

Probate, Legal and Tax Implications of Conservation



Protecting Family Lands and Forests April 18, 2013

Morse House at Yale Forest
150 Centre Pike
Eastford, CT

CT Forest and Park Association

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TABLE OF CONTENTS

Probate, Legal and Tax Implications of Conservation

<i>William J. Dakin – Biography</i>	3
<i>Identify Your Objectives and Concerns</i>	4
<i>Potential Problems Interfering with your Objectives</i>	4
<i>Basic Choices on How to Proceed</i>	
1. <i>Deeds</i>	5
2. <i>Wills</i>	5
3. <i>Trusts</i>	6
4. <i>Limited Liability Company (LLC)</i>	6
<i>General Estate Tax Rules</i>	
1. <i>Federal</i>	6
2. <i>Connecticut</i>	7
<i>Keep the Land in the Family</i>	7
<i>Donation of Qualified Conservation Easements</i>	
1. <i>Transfers during Lifetime</i>	7
2. <i>Transfers upon Death</i>	10
3. <i>Example</i>	10

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WILLIAM J. DAKIN has been a practicing attorney for over thirty years and primarily practices in the areas of estate planning, business planning, probate administration and taxation. Attorney Dakin currently manages the probate administration, estate planning, business planning, and taxation practice of Kahan, Kerensky & Capossela, LLP. He has been associated with the firm since 1981. Prior to working at Kahan, Kerensky & Capossela, LLP, Attorney Dakin was employed with Peat, Marwick, Main CPA's of Hartford, Connecticut and worked within their tax department. He was also previously employed with Touche, Ross & Co. CPA's of Miami, Florida as a tax consultant.

Attorney Dakin graduated magna cum laude from the University of Connecticut where he received a Bachelor of Arts Degree in 1976. He received his Juris Doctor Degree in 1979 from the University of Miami (Florida) School of Law. He received a Graduate Degree in Taxation from Boston University School of Law in 1987. Attorney Dakin is also a Certified Public Accountant.

Attorney Dakin is a member of the American Bar Association Committee on Taxation and the Connecticut Bar Association Committees on Taxation, Estate and Probate. He is a member of the Estate and Gift Tax Committee of the Connecticut Society of Certified Public Accountants and a member of the Tax and Probate Committees of the Connecticut Bar Association. He was also an adjunct faculty member of the University of Hartford Graduate Tax Program for numerous years, teaching courses in Corporate Tax and Estate Planning.

In addition to his professional activities, Attorney Dakin is a frequent lecturer on estate planning and tax matters. He was the founder and past President of the Business and Estate Council of Northeast Connecticut. He was also involved in many community activities including Windham Hospital, Eastern Connecticut Health Network, AHM Youth Services, and Moderator of the Bolton Congregational Church.

Probate, Legal and Tax Implications of Conservation

WHAT ARE YOUR OBJECTIVES AND CONCERNS?

1. Why did you decide to come tonight?
2. Make a list of your assets
3. Make a list of your most important objectives
4. Who will receive which assets?
 - Do you have a Will? What does it say?
 - i. Is equal shares to your children the best approach?
 - If you leave it to your spouse, will he/she honor your wishes?
 - i. Absent special provisions, a beneficiary may do as they choose with inherited assets.
 - If two or more people will share an asset, do they get along?
 - i. Partition rights – forced sale!
 - Is the life of the beneficiary “stable”, or does he/she have problems?
 - i. Divorce? Creditors? State assistance?
 - Fair versus equal?
 - Do you need to make the “pie” bigger?
 - i. Life insurance?
 - Without a Will, CT law allocates your assets among your family
5. What are your objectives regarding your forest land?
 - Who should get it?
 - Would you like for it to simply stay in the family?
 - i. Have you made special plans to insure this result?
 - Do you want to permanently protect the land from development?
 - i. Have you begun analysis of a conservation easement?
 - Will the beneficiary cherish your forest land?
6. When do you want to implement your plans for your forest land?
 - Now – work out the details
 - Upon death – leave the details to chance

WHAT POTENTIAL PROBLEMS INTERFERE WITH YOUR PLANS?

1. Property Tax
 - Classify property under PA-490 to reduce property tax
2. Income Tax
 - Property tax deduction
3. Gift tax
 - Gifts having a value of \$2,000,000 or less not taxable
 - Gifts having a value of \$5,250,000 may pay a minor tax
4. Creditors/Liability
 - Can your creditors attach your land?
 - Are your other assets protected from potential liability occurring on the land?
 - Do you have adequate liability insurance for your property?

5. Incapacity
 - Do you have a power of attorney?
 - Does it include the power to make gifts; including conservation gifts to charity?
6. Longterm care costs – a growing problem for us all !!
 - Who will take care of you when you can no longer live alone
 - What will it cost?
 - Where will the money come from to pay these costs?
 - Are you relying on Medicaid (Title 19)?
7. Estate tax
 - Similar exemptions as gift tax
 - Few estates are projected to ever pay an estate tax
8. Probate
 - Have you taken action to minimize probate requirements upon death
 - Will there be a fight among your heirs over your assets?

BASIC CHOICES ON HOW TO PROCEED

1. Deeds

- Donate some or all of the property to a qualified conservation organization
 - i. Choices
 1. Transfer land in its entirety
 2. Transfer a segregated portion of the land
 3. Transfer the conservation rights
 - ii. Effective immediately
 - iii. Permanent
 - iv. Certainty – You set the rules
 - v. Can either Gift or Sale (or combination of both)
 - vi. Effectively, BOTH income and estate tax deduction
 - vii. No gift tax on transfer to charity
 - viii. Will the charity ask for a cash bequest as well to fund the conservation goal?
- Sell your property?
 - i. Not usually consistent with conservation objectives
 1. Sale of development rights?
 2. Sale to municipality?
 - ii. Income tax upon the sale
 1. Likely capital gains tax
 2. Tax on amount of appreciation
 3. Federal rate now 20%, plus 6+% CT
- Combination – part donation/part sale

2. Wills

- Effective at death
- Uncertainty in outcome
 - You might not own the property at death

- Your Will might not be successfully admitted to probate for administration
- Relying on others to implement your plans
- Include a bequest in your Will as to your conservation objectives
 - What if the organization will not accept the gift upon the terms that you have stated?
- No income tax deduction
- Reduces risk of estate tax

3. Trusts

- Leave others in charge to manage your assets and implement your conservation goals
- Can establish during life or upon death
- Can be revocable (modifiable) or irrevocable (permanent)
- Can include cash and other resources to aid in conservation goals
- Choices as to income tax consequences
- Can couple with use of Deed or Will

4. Limited Liability Company (LLC)

- Historically a business entity
- Leave others in charge of the land and your conservation goals
- Flexibility to modify rules and terms over time
- Flexibility to purge rights of future family members not involved in conservation goals
- Pass through income tax treatment
- Can couple with Deed

GENERAL GIFT AND ESTATE TAX RULES

1. Federal

- Gift tax

- First \$14,000 each year per recipient of gifts made during lifetime excluded from taxation- doubled to \$28,000/year if married
- Any excess value offset by \$5,250,000 exclusion
 1. Must file gift tax return (form 709)
- Recipient of gift receives carryover income tax basis

- Estate Tax

- No estate tax due if value of decedent's assets are less than \$5,250,000 in 2013.
- Exemption "doubles" if married
- Portability – surviving spouse automatically receives unused exemption from first spouse (federal rule only – n/a for CT tax)
- Wills/Trusts properly drafted and assets properly titled better approach
- Estate tax election to reduce value of certain farmland
- Election to pay estate tax over 14 years, in order to avoid forced sale of farm.

