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Running with the Land:

The Past, Present, and Future
of Vermont's Use Value
Appraisal Program

by Rebecca A. Basch

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By: Rebecca A. Basch

Published by:

Vermont Natural Resources Council Inc.

9 Bailey Avenue

Montpelier, Vermont 05602

Phone: (802) 223-2328

E-mail: VNRC@plainfield.bypass.com

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EXECUTIVE SUMMARY

The History of Use Value Appraisal

The original intent of property taxation in Vermont was to tax people according to their ability to pay, and according to the services they would receive in return. Since the middle of the 20th century, however, one's wealth and income have not necessarily been reflected in the property one owns. Also, since a majority of property taxes are used to fund education, the amount of property one owns no longer determines the amount of services received. Vermont's Use Value Appraisal program, adopted by the legislature in 1977, was created in order to reestablish equitable taxation for agricultural and forest land, to enable such land to remain in its productive capacity and to forestall its conversion to more intensive uses. The program joined a nationwide trend toward state initiated programs for taxation of farmland, forest land, and open space and followed several years of local authority to create tax stabilization contracts in Vermont.

Programs for preferential taxation of farm and forest land exist in almost every state. Currently all but Michigan and Wisconsin provide for preferential taxation of agricultural land. However, even in these two states, listers are likely to assess farmland at its current use; in addition, the states offer property tax credits for qualified farmers. All but Alaska, Iowa, Nebraska, and Oklahoma have preferential taxation programs for timber land. In addition, many states have adopted programs that offer preferential taxation for other open space and recreational uses.

Towns in Vermont have had the authority to establish tax stabilization contracts with owners of industrial land since 1955, and owners of farmland since 1967. As the 1960's and 70's brought increasing demand for land in the state for uses other than farms or timber operations, fair market values of such properties increased dramatically, and property taxes increased disproportionate to the ability of the landowners to pay out of the income earned from the land. The state enacted the Use Value Appraisal program in 1977 and the accompanying reimbursement program in recognition of the importance of farm and forest land at the state level.

Although initial enrollments in Use Value Appraisal were modest, increasing land values and changes to the program over the years brought increased enrollments and higher costs for the state funded reimbursement program. From 1991-95, the Use Value Appraisal program was underfunded by the legislature. At underfunding, landowners enrolled in the program must make up the portion of taxes that are not reimbursed by the state. Underfunding also removes the land use change tax, meaning landowners may withdraw their land and sell it for development with no penalty.

Through the 1996 Appropriations Bill, the Vermont state legislature changed Use Value Appraisal program in a number of ways:

1. The Farmland and Working Farm Tax Abatement programs were eliminated, effectively consolidating the four programs into two, one for forest land and one for agriculture.

Those enrolled in the Farmland and WFTAP programs were asked to reapply to the agriculture program. Farm buildings are now to be assessed at 50% of their fair market value and must be situated on property enrolled in Use Value Appraisal.

2. State Reimbursement of Use Value Appraisal was eliminated. Moneys that had been targeted for reimbursement, \$8 million, were redirected into state aid for education (\$3.3 million) and “hold harmless” funding (\$4.7 million) that would be used to ease the impact of the tax shift from the state to the towns.

Hold harmless funding was allocated so that town tax rates would not be raised over 1.8% (or \$.018 per \$100 property value). However, towns that were designated as “gold towns” by the department of education because of their revenue-raising resources did not receive any hold harmless funding or aid for education.

The changes to the Use Value Appraisal program went into effect July 1, 1996. For local listers, this fact alone caused a great deal of extra time and paperwork, as grand lists are due on April 1. Listers were directed to appraise land enrolled in Current Use at use value and recalculate taxes on all town properties based on the tax shift minus hold harmless payments and increased aid for education.

In addition to the administrative difficulties caused by the changes, local officials have complained that shifting the tax burden to the towns is effectively an “unfunded mandate” requiring payment for a program that consists of contracts between private landowners and the state. The towns of Barnard, Bridgewater, and Halifax voted to ignore the new mandate and, instead, taxed all land at fair market value. Sixty towns in all expressed interest in holding a meeting to repeal the 1996 changes to Use Value Appraisal.

The Future of Use Value Appraisal in Vermont

A *Rutland Herald* poll conducted in September 1996 showed that 82% of Vermonters favor the policy that taxes farm and forest land at use value and 83% believe that funding for such a program should come from the state. The object of controversy in Vermont’s Use Value Appraisal program has always been the cost of reimbursement — who should bear that cost, and who should benefit from reduced taxation through the program. While the state as a whole benefits from land enrolled in Use Value Appraisal, it may be argued that towns accrue additional benefits and should bear some of the burden of the tax shift. This chapter examines the benefits that Use Value Appraisal offers and outlines some of the issues that have been discussed by the Governor’s Task Force on Current Use and others regarding the future of the program in Vermont.

One of the greatest economic benefits that the Use Value Appraisal program provides for the state is the incentive for sustainable management of privately owned forest land. Property taxes are one of the greatest factors in a landowner’s decision to manage timber land for the long-term health of the forest rather than for short-term profits. Sustainable forestry ensures the continuation of the timber industry and the jobs it provides as well as the protection of wildlife habitat and open space for recreation. Additional economic benefits include the continuation of productive small farms in the state.

An important economic benefit felt at the local level is the avoided cost of local services that open space offers. Studies by the American Farmland Trust show that for every

dollar in taxes paid on farm property, only \$.30 in services are required, whereas for every dollar paid on residential property, the town must spend more than a dollar on services.

Use Value Appraisal provides a number of noneconomic benefits to the public as well. These include open space for recreational use, protection of wildlife habitat, and preservation of resource land such as buffer areas next to rivers. Unfortunately, however, management of land for these purposes alone is not currently recognized under the state's Use Value Appraisal program.

Shortly after the 1996 changes to Use Value Appraisal went into effect, the Governor appointed a task force to look at the program and make recommendations for how it should be revised in the coming year. The Governor's Task Force on Current Use primarily consisted of local officials as well as representatives from the Vermont League of Cities and Towns and the Current Use Tax Coalition, and the Commissioners of Agriculture, Taxation, and Forest, Parks and Recreation.

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Among the changes discussed by the Governor's Task Force, the following issues were considered in discussions about the program's reform:

- residency requirements for enrollment
- means testing (i.e. income requirements for enrollment)
- disallowance of parcels already precluded from development, (e.g. small parcels, those on which development rights have been sold or donated to a land trust, those subject to the Wetlands Protection Act, parcels above 2,500 feet elevation)
- increasing the minimum acreage of land required for enrollment
- requiring public access or instituting an incentive system for allowing public access.
- increasing the penalty for withdrawal or change in use
- re-examining the methods for determining the dollar amount of "use value"

While not all of these were embraced by the Task Force, they are issues that have been raised repeatedly over the years of the program's existence and merit further investigation.

Alternatives — Examples from Other States

Open space and public benefits

While the public benefits from the continued productivity of farm and forest land, many states have also recognized the benefits offered by other open lands. Programs for use value appraisal of "open space" exist in 19 states. The chief difficulty in administering an open space category for use value appraisal is in the definition of open space and in ensuring that real public benefit is gained from appraising such lands at less than fair market value. In most states that have open space programs, eligibility involves compliance with

local zoning or designation by a specific agency, or land that is under a restrictive covenant such as a conservation easement.

A few states that offer reduced taxation for open space land have developed public benefits tests in order to determine eligibility and the appraisal levels of enrolled land.

Maine's Farm and Open Space Tax Law and Washington's Public Benefit Rating System are discussed. Benefits recognized by these programs include preservation of scenic

resources and historic sites; protection of water supplies, wetlands and endangered species habitat, and enhancement of recreation opportunities. Programs are administered at the local or county level, and appraisals are reduced according to the number and type of public benefits provided.

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Many states, in addition to Maine and Washington, offer incentives for landowners to allow access for recreation. Incentives are usually in the form of an additional percentage reduction from appraised or use value. Landowners enrolled in Use Value Appraisal in Vermont have been opposed to access requirements in the past due to fear of liability suits and dislike of additional requirements. Landowner liability is an issue the upcoming legislature will have to address in order to slow the pace of postings on private land in the state.

