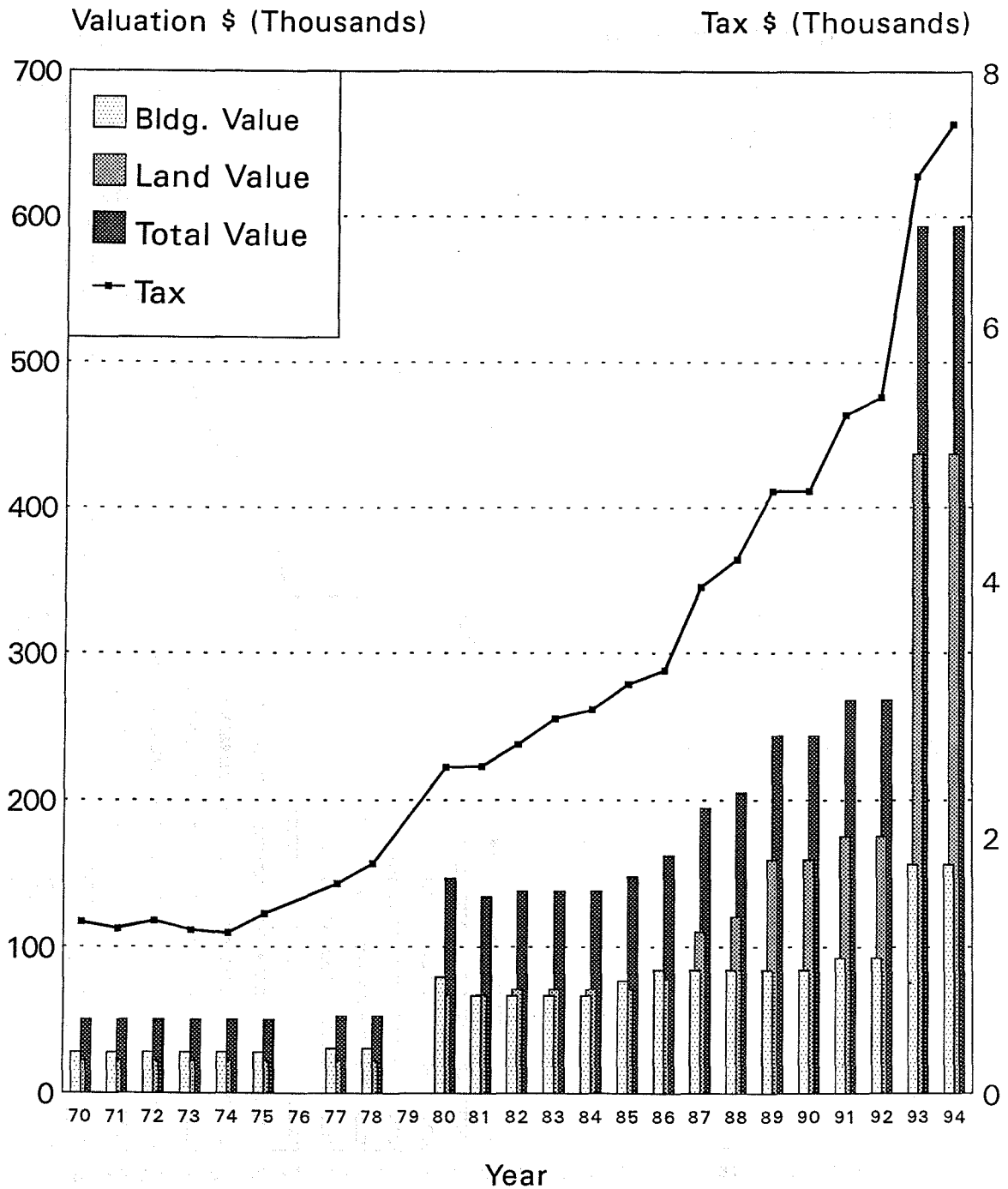
Easement Property S-10

Donated March 1981



Easement Property S-11

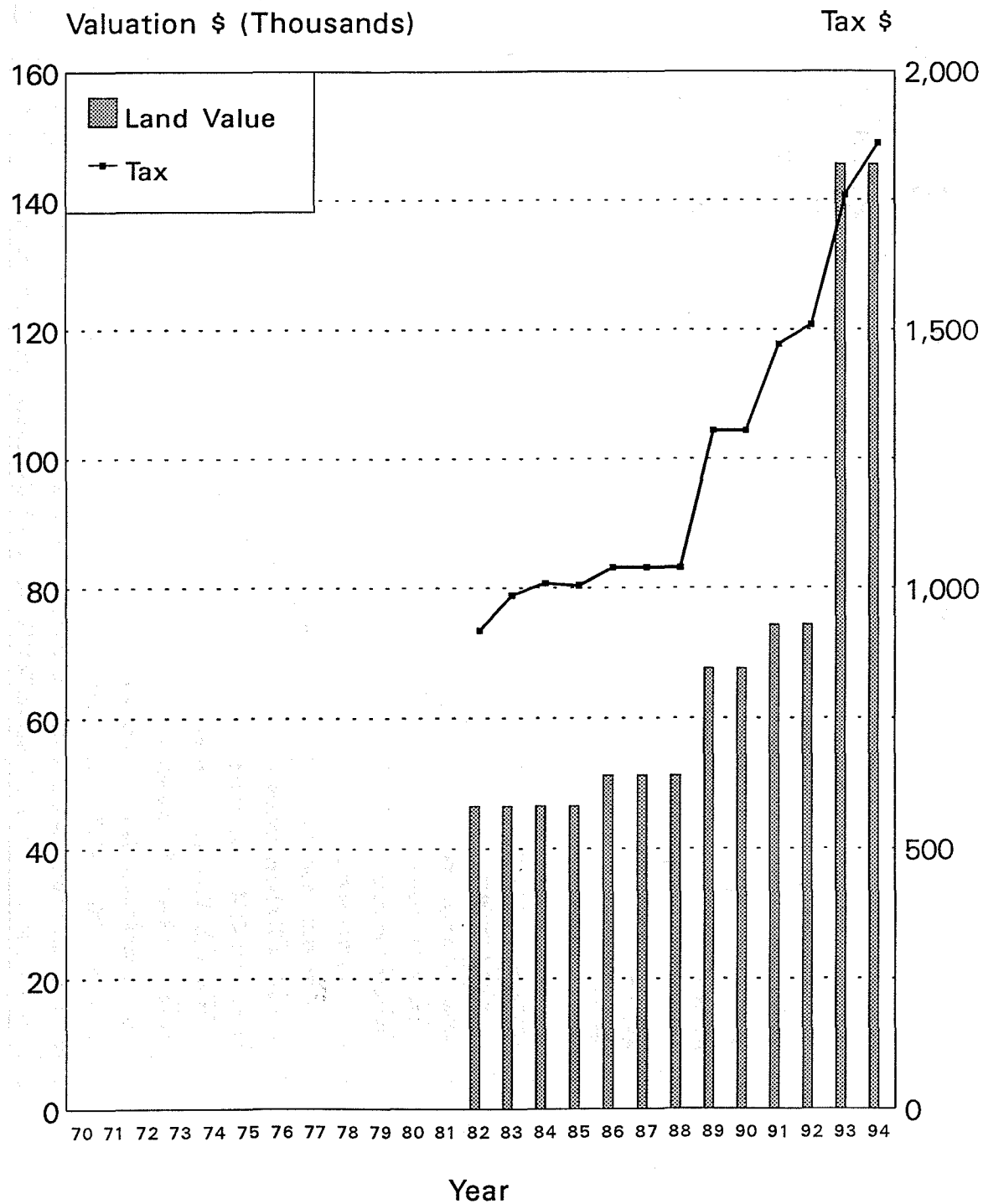
Donated August 1971



Valuation and tax data not available for 1976 & 1979

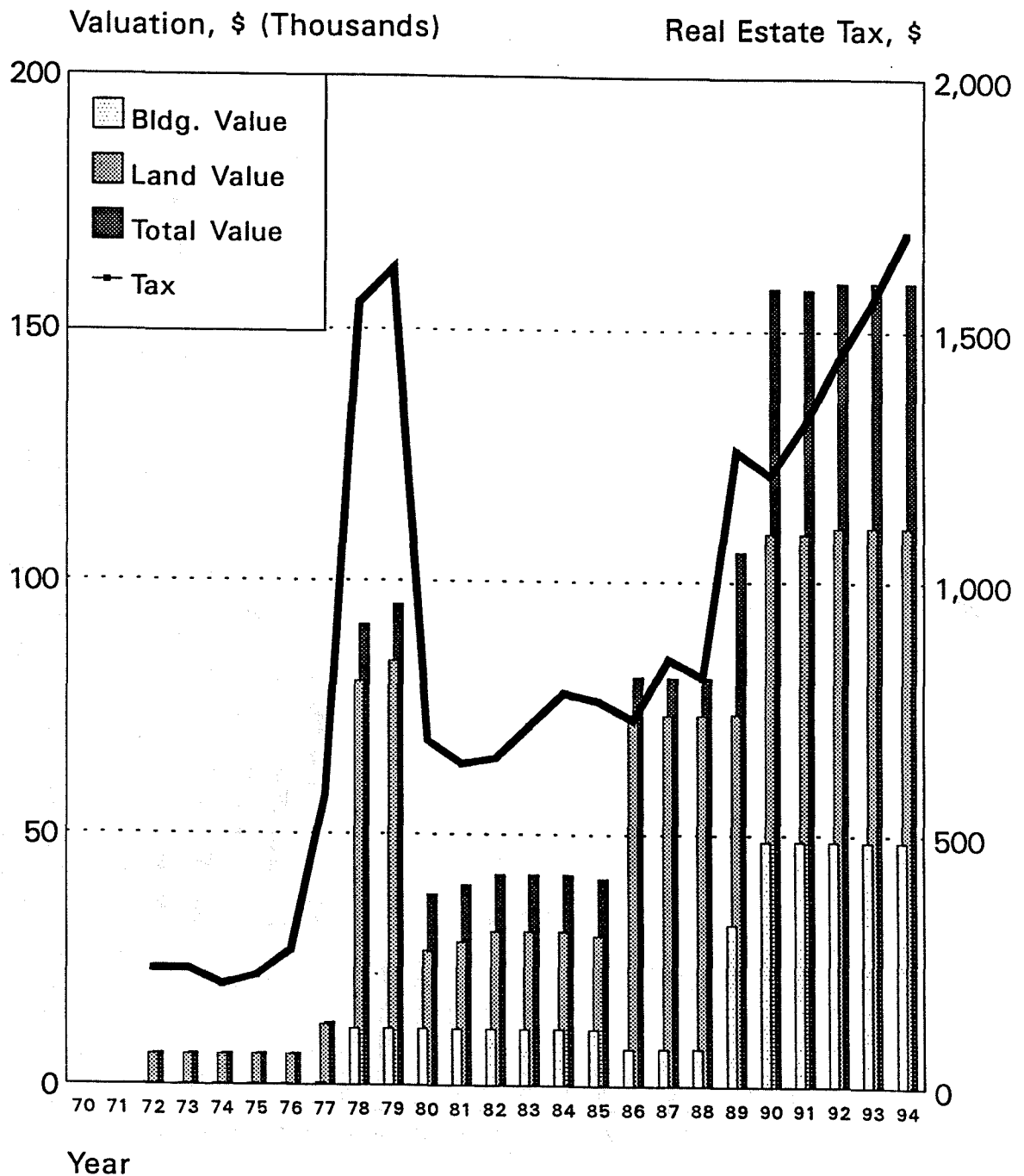
Easement Property S-12

Donated March 1981



Easement Property T-1

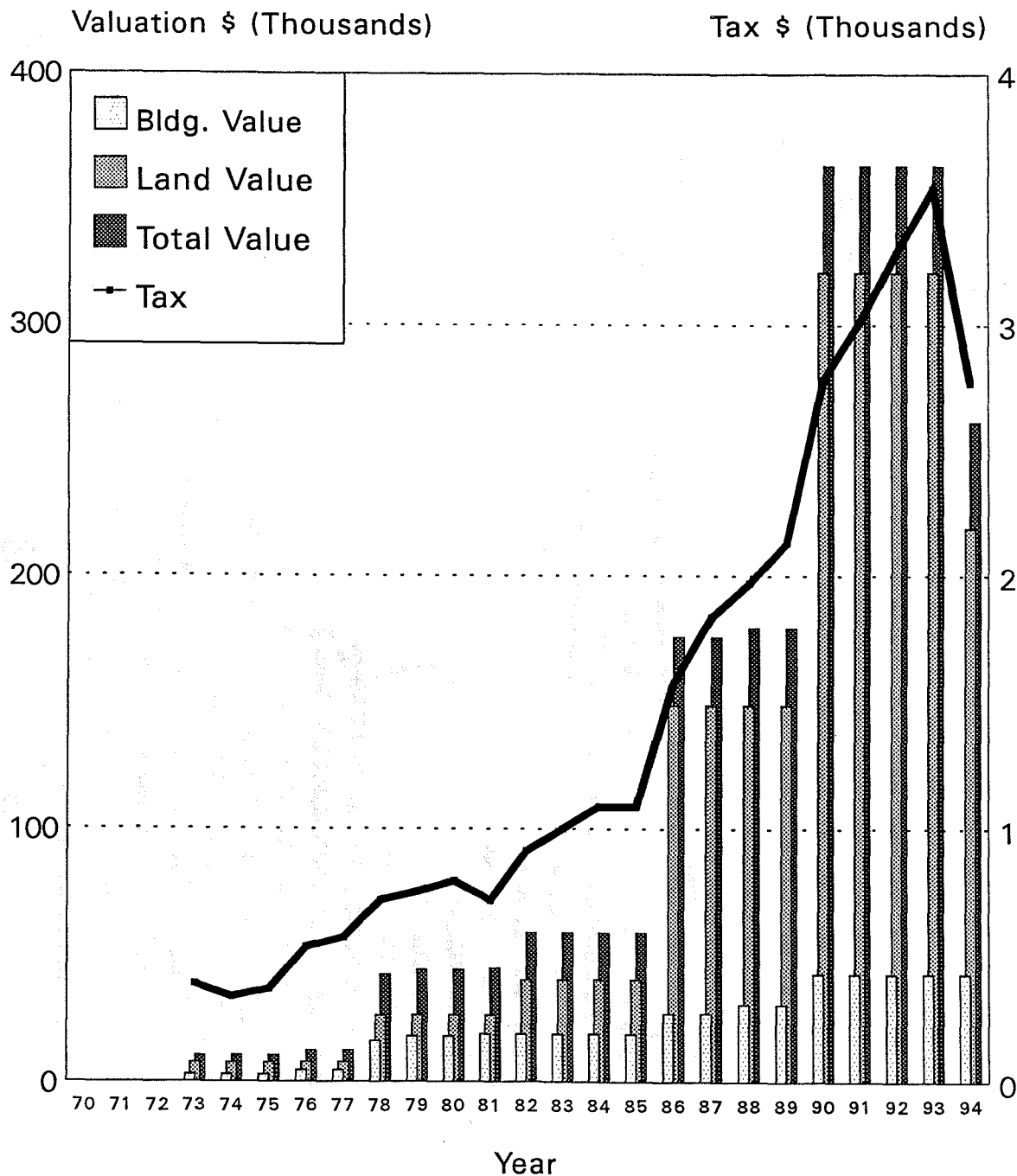
Donated June 1973