2. Connecticut

• Gift Tax:

- First \$14,000 each year per recipient of gifts made during lifetime excluded from taxation - doubled to \$28,000/year if married
- Any excess value offset by \$2,000,000 exclusion
 1. Must file gift tax return (form 709)
- Recipient of gift receives carryover income tax basis

• Estate tax

- In 2013, \$2,000,000 estate tax exemption
- Tax rates range from 7.2%-12%.

KEEP IT IN THE FAMILY

1. Non-permanent solution to conservation goals
2. Simple bequest to spouse, children and other family members may not work
3. Consider restricting the group of beneficiaries that will inherit. Choose only those that will and are able to honor your wishes
4. Impose legally binding restrictions
 - a. Conservation easement - See below
 - b. Trust agreement
 - i. Create rules by which the property will be managed and used
 - ii. Pick someone to be in charge
 - iii. Inevitably will end for lack of money or family interested in preserving your wishes
 - iv. What should happen to property when the trust terminates?
 - v. Such trusts are irrevocable. No ability to modify rules as time or changes in circumstances dictate
 - vi. Likely some degree of State monitoring and oversight
 - c. Limited Liability Company (LLC)
 - i. Create rules by which the property will be managed and used
 - ii. Pick someone to be in charge
 - iii. Inevitably will end for lack of money or family interested in preserving your wishes
 - iv. Buyout/redeem disgruntled owner – liquidity to do so?
 - v. What should happen to property when there is no further interest in maintaining property?
 - vi. Such operating rules can be altered by the members of the LLC. There is an ability to modify rules as time or changes in circumstances dictate
 - vii. Unlikely that State will monitor and oversee

DONATION OF QUALIFIED CONSERVATION EASEMENTS

1. Transfers during lifetime

- A. Contributions are deductible
- B. Deductions offset income otherwise taxable.
- C. No deduction for Connecticut income tax purposes.
- D. No deduction for the contribution of services.

- E. Amount of deduction each year is limited.
 - (1) By the type of organization receiving the contribution.
 - (2) By the contributors adjusted gross income ("AGI").
 - (a) 50% of AGI limit applies to public charities & municipalities.
 - (b) 30% of AGI limitation applies to gifts of capital gain property.
 - (c) Can elect to use 50% limitation (rather than 30% AGI limitation) if the fair market value of the gift is first reduced by the long-term capital gain component.
- F. Contributions in excess of limitations can be carried over 5 successive years.
- G. Contributions of \$250 or more must be substantiated in writing by the donee organization.
- H. Noncash contributions in excess of \$500 require completion and filing of IRS Form 8283, which requires:
 - Identify the conservation purpose
 - shows the before and after value
 - states whether the donation was done in order to obtain zoning approval or required by contract, and
 - describes the interest of the donor or related person in other property located nearby.
- I. For easements, valuation typically done using the "before and after" method.
- J. Donor must retain written records of the conservation purpose served by the contribution.
- K. Generally, no deduction is available for gifts of a partial interest in property
- L. What constitutes a qualified conservation contribution?
 - (1) Property must be qualified real property
 - (2) Donated to a qualified organization
 - (3) Exclusively for conservation purposes
- M. Qualified real property interest
 - (1) The entire interest of the donor in the property
 - (2) Remainder interest
 - (3) Perpetual conservation restriction
- N. Qualified organization
 - (1) Must be eligible to receive conservation contribution
 - (2) Must have a commitment to protect the conservation purpose of the property; operated primarily for the conservation purposes of IRC 170(h)(4)(A).
 - (3) Must have resources to enforce the restriction
 - (4) The donee cannot thereafter reconvey without preserving the conservation purpose.
- O. Exclusively for conservation purposes
 - (1) Preserve land for outdoor recreation or education of the general public;
 - (2) Preserving land areas for education of the general public;
 - (3) Protecting, in a relatively natural habitat, fish, wildlife, or plants, or similar ecosystems;
 - (4) Preserving open space (including forest land for the scenic enjoyment of the general public or local government conservation policy yielding significant public benefits); or

- (5) Preservation of historically important land or certified historic structure.
- P. The regulations provide that scenic enjoyment is evaluated on the basis on all pertinent facts and circumstances, including
- (1) The compatibility of the land use with other land in the vicinity;
 - (2) The degree of contrast and variety provided by the visual scene;
 - (3) The openness of the land;
 - (4) Relief from urban closeness;
 - (5) The harmonious variety of shapes and textures;
 - (6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;
 - (7) The consistency of the proposed scenic view with a methodical state scenic identification program; such as state landscape inventory; and
 - (8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.
- Q. An easement satisfied the exclusively-for-conservation requirement
- (1) Protect and preserve the conservation values;
 - (2) Prevent any use or activity that would significantly impair the conservation values;
 - (3) Conserve and protect in perpetuity the protected area as a "relatively natural habitat of fish, wildlife or plants or similar ecosystem" and as an "open space; or
 - (4) Protects ecological and natural resources, including birds, tree ecosystems, diversity of wildlife habitat, water quality values, open space and scenic value, and historical and cultural values.
- R. The terms of the easement may set forth the reserved rights of the grantors, provided not inconsistent/detrimental to conservation. Reserved rights include:
- (1) Plant, grow, harvest, sell, and manage forest;
 - (2) Engage in agricultural;
 - (3) Engage in recreational activities;
 - (4) Engage in scientific research activities;
 - (5) Conduct wildlife management activities; and
 - (6) Construct new ponds limited in size to 400 acres.
- S. The easement terms may also restrict the grantors in several other ways, including:
- (1) Prohibiting subdivision;
 - (2) Imposing limitations relating to the construction, enlargement, and replacement of residential, agricultural, and other structures on the protected property;
 - (3) Prohibiting the use of impervious surfaces, other than fencing and gates;
 - (4) Prohibiting industrial and commercial uses, activities, and structures;
 - (5) Limiting road construction and use;
 - (6) Limiting the paving of any road to use of non-permeable materials and roads;
 - (7) Prohibiting/limiting mining and recovery of oil, gas, or minerals;