Program Criteria

The following sections specifically address proposals to reduce the cost of Vermont's Use Value Appraisal program. Examples of programs in other states are discussed.

Minimum acreage — Minimum acreage requirements are a criteria for enrollment in 29 state programs and range from two to fifty acres, with ten being the most common minimum requirement. Minimum acreage requirements for farm land or open space are often smaller than ten acres but additional requirements, such as income per acre or assured public benefits, must be met in order for smaller parcels to be eligible for reduced appraisal. Methods by which states set minimum acreage requirements are arbitrary — the size of a parcel alone cannot predict the importance of keeping that parcel undeveloped.

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Means testing — At least two states administer programs that take income levels into account before distributing property tax relief. Two programs are examined: Michigan's Farm and Open Space Preservation Act and Wisconsin's Farmland Preservation Program. Means testing radically changes the philosophy of use value appraisal from a program that runs with the land to one that runs with the individual landowner. But, according to one of the original authors of Wisconsin's Farmland Preservation Program, the circuit breaker program makes more people better off, and focuses resources on those who really need them. In addition, both Michigan's and Wisconsin's programs require that land must be

zoned as agricultural land in order for landowners to receive benefits. This requirement has sparked owners of farmland in Wisconsin to lobby for planning practices in their counties or towns where planning and zoning has previously been underutilized.

Corporate and non-resident landowners — There has been some discussion about restricting use value appraisal only to state resident and non-corporate landowners. Such a change could be potentially devastating to the goals of the program, however, particularly concerning the continued productivity of timber land in the state. Any property tax incentive program such as use value appraisal encourages timber companies to use better management practices with longer management cycles and makes them less likely to liquidate their land. In addition, land held by timber companies provides the most public benefit for the least cost. Reports from the Department of Property Valuation and Review show that in 1995, all owners of property reimbursed by the state at less than \$2.00 per acre was owned by timber companies with land holdings in the thousands of acres. Farmland and smaller parcels owned by individuals, on the other hand, cost the state far more per acre. One of the strengths of Vermont's Use Value Appraisal program is that, for the most part, it has run with the land and not the landowner.

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Zoning — Zoning for farm or forest use is another potential criteria change that has been discussed with regard to Vermont's Use Value Appraisal program. California is the state most widely known to have adopted zoning requirements in conjunction with its program for taxation of farm and forest land. In California's Williamson Act, counties were required to designate "timberland production zones" and "agricultural preserves" in which land was to be appraised at use value. The state reimburses towns \$5 per acre for agricultural land and \$1 per acre for open space land "of statewide significance." Elements of this program would be useful to apply in Vermont — primarily the determination of what land is most important to preserve in agricultural or forestry use, and the examination of which of that land is already enrolled in Use Value Appraisal.

Valuation Techniques

The Governor's Task Force on Current Use has discussed whether or not use values are set too low. The focus of this debate centers on the definition of "use value appraisal." In the statute, "use value appraisal" is defined as "the price per acre which the land would command if it were required to remain henceforth in agriculture or forest use." Current and former administrators of the Use Value Appraisal program recognize that use values assigned by the Current Use Advisory Board do not reflect the market prices of farm and forest land on which development rights have been donated or sold — in effect, land which would remain henceforth in its current use. Use values are based on the income producing potential of the land. Most state programs calculate use values through the capitalization of income approach, yet many also allow listers to apply a range of values depending on their location. Some states tax timber land according to a "bare land" value and charge a "yield tax" at time of harvest. This method encourages sustainable harvest forestry but causes tax revenues for towns to be unpredictable.

Penalties for Withdrawal

Most state programs, including Vermont's, levy a penalty of either a "roll-back" tax or a "conveyance" or "development" tax when the land enrolled in a current use program is developed. Compared to other states in New England, Vermont's penalty for withdrawal from Use Value Appraisal is fairly weak. Participants in recent discussions about the program feel that the penalty should be stronger in order to ensure that the public receives the long-term benefit of land that remains undeveloped for a number of years.

State vs. Local Control

Whereas many states administer current use programs at the local level, Vermont's program has been managed at the state level for many years. After the 1996 changes, towns administered penalties associated with change in use. Should Vermont's program continue to affect local tax roles without full state reimbursement, local officials have called for greater control over which parcels are allowed in the program. Such a change could improve the efficiency of monitoring enrolled sites, but could also result in variable criteria for enrollment from town to town and a reduction in the amount of enrolled land. State policy makers need to determine what lands are of particular importance to the state as a whole if such an administrative change is to go into effect.

Education Finance Reform and Alternative Funding Sources

There are several ways in which broad-based taxes may be tapped either for funding of Use Value Appraisal or overall education finance reform. This section reviews Michigan's program of comprehensive education finance reform, which increased state funding for education from 30% to approximately 80%. Also discussed are taxes on carbon-based fuels, a program which Minnesota has proposed, and Vermont's Rooms and Meals tax.

Conclusion and Recommendations

State funding is what has made Vermont's program different from all other use value appraisal and preferential taxation programs in the U.S. Underfunding by the state was ultimately the cause for the 1996 changes that shifted some of the tax burden onto local budgets, and funding will continue to be the main issue of discussion in the upcoming legislative session. Legislators will have to address one or all of the following issues in order to enable the Use Value Appraisal Program to achieve its goals effectively and efficiently:

- Adopt a program of comprehensive education finance reform, in order to take some of the burden of education funding off of the local property tax and eliminate much of the need (and cost) for property tax relief for farm and forest land owners, or
- Find a way to fully fund the Use Value Appraisal program. In the absence of comprehensive tax reform, the Use Value Appraisal program should be fully funded. Funding may come from some combination of state and local taxes, with additional local control over those portions of the program funded at the local level. Or, broad-based taxes could be increased in order to fully fund Use Value Appraisal at the state level.
- In either funding scenario, the cost of Use Value Appraisal must be examined. The criteria for enrollment are, and always have been, arbitrarily selected. Additional narrowing of these criteria through income requirements or minimum acreage requirements would also be politically based and arbitrary. Any additional scrutinizing of enrolled parcels should include a public benefits test as a means of balancing tax relief with

public benefits gained through keeping land in Use Value Appraisal.

- Legislators should consider how land is valued in the Use Value Appraisal program before eliminating land through eligibility criteria. The cost of reimbursement may be reduced either through increasing use values on enrolled land to include some of the intangible values of land ownership, or by limiting the fair market value appraisal levels of eligible farm and forest land.
- Penalties for withdrawal of land or change of use must be increased in order to ensure a landowner's commitment to stewardship and long-term benefit to the public. In addition, an incentive for landowners to keep land open to public access for passive recreation should be added to the Use Value Appraisal program in order to reward and encourage landowners to provide an important public benefit. In considering the assignment of higher use values to all properties, this incentive could come in the form of a percent reduction in appraised value on land left open.

Some specific recommendations for policy makers to consider are as follows:

- 1) **Funding sources** — In the absence of comprehensive property tax reform, the Use Value Appraisal program could be fully funded with the \$8 million allocated in 1996 and a one percent increase in the Rooms and Meals tax (approximately \$8.4 million).
Additional funding sources to consider for Use Value Appraisal or education finance reform include severance taxes on all timber harvested in state, pollution taxes, a statewide property tax (possibly different levels for residents and nonresidents), and a broadening of the sales tax.
- 2) **Increase use values** — Use values of farm and forest land as determined by the CUAB are currently at rock bottom. Eligible farmers, as defined by statute should continue to have land appraised at these use values. All other land in the program should be increased in value. For ease of administration, use values on all parcels under 100 acres should be doubled; all parcels of 100 acres and greater should be multiplied by 1.5.
- 3) **Provide incentives for public access** — Land that is not posted should receive a reduction of 25% from the use values as calculated above. Monitoring of land postings should occur at the local level.
- 4) **Cap on appraisal levels** — In order to reduce the wide variations in reimbursement allocations received by different towns, fair market appraisals of farm and forest land should be capped at uniform values for each land type as determined by the Current Use Advisory Board, or at a multiple of four times use value.
- 5) **Look at the public benefits** provided by Use Value Appraisal when considering any changes to eligibility, and look at the positive effects that the program has had on the landscape. Some consideration should be given to allowing enrollment of lands that provide public benefit but are not farmed or forested — for example, valuable recreation land, wildlife habitat, and water resource protection areas. Some funding should be appropriated for the Department of Property Valuation and Review to map parcels enrolled in Use Value Appraisal.

