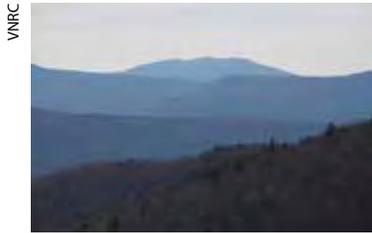


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7. Local Tax Stabilization for Forestland and Open Space

Overview

Reducing the tax burden on forestland owners can help them keep that land in production and remain financially viable. The alternative – which many landowners face – is selling their land for development in order to make ends meet. Municipalities have the authority to enter into tax stabilization contracts with owners, lessees or operators of existing or new forest, agricultural, or open lands in order to promote forestry and open space preservation. These contracts can be written to stabilize taxes in a variety of ways: by fixing property values, tax rates, or the amount or percentage of annual tax assessed.



The 2008 Vermont Municipal Information Report by the Vermont League of Cities & Towns notes that of the 208 towns surveyed, 33 have created tax stabilization contracts, and 11 of these are for land in agriculture and forestry. Two of the 33 towns have tax stabilization programs to promote open space protection; both of these towns also have agreements for agriculture and forestry.¹

Statutory Authority and Implementation

24 V.S.A. §2741 and 32 V.S.A. §3846

According to the Supreme Court of Vermont, the legislative scheme regarding municipal tax stabilization plans gives towns considerable discretion. Beyond specific requirements described in statute, towns are free to adopt any rules and requirements that, in their judgment, further the policies of their municipal plans.

There are two ways for municipalities to enter into tax stabilization contracts.

Title 32 V.S.A. §3606 provides guidance on assessing the value of working forestland, so that property is not assessed at a higher value once the timber on it is under contract for sale. The statute reads: “The sale or conveyance of standing timber shall not affect the valuation of the underlying land.”

Voter Approval Option (24 V.S.A. §2741)

Under this option, voters provide the legislative body (e.g., Selectboard) with either (a) general authority to enter into tax stabilization agreements or (b) limited authority to negotiate contracts. If granted limited authority, the contract negotiated by the legislative board becomes effective only after it is approved by the majority of voters present and voting at an annual or special meeting warned for that purpose.

Under this “voter approval” option, contracts cannot exceed a period of 10 years. Contracts may be applied to existing or to newly established agricultural, forested, or open space properties. In addition – and in contrast to the state’s Current Use Program – there are no requirements for the size of the parcel being enrolled, giving a municipality the flexibility to enroll, for example, a 10 acre farm or woodlot parcel.

Under the voter approval option, “forest land,” “farmland,” and “open space land” have specific definitions. “Forest land” is defined as “any land, exclusive of any housesite, which is under active forest management for the purpose of growing and harvesting repeated forest crops.”² (“Housesite” is defined as “two acres of land surrounding any house, mobile home, or dwelling.”³) “Farmland” is “real estate, exclusive of any housesite, which is actively and exclusively devoted to farming and is operated or leased as a farm enterprise by the owner.”⁴ In addition, “open space land” is defined as “any land, exclusive of any housesite, that does not fall under the definition of ‘farmland’ and ‘forest land,’ is not used for commercial or industrial purposes, and does not have structures thereon.”⁵



This section of the statute predates the state’s Current Use Program. While the availability of current use may have decreased interest in local tax stabilization, some communities may prefer this as a way keep the program under local control. It also allows for the enrollment of parcels smaller than the minimum 25 acres required by the Current Use Program, which may help a community meet its goals more effectively.



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Selectboard Option (32 V.S.A. §3846)

In this option, the legislative body of a municipality can negotiate contracts without voter approval, but there are greater limitations related to parcel size and ownership on the kind of land that can qualify.

Forestland must be at least 25 acres in size and under active forest management for the purpose of growing and harvesting repeated forest crops. In addition, in order to qualify for enrollment, the beneficiary of the contract must be an owner of forestland. Being an owner means being the record holder of the legal title or a leasehold interest in the forestland. Furthermore, in the event an owner breaches the contract by converting the forestland to another use, the owner must pay back the tax savings from the previous three years.