- (8) Limiting additional residential structures;
- (9) Allowing/limiting agricultural structures;

2. Transfers Upon Death

- A. There is an unlimited deduction for estate purposes for gifts to municipalities or qualified tax-exempt charitable organizations.
- B. Fractional interest transfers are only allowed for certain trusts, and for qualified conservation contributions.
- C. Executor may elect to exclude from the federal gross estate the value of land subject to a qualified conservation easement. The election is made on a timely filed return, and once made is irrevocable.
- D. Land must have been owned by the decedent or his family during the 3 years prior to death.
- E. "Family" means:
 - An ancestor of the individual,
 - The spouse of the individual,
 - A lineal descendant of the individual, of the individual's spouse, or of a parent of the individual, or
 - The spouse of any lineal descendant described immediately above.
- F. Qualified conservation easement is same as for income tax purposes, except that:
 - (1) Preservation of historically important land or certified historic structure does not qualify
 - (2) Perpetual restriction must include a prohibition of commercial recreational activity
- G. The exclusion is limited. It is the lesser of:
 - (1) Not more than 40% of the value of the property, or
 - (2) \$500,000
 - (3) The 40 percent factor is reduced by 2 percent for each one percent by which the value of the qualified conservation easement is less than 30 percent of the value of the land.
- H. Value the land with and without the qualified conservation easement
- I. This exclusion should not prevent property from later qualifying for special-use valuation (farmland value),
- J. The exclusion may apply on land owned by an entity (corporation, LLC or trust) in which the decedent owned (directly or indirectly) a 30% interest.

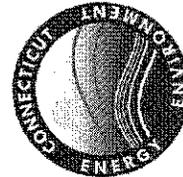
3. Example

- Land has a value of \$2M. The owner donates a qualified conservation easement. After the easement, the land has a value of \$1.25M.
 - The donor is entitled to a \$750K income tax deduction, which may be carried over for 15 years until the deduction is fully utilized.
 - Assuming a 30% income tax rate, the deduction results in income tax savings of 225,000.
- Upon the death of the donor, the land would be worth \$2.5M but for the easement. The land has a value of \$1.5M when considering the easement.

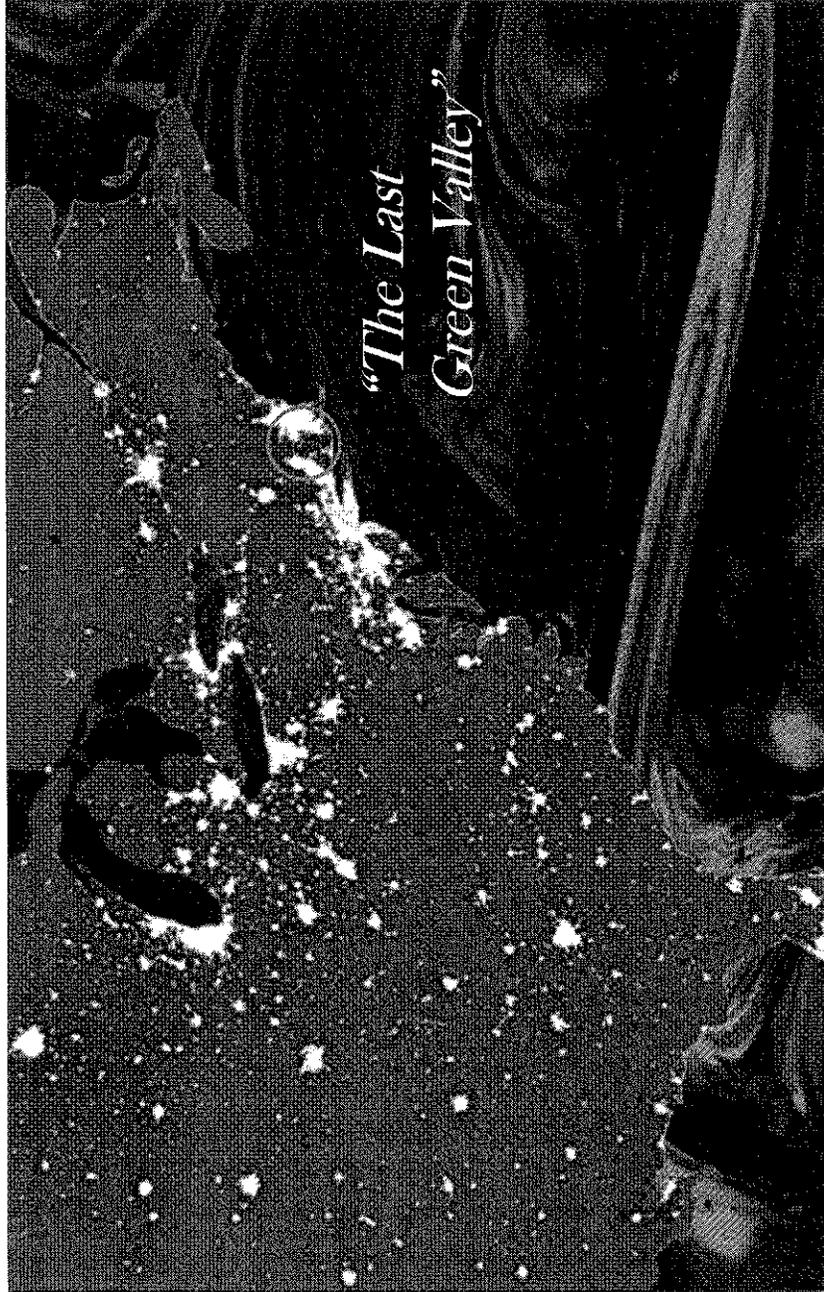
- The easement had a value of \$750K on the date of donation, exceeding 30% of the value of the land at that time ($750K \div 2M = 37.5\%$). Thus there is no reduction in the normal 40% limitation.
- The estate is entitled to exclude \$500k of value from the estate; the lesser of 40% of the date-of-death value of land ($\$2.5M \times 40\% = \$1M$) and the \$500k cap.
- The estate is also effectively reduced by the date-of-death value of the donated easement (\$1M)
- Assuming a 45% estate tax rate, the estate tax savings is \$675K ($\$1.5M \text{ exclusions} \times 45\% = \$675K$).
- The combined income and estate tax savings is \$900K ($\$225K + \$675K$)

**I THINK I WANT TO
PERMANENTLY PROTECT
MY LAND!**

Now what do
I do???



We Live in a Special Place!