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I. INTRODUCTION

Vermont's Use Value Appraisal or "Current Use" program saw significant media attention in the summer and fall of 1996 due both to the changes to the program added late in the 1996 legislative session, and to the role of the Use Value Appraisal program in the larger debate over property tax reform and funding of education. More than any other region in the U.S., New England states rely on the property tax for a majority of their revenue. In 1995, 49.65% of all state-local tax proceeds in the state of Vermont were collected through the property tax. The personal income tax

generated less than half of the revenue raised through property taxes in the same year.¹

Whereas, on average nationwide, property taxes make up less than one-third of total local revenues, the property tax makes up almost 60% of total local revenues in Vermont.²

Two-thirds of most town budgets are used to fund education. The state of Vermont contributes to approximately 30% of education funding, a low figure compared to the nationwide average of 50% state funding for education. In 1993-94, Vermont ranked 47th out of the 50 states for the percentage of state-

financed education funding and showed the third highest percentage of local revenues used to fund education.³ The heavy reliance that Vermont cities and towns have on the property tax as a source of revenue often make any policy affecting the tax highly controversial.

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Calls for property tax reform have resounded through the state of Vermont for decades. Until the middle of the 20th century, property was a relatively fair measure of wealth in the state. Property taxes were originally collected by the state, and the amount of taxes one paid generally reflected the amount of services he or she received. Since property taxes were instituted in 1778, the state has required real property to be appraised at "fair cash value" or, in today's terms, "fair market value." After completion of the interstates in Vermont in the late 1960s, land values began to increase at a rapid rate, and new development required additional local services. The combined effect of increasing land values and greater local expenditures resulted in increasing property taxes throughout the state. As land that had been traditionally valued as farm and forest land became desirable for residential and commercial development, land values and property taxes rose. And, the value of one's property was no longer reflective of one's wealth or ability to pay.

There is currently little debate that the property tax is a "regressive" tax, becoming more of a burden at lower levels of income. The state of Vermont adopted the Use Value Appraisal program in 1977 in order to re-establish "vertical equity" of taxation — levying taxes according to the ability to pay and the amount of services received. However, in Vermont there continues to be a problem of "horizontal equity" — vastly different property tax rates and the ability to raise revenue from one town to the next. The changes made to

the Use Value Appraisal program by the 1996 legislature were an attempt to re-establish vertical equity in a program that had seen years of underfunding in which owners of farm and forest land again bore much of the burden of unequal taxation. Much of the funding that would have gone to towns as reimbursement for lost tax dollars due to Use Value Appraisal was redistributed through additional aid to education. Towns were directed to assess all land at use value. And, while revenues lost through reduced taxation of farm and forest land were shifted to local tax bases, most towns received “hold harmless” funding in order to offset the additional burden. The purpose of hold harmless funding was to ensure that tax rates in all towns other than “gold towns” did not increase more than 1.8% as a result of the loss of Current Use reimbursements.

In addition to changes in funding for Use Value Appraisal, what had been four programs — for agriculture, forest land, farmland, and the Working Farm Tax Abatement Program — were consolidated into two programs, one for agriculture and one for forest land. As a result of a return to full funding, the penalty for developing land in the program went back into effect. In addition, the state increased funding for the Property Tax Rebate Program which provides aid for low income households. But, many towns saw the changes in Use Value Appraisal as an “unfunded mandate” passed down from the state. Towns classified as “gold towns” did not receive the additional aid, and many balked at the changes. Three towns — Barnard, Bridgewater, and Halifax — voted to defy the state’s order to tax property at use value. In addition, 60 towns responded to a Vermont League of Cities and Towns call for a special hearing to repeal the new legislation.

While the battles have raged over who should “pay” for use value appraisal and who should be eligible to “benefit” from reduced property taxes, much of the broader discussion about how this program benefits all Vermonters and visitors to the state has been lost. The goals of Vermont’s program are broad: “to encourage and assist the maintenance of Vermont’s productive agricultural and forest land; to encourage and assist in their conservation and preservation for future productive use and for the protection of natural ecological systems; to prevent the accelerated conversion of these lands to more intensive use...”⁴ Yet, in practice, the program has focused on the productive capacity of the land and ignored benefits such as the maintenance of the rural landscape and preservation of large tracts of undeveloped land for wildlife that may, in fact, be some of the most valuable aspects of the program for many Vermonters. According to a poll conducted by the *Rutland Herald* in September 1996, 83% of Vermonters value the policy of taxing farm and forest land at use value and 82% feel that the program should be funded by the state.⁵

The purpose of this paper is to provide a background of Vermont’s Use Value Appraisal program and to explore some of the issues being discussed regarding the program’s future. Chapter II gives a brief history of preferential taxation programs nationwide and a more detailed history of Use Value Appraisal in Vermont. This chapter also examines what led to the recent changes in the program and details what these changes were and what they have meant in terms of administration and enrollment. Chapter III looks at the benefits of Use Value Appraisal and outlines the issues being discussed concerning the program’s reform. Alternatives are presented in Chapter IV in terms of how issues of concern are addressed in other states. Finally, Chapter V offers recommendations for how the program could be altered to best meet the needs and values of all Vermonters.

Notes

- ¹ Vermont League of Cities and Towns (VLCT) Candidate Bulletin on Property Taxes in Vermont, September 1996.
- ² VLCT Candidate Bulletin on Property Taxes (1996) quoting *Significant Features of Fiscal Federalism, 1994, Vol. 2*, U.S. Advisory Commission on Intergovernmental Relations.
- ³ Education Partners Project, Foundation for State Legislatures (1996) "Principles of a Sound State School Finance System," National Conference of State Legislatures, Denver, CO, July 1996, p. 15.
- ⁴ V.S.A. Tit. 24 § 3751
- ⁵ Jack Hoffman, "Vermonters Support Gay Marriages, Favor the 'Old' Current Use," *The Times Argus*, September 25, 1996

II. HISTORY OF USE VALUE APPRAISAL

Programs for preferential taxation of farm and forest land exist in almost every state in the U.S. Currently all but Michigan and Wisconsin provide for preferential taxation of agricultural land. However, even in these two states, listers are likely to assess farmland at its current use; in addition, these states offer property tax credits for qualified farmers.¹ All but Alaska, Iowa, Nebraska, and Oklahoma have preferential taxation programs for timber land. In addition, many states have adopted programs that offer preferential taxation for other open space and recreational uses.² Vermont's Use Value Appraisal (UVA) program, adopted by the legislature in 1977, joined the nationwide trend toward state initiated programs for taxation of farmland, forest land, and open space. In addition, the legislation followed several years of local authority to create tax stabilization contracts in Vermont.

Current Use Programs in the United States

Forest land

Programs for preferential taxation of forest land have been in effect since the 19th century.³ Because timber matures in decades and property taxes are collected annually, it has long been argued that the property tax has the potential to force forest land owners to cut timber before its proper maturity, thereby having an adverse affect on the health and integrity of the forest. During the Fifth National Conservation Congress in 1913, the Subcommittee on Forestry Taxation discussed the problem as follows:

*The general property tax upon timber . . . has an alarming tendency to become excessive and is additionally difficult to meet because it is imposed annually while revenue with which to meet it is deferred. From the individual standpoint it threatens injustice or even confiscation. From the standpoint of the public it threatens rapid wasteful cutting of mature timber, penalizes the growing of a second crop, and for both these reasons hastens the cessation of all revenue from forest taxation and the consequent imposition of the entire burden upon other forms of property.*⁴

A "yield tax," or taxation of timber at the time it is cut, the subcommittee argued, was a more effective way of taxing forestry and would not discourage the proper maturity of forests.