Ron Powers

agreements in place before July 1, 1997 reduces the municipality's overall education property tax liability. However, tax stabilization agreements entered into after July 1, 1997, do not reduce the municipality's education property tax liability. Instead, the land is assessed at fair market value, and municipalities must make up the difference in what they owe to the state education fund, usually with an add-on to the typical municipal rate, which is then clearly

identified on the tax bill. Depending on the agreement between the municipality and the landowner, this may lead to a reduction in the education property tax liability of the owner.

Tax stabilization agreements may help landowners that are reluctant to conserve land through other options:

Some landowners are reluctant to enter into the Current Use Program because the state holds a lien on their property to enforce against conversion or mismanagement of forestland. For landowners who would rather enter into a local program administered by their own town, tax stabilization agreements may also be used to complement enrollment in the state's Current Use Program.

Flexibility: As mentioned above, municipalities have wide latitude to incorporate additional terms that are rationally

related to furthering the objectives of their tax stabilization programs. In the case of contracts that are voter approved, there is no minimum acreage requirement. Therefore, there may be important forestland parcels that have high public values that can be conserved through tax stabilization contracts, but would not qualify for enrollment in Vermont's Current Use Program due to the 25 acre threshold requirement.

Things to Consider

Cost to towns: The municipality and its property taxpayers bear the burden of any tax loss resulting from local tax stabilization. By contrast, under the Current Use Program, municipalities are reimbursed for lost municipal taxes. It is important to note that in many cases, conserved land requires fewer services than developed land, and municipalities therefore benefit by having land conserved, which can help to offset reductions in tax revenue from tax stabilization agreements.

Tax stabilization and the education property tax: One consideration with any program related to taxation is Vermont's state education property tax. Title 32 V.S.A. §5404(a) explains how local tax stabilization programs relate to the state education property tax. In a nutshell, land with tax stabilization

Wayne Fawbush





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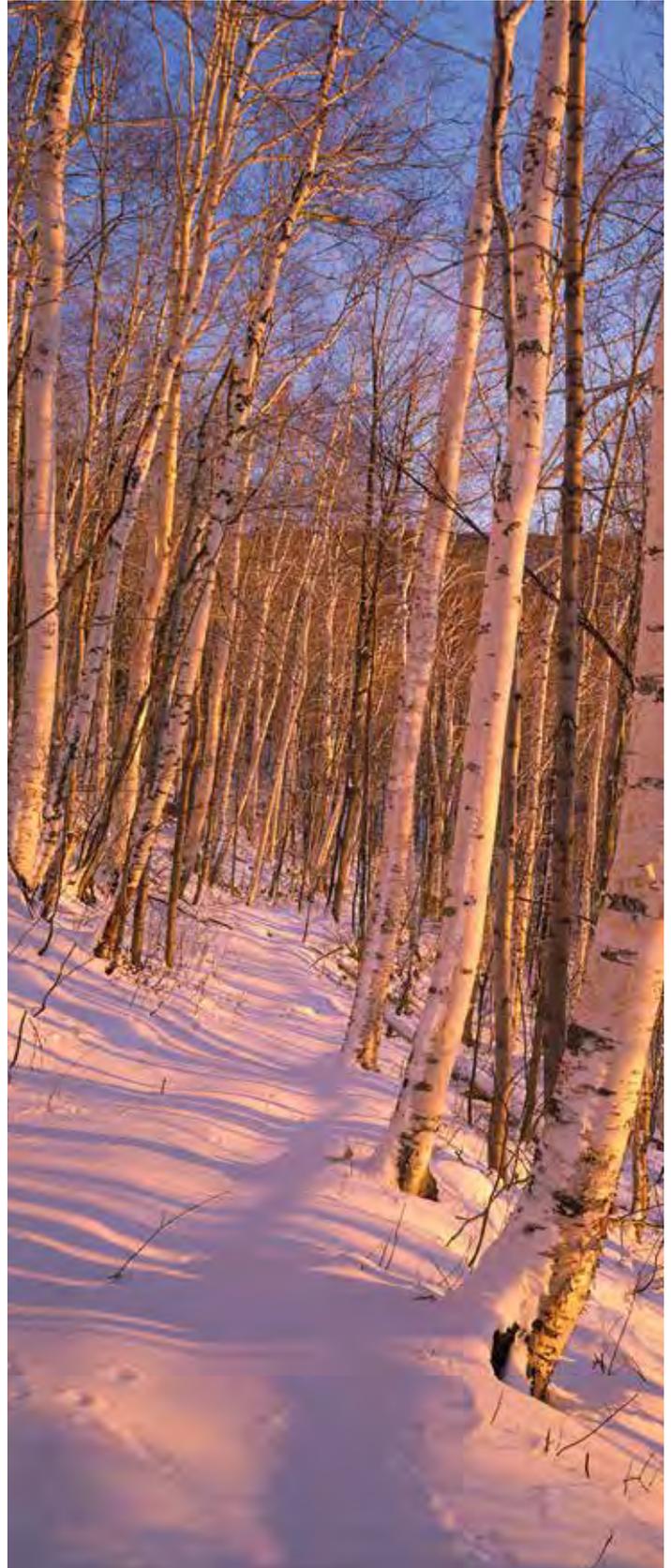
Case Study