#1: WHAT DO YOU REALLY WANT TO SEE HAPPEN?

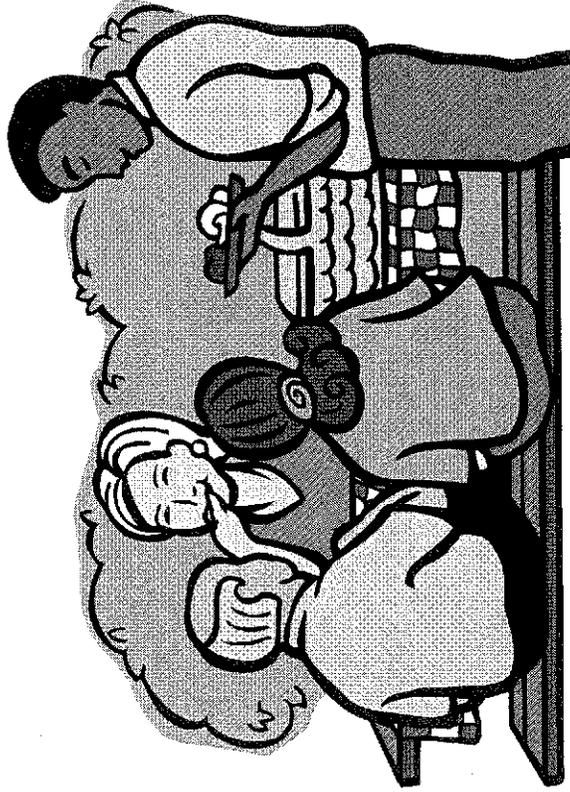
- What is it you want protected?
 - Farmland? Wildlife habitat? Scenic beauty?
 - Unique or fragile areas?
 - All the land, or certain parts?
- Future Use
 - Working land?
 - Any public use, or strictly private?

#1: WHAT DO YOU REALLY WANT TO SEE HAPPEN?

- Future ownership
 - Retained life use for you & yours?
 - Heirs who would like to own?
 - Private or public in the future?
- Financial Issues: would you like to:
 - Reduce income taxes now or in the future?
 - Reduce potential estate taxes?
- When? Is there time pressure?

#2: TALK WITH THE FAMILY!

- Often biggest stumbling block
- No sense denying: we're all mortal!



#3: *Make Some Calls!*



CONNECT WITH LOCAL SUPPORT:

- Local Land Trust
- The Quiet Corner Initiative
- Town Conservation Commission
- Conservation attorney
- Certified forester

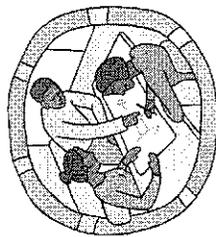
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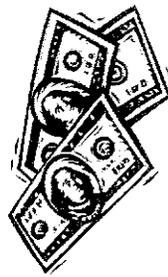
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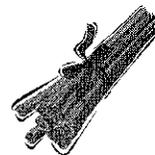
#4: LEARN A LITTLE!



Land protection methods/tools:

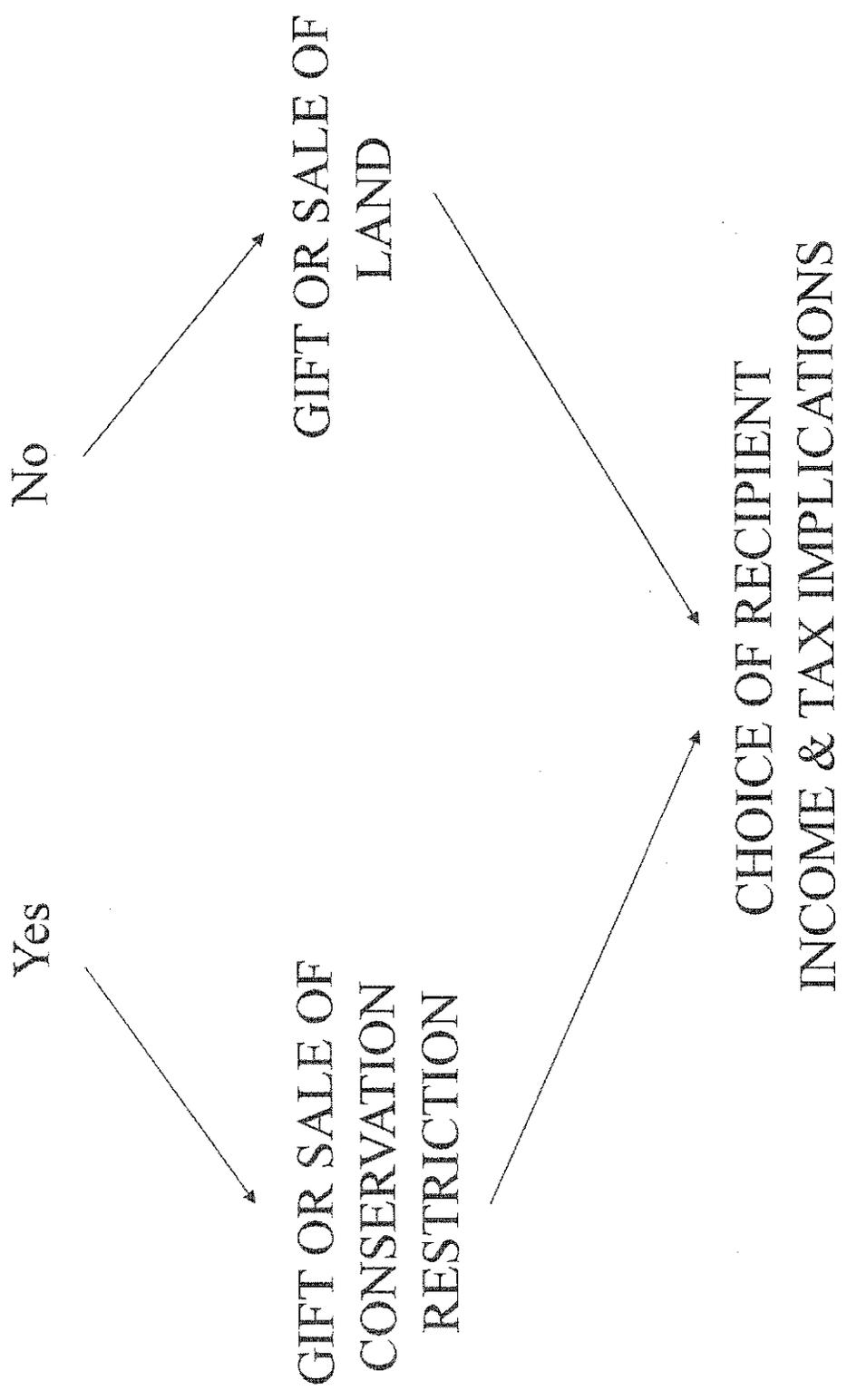


Funding & tax saving opportunities



“Bundle of sticks” concept

KEEPING THE PROTECTED LAND
IN PRIVATE HANDS?