Members of the Conservation Congress recognized that different regions of the country had specific needs regarding systems of taxation depending upon the maturity level of the forests. Because most of the forest land in the Northeast had been cut for agriculture, recommendations for legislation concerning forests were set primarily to encourage the growth and maturity of "new forests."⁵ As agriculture began to move to the Midwest, laws in Northeastern states focused on building up the forest industry, thus providing a future source of state and local tax revenues.⁶

Over the years, the goals of preferential taxation programs and the people who enroll in them have shifted somewhat to meet the different values that forest land has today. A 1989 survey of nonindustrial forest landowners in Michigan indicated that the main rea-

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sons for enrollment in a preferential taxation program were “preserving nature, viewing wildlife, and preserving scenery and aesthetics,”⁷ while in the same time period, “forest product companies found it more profitable to sell off parts of their lands for recreational or residential use.”⁸ The concern by many is that, although preferential taxation programs may encourage and allow some landowners to manage their land rather than selling it, the price they can get for selling the land for development later will outweigh any penalties levied for withdrawing from the taxation program.⁹

According to a 1987 poll conducted by the Current Use Tax Coalition, members of planning commissions and the Vermont Chamber of Commerce felt that Use Value Appraisal was an effective program. Over 50% of respondents agreed that the UVA was very important in achieving the goals of conserving agricultural and forest land, preserving the land’s productivity, preventing accelerated conversion, achieving greater tax equity, and preserving valuable scenery. In addition, 97% of local and regional planners who responded felt that UVA was consistent with the goals of their plans and 94% said that the program was either somewhat or very important in helping them fulfill their plans. The survey also showed that prior to UVA, only 24% of the forest land in the program had been managed according to a forest management plan and only 26% of owners had worked with a consulting forester.¹⁰

“The survey also showed that prior to the Use Value Appraisal program, only 24% of the forest land in the program had been managed according to a forest management plan and only 26% of landowners had worked with a consulting forester.”

Farmland

In 1956, the state of Maryland instituted the first preferential taxation program for agriculture as an instrument for allowing farmers to stay on their land in the face of encroaching development. The program was supported by both farmers and conservationists. However, the early program did not impose a penalty for changing the use of the land over to development. Speculators soon caught on and bought the land from farmers, allowing them to farm until the time for development was ripe. Developers were getting the benefits of the tax reductions and land was not being conserved.¹¹ In developing a preferential assessment program for the state of Connecticut in 1963, William H. Whyte recommended that: 1) the program cover any land that benefited the public, including open space, recreation land, farmland, and forest areas; 2) that areas for these purposes clearly be designated in local plans and zoning ordinances; and 3) that in the event of conversion, the property owner would pay all taxes forgiven in the previous four years. Farmers lobbied against the latter two provisions, however, and they were dropped from the final legislation.¹²

Penalties for change in use are an important yet somewhat controversial element of any preferential taxation program. Twenty states offer “pure preferential” taxation programs, assessing land at use value and not imposing a penalty for change in use. Some categories in each of forty-two state programs do impose penalties to ensure that landowners are serious about entering into stewardship contracts with their towns or states, and to minimize the possibility that society is “paying rent” on land that is targeted for development.¹³

Open space and recreation land

Eighteen states have added recreational land (including golf courses in some states), open space that is neither farmed nor forested, and areas of ecological significance to their preferential taxation programs.¹⁴ And, many of these programs require that land be in designated areas in local plans or zoning ordinances in order to qualify. In Maine, assessing officials are responsible for seeing that open space meets certain public benefit criteria in order to be accepted into the current use program.

History of Use Value Appraisal in Vermont

The property tax has been collected in the state of Vermont since 1778. Local listers have been required to assess real property at its "fair cash value" since the earliest property taxes were collected by the state. However, the role of the property tax as a means of equitable taxation has changed over the years. Early property taxes in Vermont were based on two principles: 1) the amount each person paid was related to the benefit received, and 2) the amount each person paid was related to his or her ability to pay. Since, until the middle of the 20th century, whatever was earned beyond the basic necessities was turned into property, property was a fair index of ability to pay. Today, the property taxes one pays no longer relate to the amount of benefit received or the ability to pay. Property taxes are used primarily to fund education and local services. The amount of taxes owed per acre on the fair market value appraisal of a large parcel of farm or forest land are often far greater than the amount of services received. And, a landowner's income and wealth no longer directly relate to the land he or she owns.

As the 1960s brought increased development to northern New England, the fair market value of farm and forest land in Vermont began to reflect the demand for land for the second homes and resort properties that were moving into the state. As fair market values increased, the state recognized that those who lived off the income of farm and forest land would be taxed inequitably, often beyond their ability to pay. In order to reestablish vertical equity of taxation as was intended by the state's original property taxes, the legislature authorized locally controlled tax stabilization contracts for farmland in 1967 and, ten years later, the state Use Value Appraisal program for farmland and forest land.

Property tax stabilization — local initiatives

Since 1955, cities and towns in Vermont have had the authority to enter into contracts with owners of certain types of property in order to fix the amount of taxes paid on that property. Property tax stabilization legislation, Section 2741 of Title 24, was first adopted to allow municipalities to enter into contracts with owners of commercial and industrial businesses in order to provide incentives for development. In 1967 the law was amended to include farmers, defined as persons receiving two-thirds of their gross income from farming. Contracts in this early form of the legislation had to be approved by two-thirds of a town meeting vote. In 1974, the farm income requirement was eliminated from the law and owners of agricultural property were made eligible for tax stabilization. Also, the vote required to approve contracts was reduced to a majority vote.

In 1977, property tax stabilization law was modified to include forest land. Section 3846 of Title 32 allowed municipal legislative bodies such as selectmen or aldermen to

enter into stabilization contracts with landowners without the approval of local voters. In addition to authorizing local tax stabilization programs for forest land, the state adopted the Use Value Appraisal program in 1977.

Alternate-energy generating plants were added to the list of properties which could enter into municipal tax stabilization contracts in 1979, and in 1993 open space was added. By 1992, sixteen towns had authorized stabilization contracts, most in addition to Use Value Appraisal contracts administered by the state.¹⁵ If participants in the program entered into the state's Use Value Appraisal program, local contracts were negotiated such that the owner did not lose additional benefits possible through the town programs. For all of the towns except Brattleboro, property was accepted into the program through a town vote; Brattleboro used the Selectmen's method.¹⁶ Although open space was added to the enabling legislation in 1993, few towns know of the existence of this legislation or have taken advantage of it. The towns of Jericho and Underhill created special legislation for open space categories before the enabling legislation went into effect.

In addition to providing an incentive for keeping or encouraging land use, local stabilization contracts allow towns to reduce their grand lists and qualify for more state aid for education. A 1991 study showed that the cost of local stabilization contracts to local taxpayers was usually less than 1% of total town tax revenues.¹⁷

Use Value Appraisal

The 1977 adjourned session of the Vermont state legislature passed the Use Value Appraisal program for the following purposes:

... to encourage and assist the maintenance of Vermont's productive agricultural and forest land; to encourage and assist in their conservation and preservation for future productive use and for the protection of natural ecological systems; to prevent the accelerated conversion of these lands to more intensive use by the pressure of property taxation at values incompatible with the productive capacity of the land; to achieve more equitable taxation for undeveloped lands; to encourage and assist in the preservation and enhancement of Vermont's scenic natural resources; and to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare.¹⁸

The original bill for the Use Value Appraisal program, H. 361, was drafted in 1976 by members of the Fair Tax and Equal Education Coalition.¹⁹ The final law, adopted in 1977, contained criteria for two basic land use categories: agricultural land forest land. Land could be considered "agricultural" if it met any of the following three categories: 1) a minimum of 25 acres of land that is "owned by a farmer and is part of an overall farm unit," 2) a minimum of 25 acres of land that is "used by a farmer as part of his farming operation under a written lease," and 3) a parcel of any size that produces a stipulated minimum of gross farm income. Eligibility for "managed forest land" required a minimum of 25 acres and either designation as a "tree farm" or certification of a management plan for the property by a county forester.²⁰ The 1996 changes to the Use Value Appraisal program reverted much of the program to this original form.