Tree Growth 1980
1988 tax adjusted for change in fiscal year

Easement Property T-2

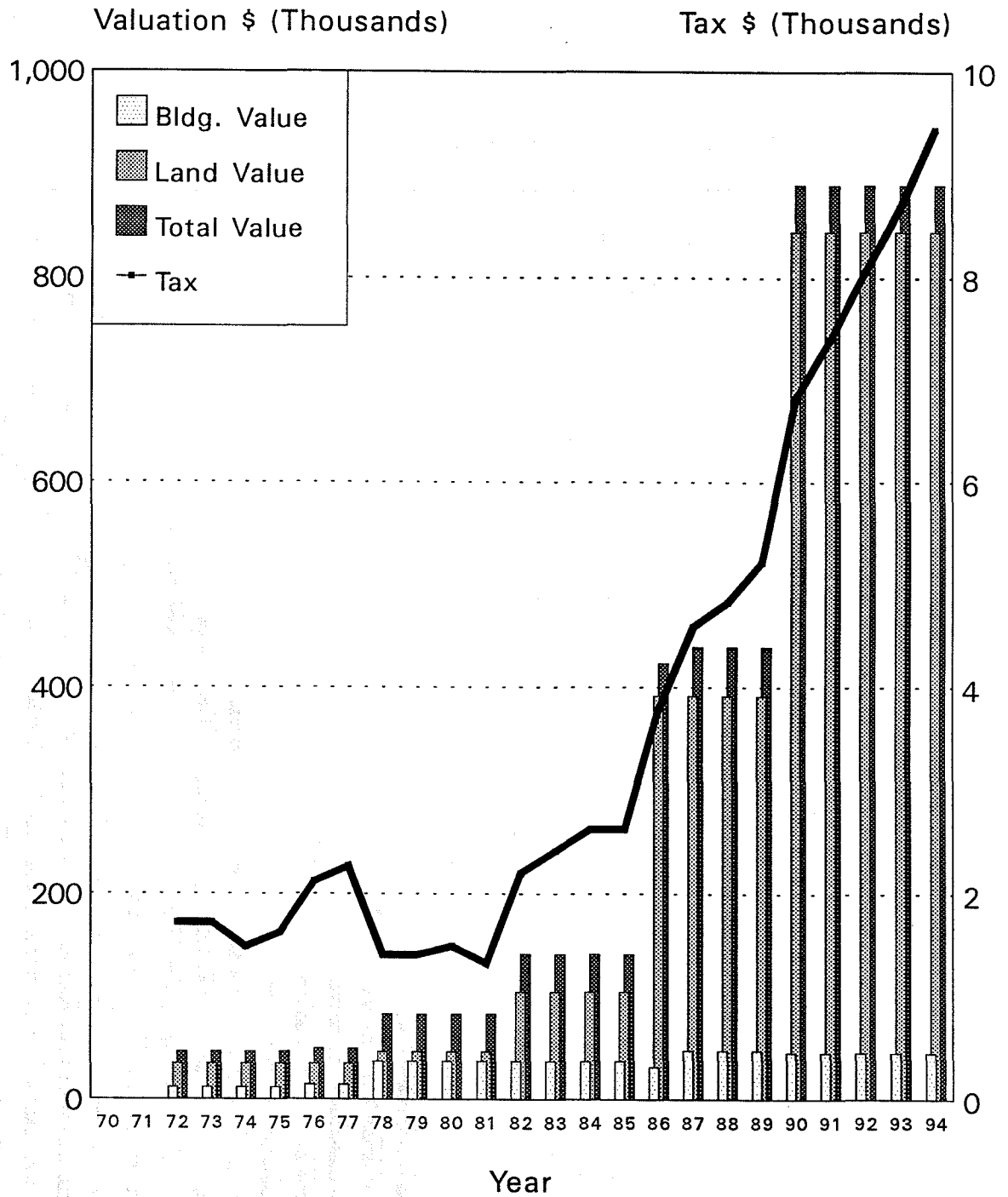
Donated September 1974



Open Space 1994
1988 tax adjusted for change in fiscal year

Easement Property T-3

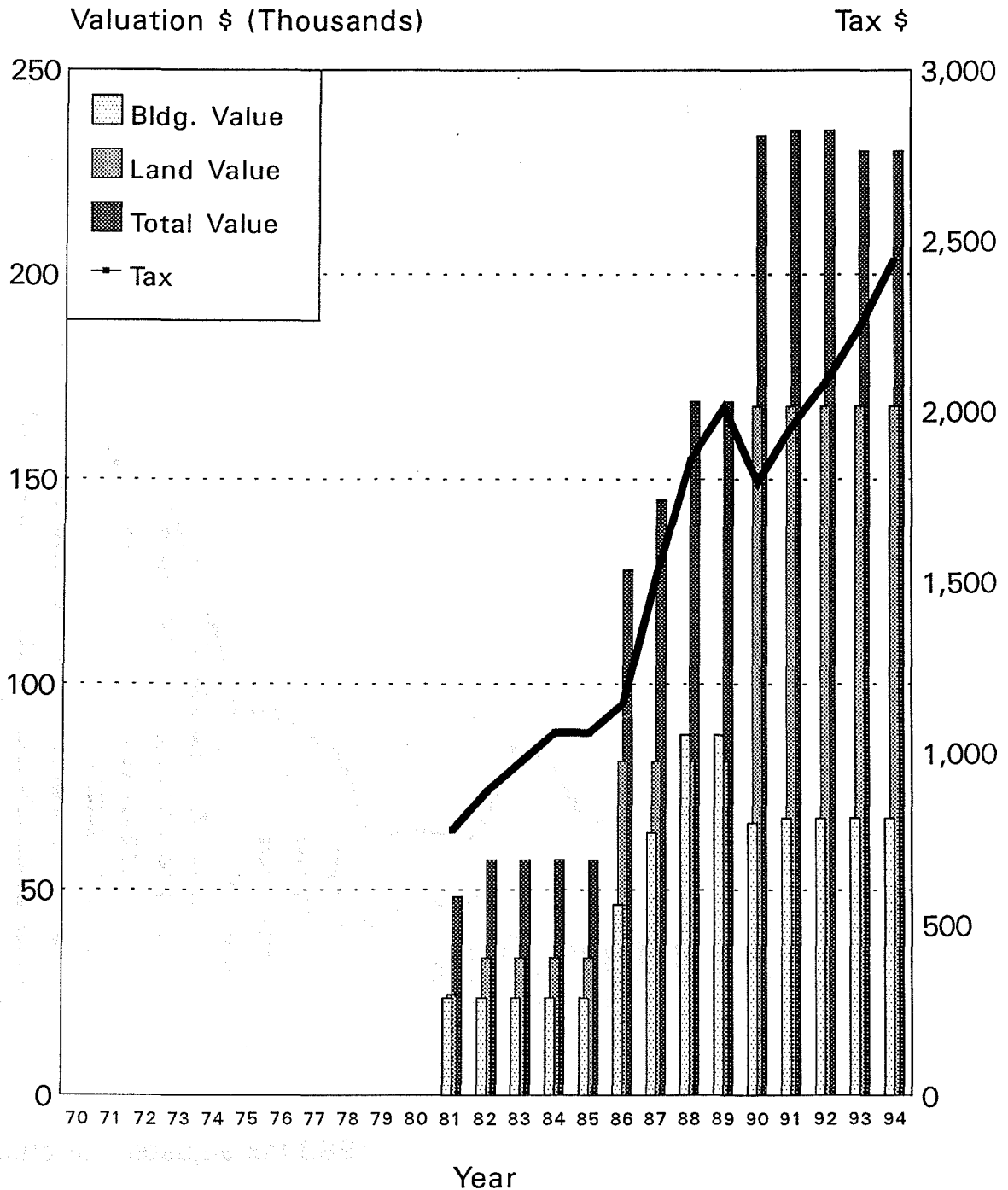
Donated October 1973



1988 tax adjusted for change in fiscal year

Easement Property T-4

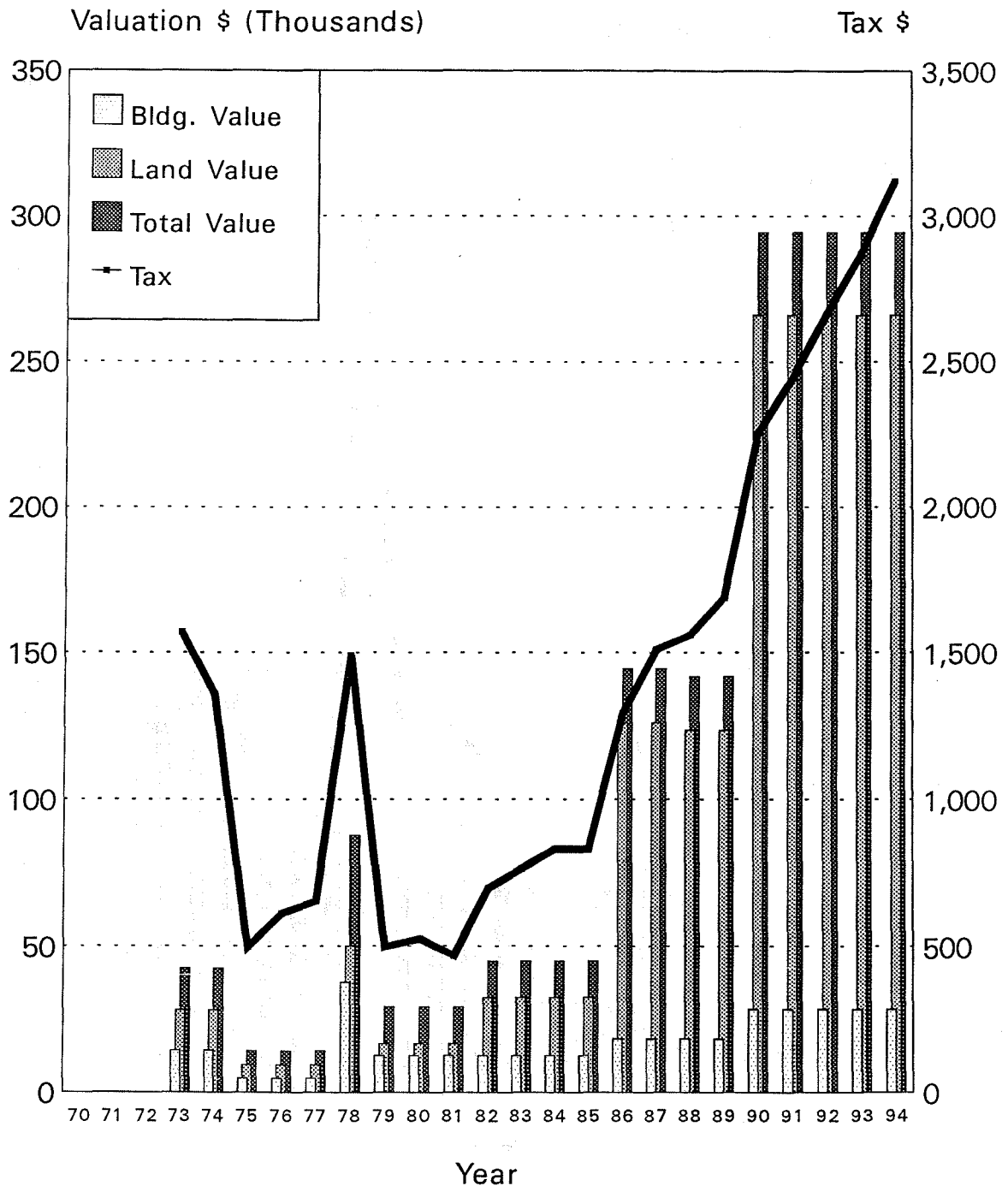