#5: KNOW YOUR LAND

DO YOU:

- Know where it is?
(Boundaries)
- Know what's out there? (Resource inventory)



REMEMBER: You can DO this!!



IF you don't procrastinate!

Tax Incentives for Open Space Preservation

Examining the Costs and Benefits of Preferential Assessment

Jeffrey O. Sundberg

Twenty-three states offer an incentive to preserve open space by providing preferential property tax assessment of qualifying parcels (table 1, p. 15). These property tax reductions can be considered expenditures in that they reduce revenue available for other uses in the interest of protecting the many amenities and environmental benefits of undeveloped land.

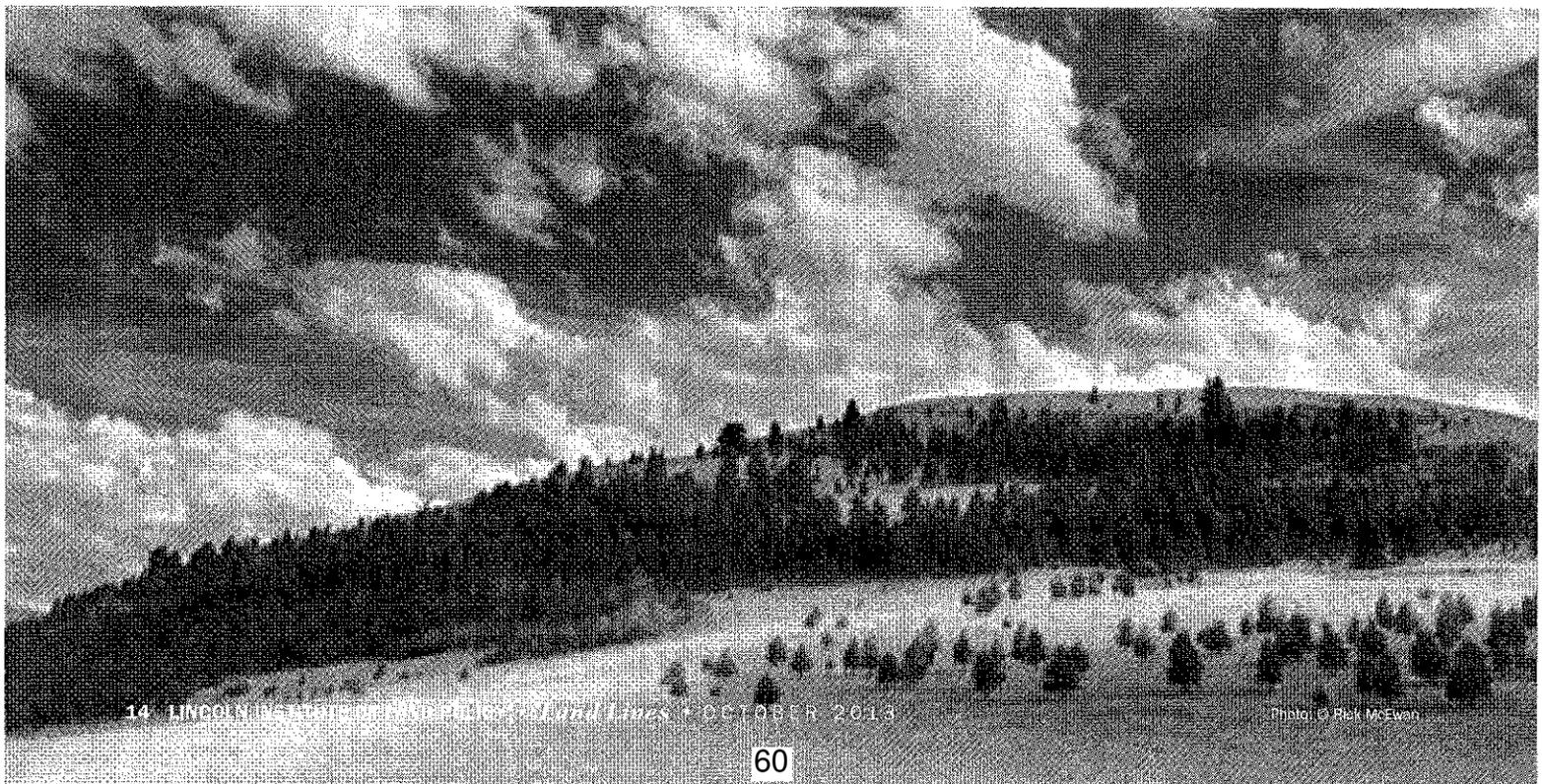
Programs vary widely from state to state, but all preferential assessment programs for open space must define the type and size of qualified parcels; permissible uses; certification requirements; assessment methods; enrollment term lengths; and penalties, if any, for removing a parcel from preferential status. Several states offer more than one program, each with its own qualification requirements. This article considers these differences, offers examples of how the tax expenditure is calculated, and describes potential societal benefits and costs of such programs.

Determining Eligibility for Preferential Assessment

States define eligibility in many different ways, but the requirements are usually relatively easy to meet. A parcel might qualify simply by being undeveloped. Several states allow landscaped land to qualify provided the building density doesn't exceed established limits. Washington, for example, allows land to qualify if it meets at least one of eleven very general requirements, including the protection of streams or water supplies, conservation or enhancement of natural or scenic resources, preservation of visual quality along roads, or enhancement of recreational opportunities.

While these criteria are very general, states may raise the bar by placing additional requirements on landowners. Some states require landowners to create and seek state approval for a property management plan that improves benefits for local wildlife. Vermont stipulates that a qualified conservation organization must own and manage the open space. One of two Texas programs requires

Protected by a Nature Conservancy easement, Findley Butte and the Zumwalt Prairie Preserve in Oregon qualify for preferential property tax assessment.



landowners to provide land and wildlife management to propagate a breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation.

Several states offer preferential assessment to properties that have attained federal status as open space. For example, parcels restricted by a conservation easement that meets the IRS requirements for a charitable donation automatically qualify for preferential assessment in Illinois and Oregon. Ohio will qualify only parcels under contract to one of four USDA programs (Conservation Reserve Program, Conservation Reserve Enhancement Program, Wetlands Reserve Program, and Grassland Preserve Program).