In the 1977 act, the criteria for identifying land use types were to be determined by the Current Use Advisory Board (CUAB) and applied by local assessing officials, subject to review and possible redetermination by the CUAB.²¹ Since the program's beginning, the CUAB and the program's administrators have set use values on the basis of the income capability of the land for agriculture or forestry. The program did not go into effect until 1980, allowing time both to build up appropriations for the reimbursement fund, and to complete the large number of administrative tasks required by the new program. According to documentation of discussions around the early legislation, there was much debate over whether the burden of the tax shift should fall on the state or on towns. The Ways and Means Committee recommended the state reimbursement program. Early drafts of the legislation included an "open space" component which was cut due to a foreseeable lack of funding.²²

Listing penalty

Early enrollments in the Use Value Appraisal program were fairly modest (see Table 1). One catalyst for increased enrollments came after 1981, when T. 16, Section 3475, put into effect a penalty for towns whose grand list did not reflect a close estimate of the fair market values of all properties in town. Until the penalty went into effect, some listers continued to value farm and forest land at its "use value." The listing penalty, created to force reappraisals and to establish some equity in taxation, reduced aid for education in towns whose "common levels of appraisal" fell below 80%.²³

The "common level of appraisal" indicates how close municipalities are to appraising all properties in town at their fair market value. In 1980, the common level of appraisal was 58%; in 1985 after most towns had completed reappraisals in order to avoid the listing penalty, the common level of appraisal was 82%.²⁴ In order to determine common levels of appraisal and coefficients of dispersion, the state has been conducting an Assessment/Sales Ratio Study since the 1960s. The analysis compares the assessed values to the selling prices of *bona fide* transactions of real property. With the increased number of reappraisals, farm properties began to show high fair market values, and interest in use value appraisal began to increase.

Changes to Use Value Appraisal through the years

In 1984, Act 220 further refined the definition of "development" and requirements for managed forest land. By 1983, 90% of land enrolled in the program was forest land and 10% was farmland. Many farmers were reluctant to enroll their land because of the requirement that a lien be placed on their property in the event of a change of use. As a result, the "Farmland" program was added to Use Value Appraisal, giving greater benefits and lighter penalties to farmers who qualified for the program. By 1987, it was estimated that one-fifth of all eligible forest land and one-half of eligible farmland was enrolled in the program. Act 200, the Municipal Planning and Development Act passed in 1988, added the Working Farm Tax Abatement Program in which the state paid 100% of education taxes on farm buildings. According to the Department of Property Valuation and Review (PVR), the addition of the Farmland and Working Farm Tax Abatement Programs created a change in the philosophy and objectives of the Use Value Appraisal program. The additions reduced the penalty for development of the land and gave greater benefits to property owners who qualified as farmers. Instead of a program focused on the use of the land, the

Farmland and WFTAP programs added an element of tax relief for individuals to the Use Value Appraisal program.

The addition of the new programs was not well integrated into the previous versions, and caused confusion among those who either benefited from or administered the program. After the addition of the Farmland program, much of the local administration of the program was transferred to the state department of Property Valuation and Review. All administrative functions were taken over by the department in 1989.

Reimbursement

The provision under Use Value Appraisal that required the state to reimburse towns for lost revenues has been both a strength and the center of contention for Vermont's program. Until the 1996 changes which required that all land be appraised at use value with much of the difference made up by local tax bases, Vermont was one of only a few states in the country that reimbursed towns for some part of the taxes deferred through use value assessment.

Much discussion was held in 1977 regarding the shift in tax burdens caused by use value appraisal during committee deliberations on H. 361. The Ways and Means Committee recommended that the state reimburse towns for lost tax revenue. Many listers were already appraising farm and forest land at use value, however, and local tax payers already bore the

additional burden of taxes for farm and forest land. With state reimbursement when those same lands enrolled in use value appraisal, those towns would receive revenues above and beyond those received before the program.

“Until the 1996 changes which required that all land be appraised at use value with much of the difference made up by local tax bases, Vermont was one of only a few states in the country that reimbursed towns for some part of the taxes deferred through use value assessment.”

As of 1993, the states of California, Iowa, Maine, Minnesota, Missouri, New York, North Dakota, and Oregon provided various levels of reimbursement for one or more land categories.²⁵ However, like Vermont, many states have not fully funded these programs in recent years. At full funding, Maine's Tree Growth program reimburses towns for 90% of the difference between a state or local appraisal value for undeveloped land (whichever is lower) and the use value appraisal figure determined by the state.²⁶ Like Vermont, Maine's program has been underfunded for several years. In 1995, 40% of the 90% was reimbursed to towns, while the unfunded portion was spread evenly over the local tax base. Only the states of Michigan and Wisconsin have fully funded property tax circuit-breaker programs for farmers.²⁷

The additions of the Farmland program in 1986 and the Working Farm Tax Abatement Program (WFTAP) in 1989 increased the amount of land enrolled in Use Value Appraisal and increased the amount the state had to pay towns for reimbursement. The WFTAP program alone increased the amount of acres in the program by 8.54% and the amount of total program benefits by 50.74%.²⁸ Tables 1 and 2 show the changes in acres enrolled and reimbursement funding since the program's beginning.

Table 1. Farmland/Agricultural/Forest Land Acres and Reimbursement 1980-95¹

Year	Farmland (acres)	Agricultural land (acres)	Forest land (acres)	TOTAL (acres)	Reimbursement Forest & Agr. (\$)	Total State Reimbursement (Forest, Agr., WFTAP) (\$)
1980	--	11,900	108,000	119,900	\$400,466	\$400,466
1981	--	20,500	219,000	239,500	799,930	799,930
1982	--	26,000	270,000	296,000	1,000,480	1,000,480
1983	--	43,000	386,000	429,000	1,501,500	1,501,500
1984	--	97,032	453,000	550,032	2,117,623	2,117,623
1985	--	159,000	527,000	686,000	2,963,520	2,963,520
1986	--	195,311	607,120	802,431	3,971,522	3,971,522
1987	296,167	160,118	668,323	1,124,608	6,258,899	6,258,899
1988	312,964	170,281	772,954	1,256,199	7,359,895	7,359,895
1989	164,901	124,404	818,606	1,107,911	7,569,233	11,100,160
1990	144,572	128,140	859,972	1,132,684	8,369,978	12,456,540
1991	129,060	128,301	884,771	1,142,132	6,725,364	10,220,309
1992	119,253	137,454	844,771	1,101,017	6,347,582	9,653,674
1993	101,277	133,130	826,913	1,061,320	5,194,005	7,930,533
1994	89,100	137,571	893,547	1,120,218	5,328,015	8,265,367
1995	83,959	140,498	904,402	1,128,859	6,021,690	9,328,148

¹ Vermont Department of Taxes, 1996**Table 2. Working Farm Tax Abatement Program Acres and Reimbursement 1989-95¹**

Year	Farmland (acres)	Forest land (acres)	TOTAL (acres)	Reimbursement (\$)
1989	205,823	42,872	248,695	\$3,530,927
1990	230,979	48,823	270,802	4,086,562
1991	244,016	50,696	294,712	3,494,945
1992	241,449	48,888	290,337	3,306,092
1993	237,626	50,283	287,909	2,736,528
1994	253,977	53,516	307,493	2,937,352
1995	256,044	55,044	311,127	3,306,458
Total WFTAP funding				\$23,398,864
GRAND TOTAL all programs				\$95,328,566

¹ Vermont Department of Taxes, 1996.

In 1991, Act 50 created a Joint Legislative Study Committee on Current Use Value Programs, "specifically with respect to the present and projected future costs of the programs, the effectiveness of achieving program objectives, the availability of more effective or less costly methods of achieving those objectives or new objectives, and any other issues determined by the committee to be pertinent to current use value programs."²⁹ The report from this committee indicates that many of the discussions that occurred during the summer of 1991 are similar to those that occurred in 1996. The 1992 report contained proposed legislation for simplification of the program as well as legislation proposed by the minority for means testing as a method of decreasing the cost of the program. Neither proposal was adopted, however. Instead, the program was underfunded for the first time in 1991. A moratorium on enrollments went into effect in 1992 and was continued in 1993. The program was underfunded by the legislature until the 1996 changes shifted much of the additional tax burden from state reimbursement to the towns, effectively funding the program at 100%.