Farm and Open Land Tax Stabilization Program: Essex, Vermont

The Town of Essex recognizes the value of forest and farmlands, which is why they chose to create the Farm and Open Land Tax Stabilization Program by town vote in 1975. The program reduces the property tax burden on qualifying landowners by 50%, which helps them keep their lands in production and avoid what can oftentimes be a more financially attractive option: development.

Owners of open lands (including forestland) are eligible to enroll in the program if they have 50 acres or more of undeveloped land. If a residence exists on the parcel, then two acres are automatically deducted from the total acreage that is considered to be eligible. Unlike open lands, farmland does not have to meet a minimum acreage standard. Rather, owners can enroll if they derive at least 50% of their income from farming.⁶

Today, the program is administered through the town assessor and the Essex selectboard has the ability to enter into tax stabilization contracts without voter approval. As of June 2013, the Town of Essex had contracts with nine owners of open lands and three owners of farmlands. Landowners must reapply to the program every five years.⁷

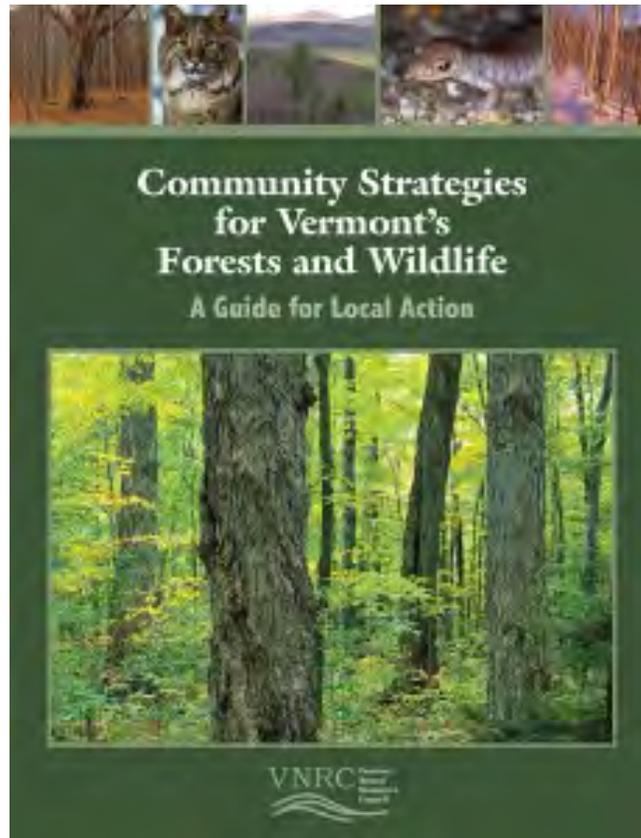


A. Blake Gardner



This chapter is part of a larger publication called ***Community Strategies for Vermont's Forests and Wildlife: A Guide for Local Action***. You can download the entire publication or individual chapters (including the endnotes, resources, and credits page) for FREE at:

www.vnrc.org/programs/forests-wildlife/guide/



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Funding or general support for this publication was provided by: Jessie B. Cox Charitable Trust; Northeastern States Research Cooperative (NSRC), a partnership of Northern Forest states (New Hampshire, Vermont, Maine, and New York), in coordination with the USDA Forest Service; The Nature Conservancy – Vermont Chapter; U.S. Forest Service, Northeastern Area State and Private Forestry; U.S. Forest Service, Green Mountain National Forest; Vermont Agency of Natural Resources.

Design: Tim Newcomb, Newcomb Studios Printing; Stillwater Graphics, Williamstown, VT

Prepared by the Vermont Natural Resources Council

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