Parcels may have to meet minimum size requirements as well. The most common minimum is ten contiguous acres, though some programs allow properties as small as two acres, and several have no stated requirements. A few states limit the total acreage that any individual landowner may enroll. Tennessee, for example, limits eligibility to 1,500 acres per owner per county, including agricultural land, forest, and open space combined. The stated use of the property may influence its acceptability; several states specifically prohibit commercial property, including golf courses. At least two states, however, have programs specifically designed for golf courses and other commercial properties that provide outdoor recreational opportunities.

State Versus Local Criteria

State governments typically authorize preferential assessment programs and the criteria for inclusion. Six states allow local or county government officials to determine criteria by authorizing a program and requiring only that parcels be “included within a plan for preservation approved by state or local planning agencies” (Chervin, Gibson, and

TABLE 1
States Offering Tax Expenditures for the Provision of Open Space

State	Program Title(s)
California	Farmland and Open Space Program (Williamson Act)
Colorado	Agricultural Valuation Program
Connecticut	Rule of Valuation for Farmland, Forest Land, and Open Space Land
Florida	Environmentally Endangered Land and Conservation Easement Program
Georgia	Conservation Use Assessment Program
Idaho	Valuation of Agricultural Land
Illinois	a) Land Conservation Stewardship Program b) Open Space Valuations c) The Real Property Conservation Rights Act
Massachusetts	Recreational Land Tax
Maryland	Agricultural Use Assessment Law
Maine	Open Space Assessment
Michigan	Open Space Preservation
Minnesota	a) Private Outdoor Recreational, Open Space, and Park Land Tax b) Rural Preserve Program
New Hampshire	Current Use Taxation Program
Nevada	Assessment of Open-Space Real Property
Ohio	Current Agricultural Use Value
Oregon	a) Conservation Easement Special Assessment b) Open Space Land Special Assessment c) Wildlife Habitat Conservation and Management Special Assessment
Pennsylvania	Farmland and Forest Land Assessment Act
Rhode Island	Farm, Forest, and Open Space Program
Tennessee	Agricultural, Forest, and Open Space Land Act (Greenbelt Law)
Texas	a) Qualification for Agricultural Appraisal based on Wildlife Management Use b) Use Valuation for Recreational, Park, or Scenic Land
Vermont	Agricultural Land, Forest Land, Conservation Land, and Farm Buildings Value Appraisal Program
Virginia	Special Land Use Assessment
Washington	Open Space Taxation Act

Source: Significant Features of the Property Tax (2012)

The Lassen Foothills of California are eligible for preferential assessment under California's Farmland and Open Space Program.



© Ian Shive

Green 2009, 8), for example, or by requiring that the appropriate governing body accepts the property via resolution. States with this requirement include California, Connecticut, Florida, Nevada, Tennessee, and Oregon. It is then up to local or county officials to choose the criteria for qualification, in some cases naming specific parcels. In other cases, the assessor's office determines the eligibility, based on the characteristics of the property and whether it meets the criteria.

This approach allows local governments to control the amount of the expenditure in their jurisdiction and tailor the program to protect the specific qualities most important to the area. For example, officials in a predominantly agricultural environment may prefer to use tax expenditures on forests or wetlands, while open fields might prove most valuable in a more urban setting.

Calculating the Value of the Tax Expenditure

Open space preferential assessment programs typically use one of three methods to determine the property's assessed value. Nine states value open space as if it were enrolled in the state's program for agriculture or forestry, even though the land isn't used for either activity. Nine other states instruct assessors to value the property considering only its current use, excluding the value of development rights (i.e., the market value as if its future

use were permanently restricted to its current use). Four states instruct the assessor to determine the fair market value as if it were not in the program and then apply a statutory formula to determine the preferential assessed value. Illinois has three programs for preferential assessment of open space, which vary by the criteria for eligibility; all offer statutory reductions that range between 75 percent and 85 percent. Nevada applies a lower statutory reduction of 26 percent.

States occasionally choose to define maximum or minimum values per acre for open space parcels. For example, Maryland set a statewide value of \$187.50 per acre for 2009. Washington allows local governments to determine a use value for their region, depending on a public benefit rating system; if no such system exists, open space land may receive an assessment no lower than the lowest agricultural valuation in the county. Massachusetts calculates the preferential value as use value, not to exceed 25 percent of fair market value.

Program Duration and Penalties for Early Withdrawal

Many programs provide for automatic annual renewal unless the landowner chooses to withdraw from the program. In some cases, length of contract is predetermined, most frequently for ten years, which generally carries forward upon the sale of

the property unless the new property owner alters the use and violates the terms of the program. Landowners pay a penalty for withdrawing from the program in order to alter land use, or for altering it without notification. Such penalties tend to equal the value of the tax expenditure received for a specified number of years prior to the current year, plus interest on that expenditure. Several states either charge 10 percent of the fair market value when use of the parcel changes, or charge a conveyance or transfer tax when a parcel in the program is sold.

If an owner withdraws a parcel from the program after a minimum number of years, however, the state may reduce or even eliminate penalties. For example, Vermont charges owners 20 percent of fair market value for withdrawing the property in the first decade and 10 percent for withdrawing after more than 10 years. Rhode Island exacts 10 percent of the new fair market value for removing a property after 6 years, but that penalty declines until it terminates, 16 years after enrollment.

Economic Benefits of Open Space Preservation

The large literature discussing the effect of environmental amenities on surrounding property values suggests that preventing development on a parcel will raise the value of neighboring parcels. The studies find complicating factors, however, that make it difficult to predict changes in value for specific regions. One study in Maryland, for example, finds that open space programs have very different effects on the value of property in three different counties, probably due at least in part to variations in the amount of open space present (Geoghegan, Lynch, and Bucholtz 2003). Numerous other studies indicate that the value of open space for individual homeowners declines with distance from the protected parcel (Chamblee, et al. 2011). The type of habitat or green space is also likely to be influential; one analysis finds that the presence of broad-leaved trees in a neighborhood is associated with positive values, but the presence of spruce trees has a negative effect on property values (Garrod and Willis 1992). An analysis of home prices in Tucson, Arizona, finds a preference for homes in areas with green space including native riparian habitat (Bark, et al. 2009; 2011).

Public access to privately owned open space for recreation or educational purposes would also

be likely to provide substantial local benefits in many cases. States rarely require public access as a condition for the tax expenditure, but Maine and New Hampshire both encourage it by offering an additional reduction in assessed value of 25 percent and 20 percent, respectively.

Protected open space can also reduce growth in the demand for municipally provided services and forestall negative effects of development, such as heavy traffic or overcrowded schools, which would likely impose a heavier tax liability on current residents. A growing literature on cost of community services indicates that the property taxes paid on developed land are often insufficient to cover the cost of services created to support that development, while open space frequently generates tax revenues well in excess of the cost of services expended on the property. The American Farmland Trust, reporting results from 151 studies covering counties and municipalities in 25 states, finds that the owners of working and open land frequently pay taxes above or even twice the cost of services received on those properties, while residential property owners typically pay less than the cost of services received (Farmland Information Center 2010).