The underfunding of Use Value Appraisal had negative effects both on landowners enrolled in the program and on the public that supported it through broad-based taxes. At underfunding, the landowner had to make up the difference in property taxes. By leaving the funding level up to the state legislature to be changed year after year, a landowner was unable to predict the amount of property taxes he or she would have to pay. The Forest Resources Advisory Council's 1996 Interim Report to the Legislature reports that, in a survey of 31 Use Value Appraisal properties between 100 and 300 acres around the state, taxes more than tripled in 1994 when funding was at 59%. Even at 80% funding, the report states, taxes on UVA properties could double over what they would be at full funding. In addition to increasing taxes on UVA properties, underfunding the program allowed enrolled landowners to withdraw without paying a penalty. While the program was underfunded in the years 1991 to 1995, the report also states, the number of parcels over 500 acres that were withdrawn from the program tripled over the previous five years of full funding and the number of acres withdrawn quadrupled.³⁰ The main reasons for withdrawal of landowners surveyed included "high property taxes and lack of support for forestry and Current Use taxation by the state."³¹ Between the years of 1985 to 1995, a total of 27 parcels over 500 acres were withdrawn from Use Value Appraisal, a total of 32,203 acres. Twenty of those parcels were withdrawn during the years of underfunding. Table 3 shows the total number of withdrawals from Use Value Appraisal between 1988 and 1994.

Table 3. Withdrawals of Forest Land from Use Value Appraisal 1988-94*

Year	Number of Parcels	Number of Acres
1989	332	13,883
1990	320	13,700
1991	670	55,901
1992	654	50,995
1993	682	54,161
1994	657	49,560

* Forest Resources Advisory Council (FRAC) (1996) "Interim Report to the Vermont Legislature," January 15, 1996.

The graph in Figure 1 shows that the number of acres enrolled in Use Value Appraisal decreased during the years in which the moratorium on enrollment was in effect, and did not rise substantially after the moratorium was lifted. In the 1994 tax year, 54% of the potentially eligible farm land and 28% of potentially eligible forest land was enrolled in Use Value Appraisal.³²

1996 Changes to Use Value Appraisal

The number of withdrawals of large parcels of forest land from Use Value Appraisal during the years of underfunding caused the legislature to consider alternatives to shifting the burden of additional taxes onto landowners enrolled in the program. During the 1996 legislative session, Use Value Appraisal appeared in several stand alone and comprehensive property tax reform bills.³³ The issue was debated in both the House and Senate, but did not appear in the media until changes in the appropriations bill were adopted at the end of the session, making the changes appear to have been made at the "last minute."

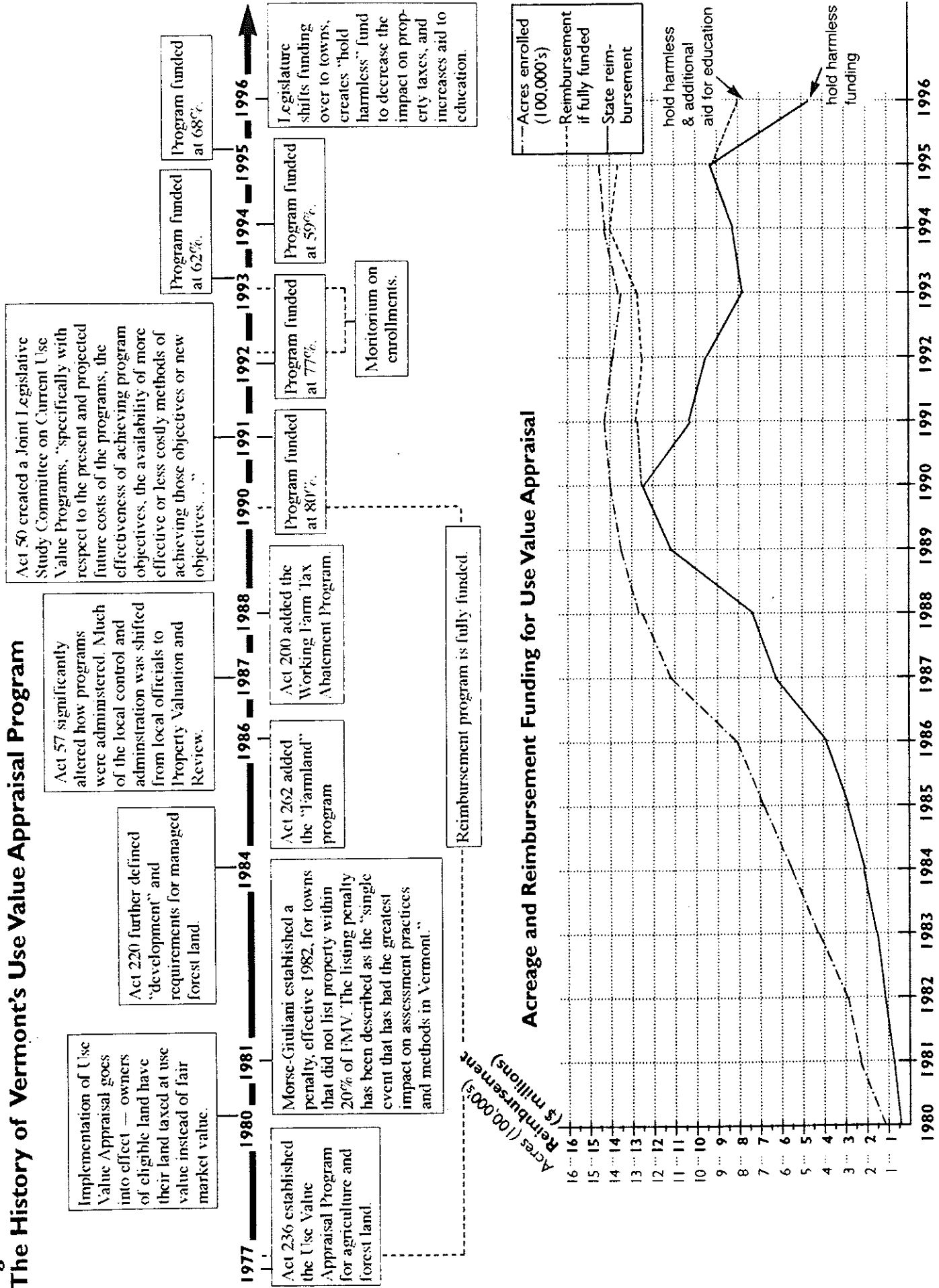
As mentioned above, five years of legislative underfunding of Use Value Appraisal created a system of unstable property taxes that caused many landowners to withdraw from the program. Interviews with owners of large timberland parcels showed frustration with underfunding, high taxes, and the lack of commitment by the state to the timber industry. Several landowners cut the timber from the property, after withdrawal from the program without penalty, and planned to sell the land.³⁴

Recommendations for the 1996 legislative session put forward by Forest Resources Advisory Council (FRAC) and the Current Use Tax Coalition (CUTC) were similar to those made by the same groups in previous years of underfunding. The 1996 FRAC Interim Report to the Legislature recommended that the state "establish a stable, predictable system of taxing productive forest and agricultural land at their use value so that landowners will be encouraged to make long-term investment and management decisions." In the meantime, the report recommended the following:

- 1) *The State of Vermont should fund the Current Use Program to the maximum extent possible — even in these difficult budget times — due to its importance in the decision-making of private forest land owners.*
- 2) *The four Current Use programs should be consolidated into two: forestry and agriculture.*
- 3) *The State of Vermont needs to*
 - a) *profess publicly its recognition of the importance of an equitable and stable tax policy in maintaining a sustainable forest resource vital to a vigorous and expanding state economy, and*
 - b) *demonstrate its commitment to developing and implementing sound, long-term forest policies.*³⁵

The Current Use Tax Coalition's recommendations were similar in that they also recommended a consolidation of the four programs into two and recommended that the state return the program to full funding. However, in the absence of full state funding, the Coalition recommended the elimination of the reimbursement program. Under CUTC's recommendations, funding from the state reimbursement fund would be redirected into state aid for education, and all land would be listed at use value. Listing all properties at

Figure 1.
The History of Vermont's Use Value Appraisal Program



use value would reduce a town's grand list and make them eligible for more state aid for education.³⁶

The Current Use Tax Coalition lobbied legislators regarding stand-alone and comprehensive tax reform proposals that included changes to Use Value Appraisal. Most of the coalition's recommended changes were finally added in the state budget, under the recommendations of Governor Dean and with the support of the Senate. The 1996 appropriations bill adopted the following changes:

1. The Farmland and Working Farm Tax Abatement programs were eliminated, effectively consolidating the four programs into two, one for forest land and one for agriculture.

Those enrolled in the Farmland and WFTAP programs were asked to reapply to the agriculture program. Farm buildings are now to be assessed at 50% of their fair market value and must be situated on property enrolled in Use Value Appraisal.