Donated January 1982



1988 tax adjusted for change in fiscal year

Easement Property T-5

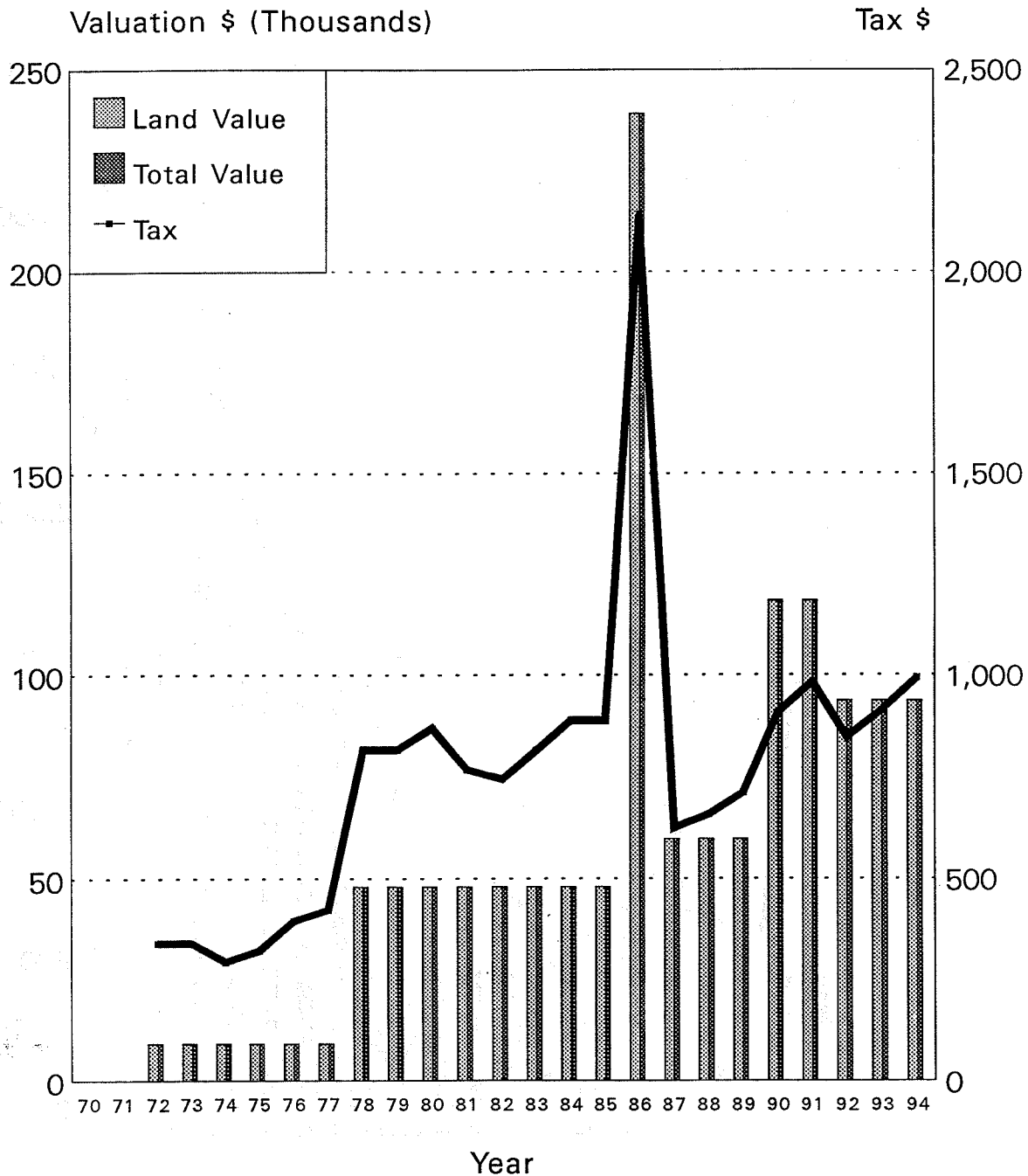
Donated September 1974



1988 tax adjusted for change in fiscal year

Easement Property T-6

Donated June 1973

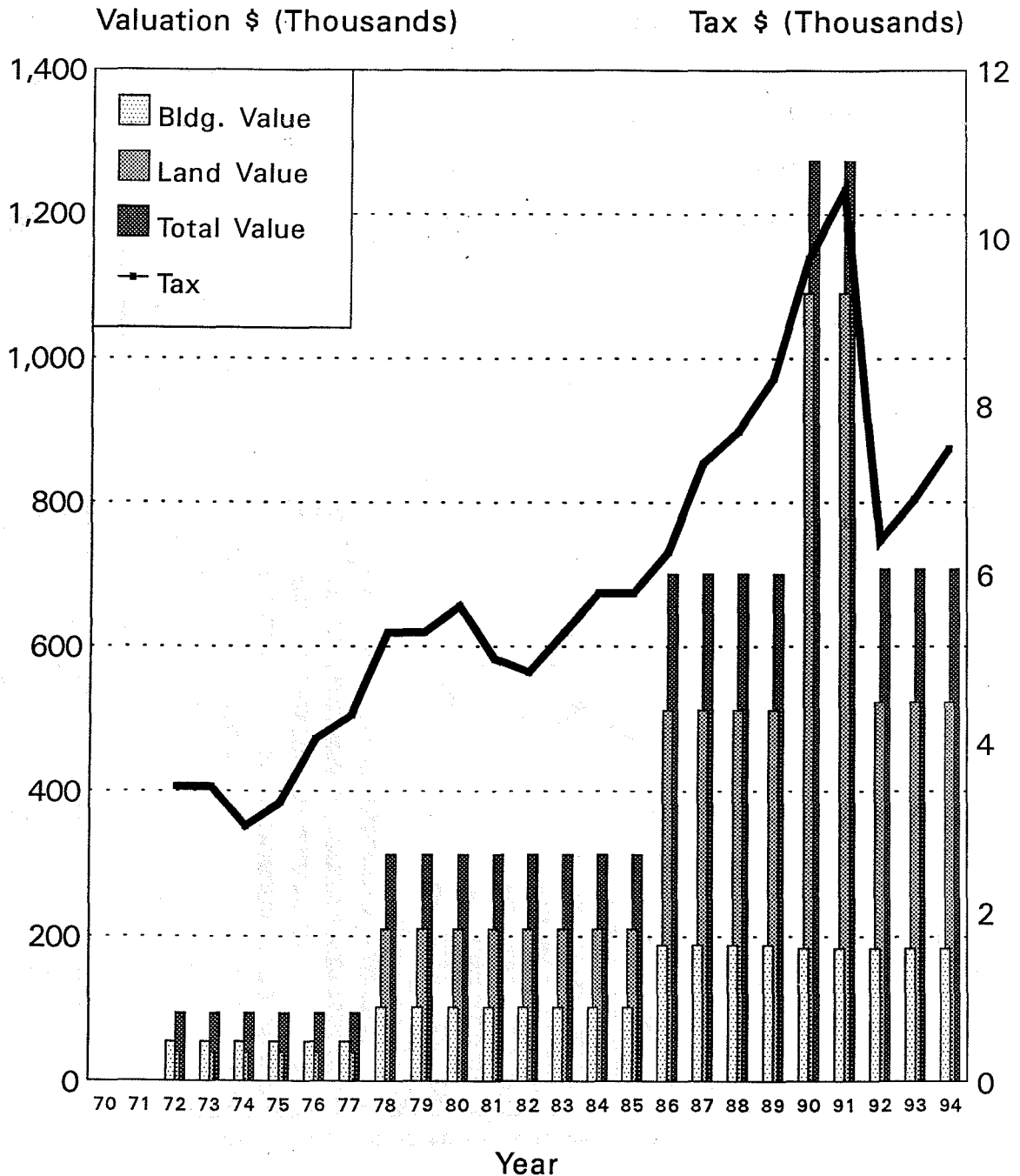


1987 open space

1988 tax adjusted for change in fiscal year

Easement Property T-7

Donated June 1973