Findings like these suggest that preferential assessment can be justified on the grounds of fairness, because the owners of open space may be subsidizing services sent to owners of developed property. However, the fact that most programs require a long-term agreement and include penalties for early conversion indicates that the goal is not fairness, but preventing development for a specified period.

Unfortunately, there is very little literature evaluating whether preferential assessment programs prevent future development on parcels that aren't under permanent protection such as an easement. Much of the existing evidence is based on studies of farmland protection programs rather than evaluations of the impact of property tax expenditures on open space. Two studies of Tennessee's Greenbelt Program evaluated a survey of woodland owners enrolled in the program and found little support for the hypothesis that preferential assessment reduced the likelihood of development on these parcels (Brockett, Gottfried, and Evans 2003; Williams, et al. 2004).

It's easier to evaluate land under long-term or permanent protection of either a perpetual



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The Land Conservancy of Western Michigan has permanently protected this 130-acre easement with mature hardwood forest and extensive wetlands, in Mason County.

conservation easement or a long-term preferential assessment contract with substantial penalties for withdrawal. In those cases, it's possible to reliably predict the continued presence of open space; unfortunately, these protection agreements may predate the preferential assessment or be otherwise uninfluenced by it.

Costs of Preferential Assessment for Open Space

In addition to the tax expenditure itself, these programs may incur several other potential costs. Programs that require an approved conservation plan, for example, might generate a particularly challenging expense. While a state agency could develop and approve such a plan, it will be costly to ensure that conditions of the plan are met.

Program enforcement requires evaluating not only changes in a property's market value but also changes in its use. If open space is used to graze livestock, for example, this new use might protect the undeveloped condition of the property but still reduce the environmental benefits.

Additionally, evidence suggests that in some instances open space preservation can lower property values by shifting development patterns, typically by resulting in the development of nearby properties (Irwin and Bockstael 2004; McDonald, et al. 2007). If preferential assessment prevents development on particular parcels, that development may shift to other parcels in ways that increase sprawl. If a leapfrog pattern of development occurs because a program prevented development on a parcel-by-parcel basis, the negative effects,

such as higher infrastructure costs, could overwhelm any public benefits from the program.

Given the voluntary nature of these programs and resulting changes in development patterns, a worst-case scenario is that lower-quality parcels might receive the preferential assessment, increasing development pressure on parcels that generate greater public benefits. On the one hand, local government approval might reduce this problem by allowing individuals who know the area best to choose the parcels that most deserve protection. On the other hand, it might inspire local officials to protect open space in their jurisdiction, pushing development into other communities and creating undesirable development patterns at the regional level. It is also important to mention that preferential assessment of open space to some degree creates a split-rate system with a higher rate on developed land, particularly on improvements to the land—an issue that concerns many property tax scholars and may also significantly affect land use patterns.

Finally, the value of the public benefits is not static; it may increase or decrease depending on the condition of the property and surrounding area. The changes may be uncorrelated, or even negatively correlated, with future changes in assessed value. For example, more intense development pressure might increase the benefit of preserving a large parcel as open space; or it might decrease the benefit of preserving a small “island” parcel. Twenty-five acres of open space in the middle of a town can greatly benefit a community, but, if 24 of those acres are developed, it will likely diminish the environmental benefits of the remaining acre. Both scenarios, however, are likely to increase tax savings from preferential assessment, as development pressure drives up local property values.

These factors indicate that, while preferential assessment does offer landowners an incentive to preserve public benefits, the amount of the incentive may under-correct or even over-correct for the benefit being created. This will result in an inherently inefficient program, though such programs may still result in significant net benefits compared to having no program at all.

Distributional Consequences

Property tax expenditures to protect open space will have distributional consequences. Most immediately, the program would redistribute the tax burden onto other property owners in the same tax

districts, as governments change the mill rate in order to maintain budgeted revenue. Owners of developed properties will now constitute a larger share of the tax base and will need to pay a greater fraction of the total tax bill as a result.

Since preferential assessment programs are primarily designed to maintain existing open space, enrolled parcels continue to generate benefits, but those benefits don't necessarily increase. Thus the public benefits should be expected to continue to accrue as before. Local residents alone will benefit from scenic views and the foregone external costs of development, while residents and nonresidents alike may benefit from protecting watersheds or habitat for endangered species (Anderson and West 2006). Benefits may be expected to increase, however, if the program requires owners to improve the value of the open space by activity such as habitat restoration.

Several studies indicate that the effects of open space on surrounding property values depend critically on the type of protection and its ability to prevent development in the future. For example, land acquired as a park or forest preserve, or land placed under a conservation easement, has a much more positive effect on neighboring property values than open space that is not permanently protected (Geoghegan 2002). Enrollment in a preferential assessment program might have little or no effect on surrounding property values if the protection is perceived to be temporary, resulting in either

permanent reductions in revenue or permanently higher tax rates on the non-enrolled parcels.

Calculating the Fiscal Cost of Preferential Assessment Expenditures

The methodology for calculating the tax expenditure resulting from the preferential assessment of open space is straightforward. The property owner will see a reduced tax burden based on the difference between the assessment without the program and the preferential assessment. This reduction in assessed value can lower tax revenue due to a reduced base. Alternatively, the lost revenue could be recouped by shifting the burden onto other property owners by increasing the tax rate. A combination of both outcomes is also possible. Oregon reports both the loss and the shift in their tax expenditure report (table 2), which listed exemption values of \$126 million in fiscal year 2009–10 for the three open space programs. The estimated revenue loss over two fiscal years is \$3.2 million, while the estimated revenue shift during that period is \$0.7 million.

Data is inconsistent from state to state, which makes it difficult to estimate the revenue effects of preferential assessment. The aggregate data presented for Oregon is much more useful than what many other states present. States that do not calculate property tax expenditures frequently do not make such data available; at best, they usually offer aggregate figures that combine the programs for agriculture, forestry, and open space. Table 2

Program	2009–10 Assessed Value of Property Exempted¹	2009–11 Revenue Impact: Loss¹	2009–11 Revenue Impact: Shift¹
Wildlife Habitat	\$51 million	\$1.1 million	\$0.2 million
Conservation Easements	\$14 million	\$0.4 million	< \$0.1 million
Open Space Land	\$61 million	\$1.7 million	\$0.4 million
Totals for Open Space Programs (as rounded)	\$126 million	\$3.2 million	\$0.7 million
Private Forests²	\$5.3 billion	\$104 million	\$19.9 million
Farmland³	\$14.1 billion	\$303.9 million	\$58.2 million
Open Space, percent of total	0.6%	0.8%	0.9%

Source: Oregon Department of Revenue (2012), pp. 317–329.