2. State Reimbursement of Use Value Appraisal was eliminated. Moneys that had been targeted for reimbursement, \$8 million, were redirected into state aid for education (\$3.3 million) and "hold harmless" funding (\$4.7 million) that would be used to ease the impact of the tax shift from the state to the towns.

Hold harmless funding was allocated so that town tax rates would not be raised over 1.8%. However, towns that were designated as "gold towns" by the department of education because of their revenue-raising resources did not receive any hold harmless funding or aid for education.

The above changes in Use Value Appraisal were adopted with a sunset clause, meaning that they would be effective until June 30, 1997. In addition to the changes to Use Value Appraisal, funding for the Property Tax Rebate Program was increased. Any property owners with household incomes of less than \$47,000 are eligible for these funds if the property tax on their residence exceeds 5% of their yearly income.

Local Reactions to Legislative Changes — The changes to the Use Value Appraisal program went into effect July 1, 1996. For local listers, this fact alone caused a great deal of extra time and paperwork, as grand lists are due on April 1. Listers were directed to appraise land enrolled in Current Use at use value and recalculate taxes on all town properties based on the tax shift minus hold harmless payments and increased aid for education.

In addition to the administrative difficulties caused by the changes, local officials have complained that shifting the tax burden to the towns is effectively an "unfunded mandate" requiring payment for a program that consists of contracts between private landowners and the state. Several towns circulated petitions and held special town meetings to vote on whether or not to accept the state's mandated changes. The towns of Barnard, Bridgewater, and Halifax voted to ignore the new mandate and, instead, assessed all land at fair market value. According to a letter from the Attorney General's office, such actions would be a violation of "clear legal duty" on behalf of the listers, and would result in towns losing their "hold harmless" funding.³⁷ Since Barnard and Bridgewater are gold towns and do not receive any hold harmless funding, a vote to defy the states would result in no loss to local revenues. Some towns, such as Reading and Westminster, held town meetings but opted to comply with the state mandate in order to avoid potential legal battles.

The 1996 changes reflected the recognition by many that the reimbursement structure was inequitable in the levels of aid provided to some towns. Since reimbursement covered the difference between taxes owed at fair market value and those owed at use value, towns with higher land values received a disproportionate amount of aid compared to towns with lower land values that may have needed more state aid. Should the program return to full state funding, this is an issue which will have to be addressed. Chapter III examines the range of issues that have arisen in recent discussions over the reform of the Use Value Appraisal program.

Notes

- ¹ Jane Malme(1993) "Preferential Property Tax Treatment of Land," Lincoln Institute of Land Policy Working Paper.
- ² Malme (1993)
- ³ Malme (1993)
- ⁴ Subcommittee on Forest Taxation (1913) chaired by Gifford Pinchot, in the *Report of the Forestry Committee of the Fifth National Conservation Congress*, Washington, D.C., p. 112.
- ⁵ Subcommittee on Forest Taxation (1913)
- ⁶ Malme (1993)
- ⁷ Malme (1993) p. 5.
- ⁸ Malme (1993) p. 5.
- ⁹ Janet Milne (1995) "Timber Taxes: A Critique of the Northern Forest Lands Council's Tax Recommendations," *Vermont Law Review*, Vol. 19, Spring 1995.
- ¹⁰ Deb Brighton for the Vermont Current Use Tax Coalition and VNRC (1988) "Use Value Appraisal: Helping to Fulfill the Vision," January 1988,.
- ¹¹ William H. Whyte (1968) *The Last Landscape*, New York: Anchor Books, pp. 125-26.
- ¹² Whyte (1968)
- ¹³ Malme (1993)
- ¹⁴ The states of CT, FL, GA, HI, IL, IN, ME, MD, MA, MN, NV, NH, OR, PA, RI, IN, TX, VA, WA. Golf courses have been included in some of these programs. (Malme, 1993, pp. 43-46)
- ¹⁵ Robert L. Townsend (1994) "Farm and Woodland Taxation in Vermont: Selected characteristics," University of Vermont Extension System, January 1994.
- ¹⁶ Memo from Benjamin L. Huffman, Vermont Legislative Council, to Rep. Leon Graves, December 13, 1991 (included in the Report to the Joint Legislative Current Use Value Study Committee, 1992).
- ¹⁷ Huffman memo, 1991.
- ¹⁸ V.S.A. Tit. 32 § 3751
- ¹⁹ Memo from Benjamin L. Huffman, Fair Tax and Equal Education Coalition, August 24, 1978.
- ²⁰ Huffman memo (1978) p. 6.
- ²¹ Huffman memo (1978)
- ²² Huffman memo (1978)
- ²³ V.S.A. Tit. 16 § 3475.
- ²⁴ Vermont Department of Property Valuation and Review 1989 Annual Report.
- ²⁵ Malme (1993)
- ²⁶ Me.S.A. Tit. 36 § 578
- ²⁷ Malme (1993)
- ²⁸ Rural Economic Development Work Group, Sub-Committee on Use Value Appraisal (1996) "Report to the Forest Resources Advisory Council," p. 3.

- ²⁹ Joint Legislative Current Use Value Study Committee (1992), Report to the General Assembly, January 23, 1992.
- ³⁰ Forest Resources Advisory Council (FRAC) (1996) "Interim Report to the Vermont Legislature," January 15, 1996, p. 8.
- ³¹ FRAC (1996) p. 7
- ³² PVR 1995 Annual Report, p. 42.
- ³³ Vermont Current Use Tax Coalition (CUTC) Newsletter, June 5, 1996.
- ³⁴ Rural Economic Development Work Group, Sub-Committee on Use Value Appraisal (1996)
- ³⁵ FRAC Interim Report (1996) p. 7.
- ³⁶ CUTC Newsletter, January 3, 1996.
- ³⁷ Letter from William Griffin, Chief Assistant to the Attorney General of the State of Vermont, to the Town of Westminster, July 12, 1996.

III. THE FUTURE OF USE VALUE APPRAISAL IN VERMONT — ISSUES

The Benefits of Use Value Appraisal

A *Rutland Herald* poll conducted in September 1996 showed that 82% of Vermonters favor the policy that taxes farm and forest land at use value and 83% believe that funding for such a program should come from the state.¹ Since the 1996 changes, groups representing local officials including the Vermont League of Cities and Towns and the Vermont Assessors and Listers Association, have also called for a return to state funding. These groups have contended that Use Value Appraisal is a state mandated program that benefits all Vermonters as well as visitors to the state.

In some respects, Use Value Appraisal does benefit everyone in the state and should therefore be a state-funded program. It may be argued, however, that local communities also benefit from many of the lands enrolled in the Use Value Appraisal program. Farms and forests in their productive capacity preserve the rural landscape and scenic views, require lower expenditures for local services than residential properties, and often provide open space for recreation. The following sections provide a discussion of the economic and noneconomic benefits of Use Value Appraisal.

Sustainable forestry

The requirement of a management plan for forest land in Vermont's Use Value Appraisal program has been very effective in improving the productivity of forest land in the state. A report from the Northern Forest Lands Council (NFLC) Taxation Project cites a number of studies that confirm that "implementing management plans devised according to sound silvicultural practices will result in an improved stand of timber over time."² A survey of landowners enrolled in Use Value Appraisal showed that enrollment in the program caused 45% of all parcels or 37% of all acres in the program to adopt forest management plans where they would not have if they had not been enrolled in the program. Extrapolating the monetary benefit of increased forest management, the NFLC study estimated an annual benefit of \$228,200 - 352,800 due to enrollment of forest land in the Use Value Appraisal program.³

Property taxes play a major role in a timber company's decision to manage land for the long-term health of the forest.⁴ According to a study for the NFLC by Hugh Canham, timber management in Northern Forest region of Maine, New Hampshire, Vermont, and New York is only profitable at low property taxes, usually less than \$2 per acre.⁵ At higher property taxes, says Canham, profitable alternatives include selling land to owners with interests other than timber management; leasing land for hunting or recreation; or high-grading, harvesting all of the high value species and leaving inferior trees for the next harvest. High-grading is often followed by selling land for non-timber uses.⁶ Each alternative creates a negative impact on the timber industry and, in most cases, on other benefits that managed timber land can provide such as wildlife habitat and protection of soil and water resources. As was shown in the FRAC survey of large landowners who withdrew from

UVA during the years of underfunding, high and unpredictable property taxes caused many landowners to harvest the timber on their land, and then sell their land for development.