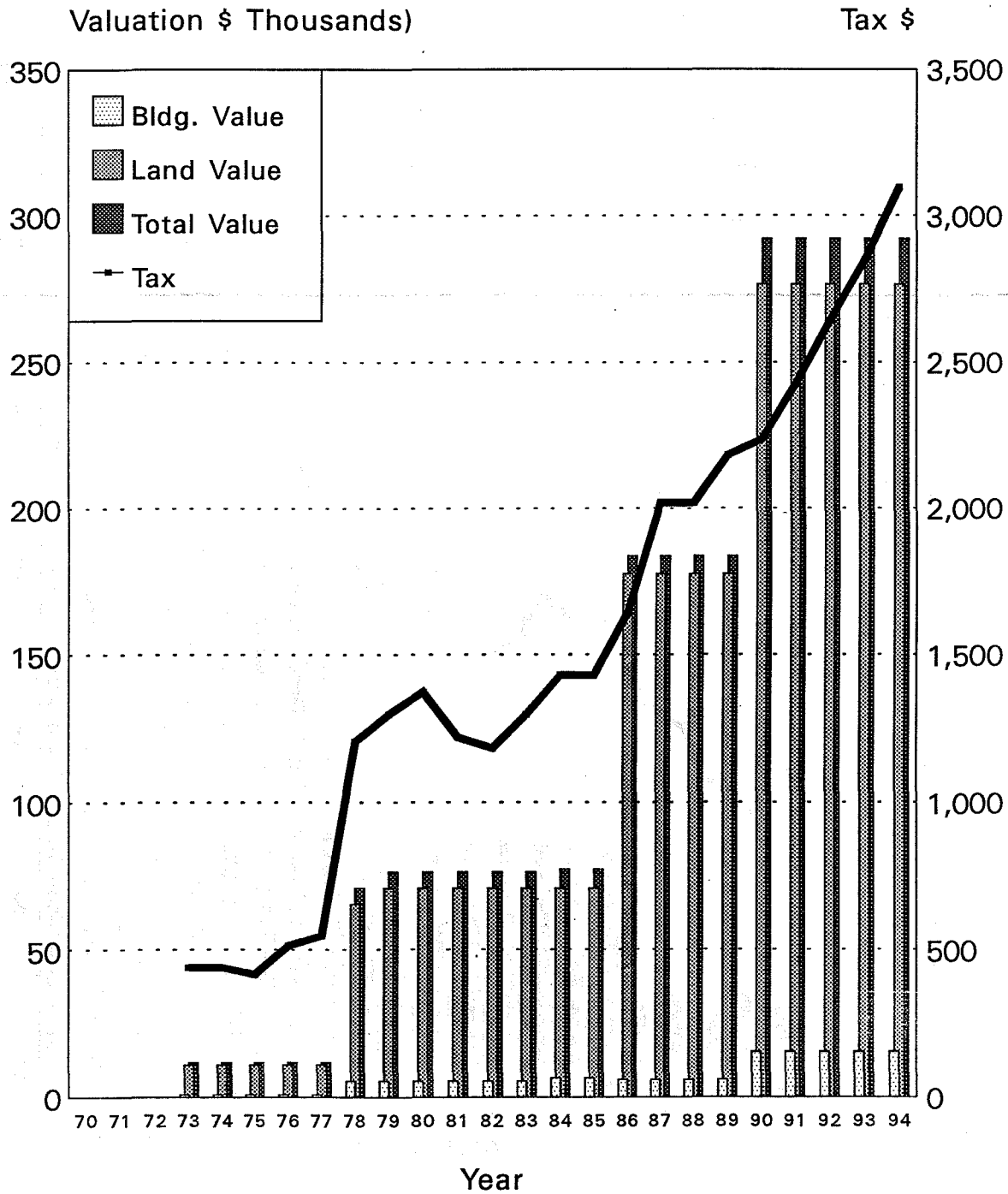


1987 open space

1988 tax adjusted for change in fiscal year

Easement Property T-8

Donated June 1973



1988/89 tax adjusted for change in fiscal year

APPENDIX C

Acadia National Park

Easement criteria

as set out in (PL-99-420) and the Land Protection Plan of March 1988.

(h)(1) Easements acquired or accepted by the secretary under this subsection must possess one or more of the following characteristics:

- (A) important scenic, ecological, historic, archeological, or cultural resources;
 - (B) shorefront property; or
 - (C) largely undeveloped entire islands.
- (2) Conservation easements acquired pursuant to this subsection shall:
- (A) protect the respective scenic, ecological, historic, archeological, or cultural resources existing on the parcels;
 - (B) preserve through setback requirements or other appropriate restrictions, the open, natural, or traditional appearance of the shorefront when viewed from the water or other public viewpoints; or
 - (C) limit the year-round and seasonal residential and commercial development to activities consistent with the preservation of the islands' natural qualities and to traditional resource-based land use including, but not limited to, fishing, farming, silviculture, and grazing.
- (3) In determining whether to accept or acquire conservation easements pursuant to this subsection, the secretary shall consider the following factors:
- (A) the resource protection benefits which would be provided by the conservation easement;
 - (B) the public benefit that would be provided by the conservation easement;
 - (C) the significance of the easement in relation to land planning objectives of local government and regional and state agencies;
 - (D) the economic impact of the conservation easement on local livelihoods, activities, and government revenues; and
 - (E) the proximity of the parcel to the boundary of the park and to other parcels on which the secretary maintains conservation easements.