- 1 Numbers in the table are reported as listed in the report. The dollar values are rounded to the nearest million or tenth of a million.
- 2 Private Forests includes preferential assessment programs for forest homesites, western private forestland, eastern private forestland, and small tract forestland. It does not include property tax exemptions for standing timber.
- 3 Farmland includes preferential assessment programs for farmland and for farm homesites.

also indicates the relative scope of open space in that context. The exemption values for private forestry were over \$5 billion, and the exemption values for farmland and farm home sites were \$14.1 billion. The three conservation programs combined represent approximately one-half of one percent of the total exemption value, and less than one percent of the revenue lost or shifted.

Such calculations also depend on other effects

that may be very difficult to observe. It will be impossible to determine the extent to which revenue shifted, without detailed information about local government's ability to respond by changing the mill rate. In that case, the estimate will account for only foregone revenue. It will also be necessary to ignore the program's possible positive property value effects on neighboring parcels.

Conclusion

Designing a preferential assessment program for open space requires careful consideration. While land with limited development does provide amenities and environmental benefits under many circumstances, the value of those benefits may vary dramatically according to local conditions. If the program's goal is primarily to provide local, rather than regional, benefits, one set of criteria for the entire state is unlikely to maximize benefits. Local determination of the enrollment criteria may provide the flexibility necessary to react to those varying conditions, whereas state-level criteria are probably necessary to protect regional resources such as watersheds.

The shortage of empirical work in this area makes it difficult to assess the effectiveness of existing programs. If the goal is genuinely to forestall development on certain parcels, program design should consider the length of contract and penalty for early conversion. Short-term delays in development will primarily benefit the owners of open space. For a program to succeed, the open space must generate significant community benefits in the form of either long-term environmental protection or higher property values for other residents of the area. Higher eligibility requirements for inclusion in the program should reduce the amount of acreage enrolled; however, the number of acres should not be the program's primary goal unless legislators intend it solely as a means to reduce local development. Significant enrollment in the program could have substantial fiscal implications for local jurisdictions, especially if broad criteria and low conversion penalties make it easy for landowners to enroll and then develop the property later. Program design must ensure a maximum of public benefit in exchange for the fiscal effects. □

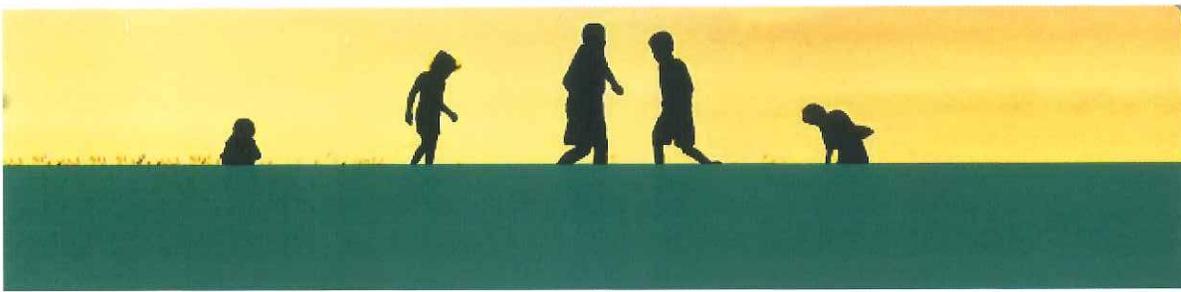
This article was adapted from the Lincoln Institute working paper, "Preferential Assessment for Open Space": https://www.lincolninstitute.edu/pubs/dl/2281_1620_Sundberg_WP13JS1.pdf.

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RESOURCES

- Anderson, Soren and Sarah West. 2006. Open space, residential property values, and spatial context. *Regional Science and Urban Economics* 36: 773-789.
- Bark, R. H., D. E. Osgood, B. G. Colby, and E. Halper. 2011. How Do Homebuyers Value Different Types of Green Space? *Journal of Agricultural and Resource Economics* 36(3): 395-415.
- Bark, R. H., D. E. Osgood, B. G. Colby, G. Katz, and J. Stromberg. 2009. Habitat preservation and restoration: Do homebuyers have preferences for quality habitat? *Ecological Economics* 68(5): 1465-1475.
- Brockett, C. D., R. R. Gottfried, and J. P. Evans. 2003. The Use of State Tax Incentives to Promote Forest Preservation on Private Lands in Tennessee: An Evaluation of Their Equity and Effectiveness Impacts. *Politics and Policy* 31(2): 252-281.
- Chamblee, John F., Peter F. Colwell, Carolyn A. Dehring, and Craig A. Depken. 2011. The Effect of Conservation Activity on Surrounding Land Prices. *Land Economics* 87(3): 453-472.
- Chervin, Stan, Teresa Gibson, and Harry Green. 2009. Greenbelt Revisited. Tennessee Advisory Commission on Intergovernmental Relations. http://www.tn.gov/tacir/PDF_FILES/Taxes/greenbeltrevisited.pdf.
- Farmland Information Center, American Farmland Trust. 2010. Fact Sheet: Cost of Community Services Studies. <http://www.farmland.org/documents/Cost-of-Community-Services-08-2010.pdf>.
- Garrod, Guy, and Ken Willis. 1992. The environmental economic impact of woodland: a two-stage hedonic price model of the amenity value of forestry in Britain. *Applied Economics* 24: 715-728.
- Geoghegan, Jacqueline, Lori Lynch, and Shawn Bucholtz. 2003. Capitalization of Open Spaces into Housing Values and the Residential Property Tax Revenue Impacts of Agricultural Easement Programs. *Agricultural and Resource Economics Review* 32(1): 33-45.
- Geoghegan, Jacqueline. 2002. The Value of Open Spaces in Residential Land Use. *Land Use Policy* 19(1): 91-98.
- Irwin, Elana G. and Nancy E. Bockstael. 2004. Land Use Externalities, Open Space Preservation, and Urban Sprawl. *Regional Science and Urban Economics* 34:705-725.



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- Being out there improves distance vision and lowers the chance of nearsightedness.⁹

Mind

- Exposure to natural settings may be widely effective in reducing ADHD symptoms.¹⁰
- Schools with environmental education programs score higher on standardized tests in math, reading, writing and listening.¹¹
- Exposure to environment-based education significantly increases student performance on tests of their critical thinking skills.¹²

Spirit

- Children's stress levels fall within minutes of seeing green spaces.¹³
- Play protects children's emotional development whereas loss of free time and a hurried lifestyle can contribute to anxiety and depression.¹⁴
- Nature makes you nicer, enhancing social interactions, value for community and close relationships.¹⁵

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