Working farms

Much of Vermont's rural landscape depends on the historic farm buildings and open fields provided by small working farms in the state. Most local and regional plans recognize the value of Vermont's farms to the landscape and character of rural communities. In addition, maintaining the state's agricultural economy ensures a supply of locally grown vegetables, meat and dairy products. Food and maple products grown in Vermont are also an important value-added export. The label "Made in Vermont" alerts consumers to quality products made in a clean environment, a characteristic of the state that is important to maintain.

Economic benefits of open space

Studies by the American Farmland Trust as well as those by Ad Hoc Associates show again and again that more development does not necessarily contribute to lower tax bills; in fact, development often results in a greater demand in services and higher tax bills.⁷

Breaking out the amount of taxes paid in proportion to the amount of services provided, the studies show that one-third of the property taxes paid on farmland and undeveloped land pays for the services on that land, while the other two-thirds of the taxes go into the general government fund. Taxes paid on residential property, on the other hand, do not pay for the amount of services provided. Table 4 shows the results of one American Farmland Trust survey that looked at the taxes paid and services provided on residential and farm or open land in Massachusetts.

"... studies show that one-third of the property taxes paid on farmland and undeveloped land pays for the services on that land, while the other two-thirds of the taxes go into the general government fund. Taxes paid on residential property, on the other hand, do not pay for the amount of services provided."

Table 4. American Farmland Trust Cost of Community Services study*

Town	Ratio		
	Tax Revenue: Cost to service		
	Residential	Commercial/Industrial	Farm/Open Land
Agawam	1: 1.05	1: .42	1: .30
Deerfield	1: 1.16	1: .38	1: .29
Gill	1: 1.15	1: .34	1: .29

*American Farmland Trust, 1992 (as shown in NFLC Taxation Project) Cost of Community Services Studies: Snapshots of Net Fiscal Impacts of Different Land Uses in Towns.

A recent issue of *GreenSense* reports that bond raters such as Moody's look at a town's ability to manage open space and agricultural land in balance with the pacing of development. Favorable ratings are often given to towns that plan for parks, recreation land, and open space. According to one Moody's spokesperson, "When a community has active people who insist on community amenities and are willing to pay for them, it's hard to quanti-

fy, but it shows. . . Usually communities with good parks and open space are doing other good things too.”⁸

Land that is enrolled in Use Value Appraisal contributes to the amount of open space in a town and brings in more revenue in property taxes than land acquired by the town or the state. Although properties enrolled in Use Value Appraisal cannot substitute for permanently protected land, it can serve as a buffer to areas that are protected and contributes to the scenic landscape as long as it is enrolled in the program.

Noneconomic benefits of open space

The decision of a landowner to enroll land in Use Value Appraisal offers many benefits to the public that are not easily quantified. In addition to directly contributing to Vermont’s timber and agricultural industries, forest and agricultural land provides recreational opportunities, scenic views, wildlife habitat, and protection of water resources, all benefits that are difficult to quantify in monetary terms but are major contributors to the quality of life in the state. Unfortunately, landowners who choose to manage their land for some of these benefits alone are not eligible for Use Value Appraisal.

Recreation

Ninety percent of the land in Vermont is privately owned. The wide open spaces that offer scenic views and trails are an attractive resource for visitors and residents alike. It has long been a Vermont tradition that private land is open to the public unless posted with signs that prohibit access. It is estimated that 85% of outdoor recreation in the state occurs on privately owned land.⁹ Recent trends, however, have threatened this valuable resource. According to the 1993 Vermont Recreation plan, these include: continued population growth, the rise in liability litigation, land development, and the perceived threat of government regulation over what a landowner can do on his or her land.¹⁰

The state hosts several large trail networks, two of which — the 300-mile Catamount cross-country ski trail and the hundreds of miles of trails maintained by the Vermont Association of Snow Travelers (VAST) — are primarily situated on privately owned land. According to one representative from the Catamount Trail Association, 60% of the Catamount Trail crosses private land, involving 300 landowners. Although some landowners are enrolled in Use Value Appraisal for timber management, those who choose to manage their land solely for recreation are not eligible.¹¹ The Green Mountain Club, which tries to maintain a non-timbered area on either side of the long trail, runs into similar difficulties on sections of privately owned land. These areas must be excluded from Use Value Appraisal or included in the “nonproductive” land area on parcel maps.

Wildlife habitat

In addition to improved timber harvests, good forest management can lead to improved wildlife habitat and conservation of soil and water resources. Large mammals such as moose and black bear and some species of song birds require extensive areas of forested land or travel corridors connecting large parcels of protected land. While it is not economically feasible to protect all of the bear and moose habitat in the state through land acquisition or conservation restrictions, such protected land may be surrounded by areas of working lands such as forests or open fields, thereby enlarging habitat areas without having to

remove all land from productivity. The working lands enrolled in Use Value Appraisal can serve as buffer areas to the wildlife habitat already in jeopardy in the state.

Land enrolled in Use Value Appraisal may not be managed for wildlife alone, however. According to one county forester, forest management plans may include management for wildlife if that is one of the landowner's goals. However, under the current program, wildlife management may not be the only goal. And, although the state Agency of Natural Resources has mapped bear habitat and deer wintering areas, county foresters do not refer to them in creating a management plan, preferring to rely on the landowner's own knowledge of the wildlife on his/her land.¹²

The Nature Conservancy is one example of a landowner that purchases land purely for the benefit of the public yet is not eligible, in most cases, for Use Value Appraisal. Primarily concerned with the protection of special areas and habitat for endangered or threatened plant and animal species, all of the organization's land is open to the public with the exception of a few fragile habitat areas. Because timber management is not compatible with many of these areas, the Conservancy must pay taxes on land appraised at fair market value.

Buffer zones

Rivers are one of Vermont's most important yet fragile natural resources. The existence of a growing number of watershed groups in Vermont is testimony to the importance of clean rivers to the people who live here. As with recreation land and wildlife habitat, the vegetated areas abutting rivers that may be inappropriate for the harvesting of timber, and are therefore ineligible for use value appraisal except when enrolled as unproductive land. While acceptable management practices for farming and forestry activities next to waterways recommend a 25 foot buffer area, in many cases 100- to 200-foot buffers may be required for bank stabilization or to protect important habitat areas.

Another Look at Use Value Appraisal: The Governor's Task Force on Current Use

Several issues emerged during discussions over the future of Vermont's Use Value Appraisal program by the Governor's Task Force on Current Use, a group appointed by Governor Howard Dean shortly after the changes to the program were adopted by the legislature in 1996. Since local officials and town tax rolls were the hardest hit by the changes, the majority of the Task Force is made up of members of local select boards, listers, and a representative from the Vermont League of Cities and Towns. Also appointed were a representative from the Current Use Tax Coalition and the Commissioners of the Departments of Agriculture; Forests, Parks and Recreation; and Taxation. While the group has been divided on issues regarding the structure and wording program, most parties in the debate acknowledge that working farms and forest land are important resources to Vermont. The group has also agreed that the state must address the problem of funding education.

The majority of the Governor's Task Force, mainly representatives of local governments, have favored full funding of the program and reversion of funding back to the state through broad-based taxes. However, rather than exploring alternatives for raising funds

sufficient to reimburse parcels in the current program, discussions of the Task Force have centered around how to limit the size of the program or develop different methods for determining appraisal levels. The following issues were raised with regard to limiting program enrollment:

- residency requirements for enrollment
- means testing (i.e. income requirements for enrollment)
- disallowance of parcels already precluded from development, (e.g. small parcels, those on which development rights have been sold or donated to a land trust, those subject to the Wetlands Protection Act, parcels above 2,500 feet elevation)
- increasing the minimum size of land required for enrollment
- requiring public access or instituting an incentive system for allowing public access.¹³

Some of these issues, such as means testing, were discarded immediately due to administrative and political complexities. However, since these issues have entered discussions about Use Value Appraisal by study committees and the general public for years, they have remained on the list for further discussion later in this report. Most members of the task force favor increased penalties for withdrawal (ten times the amount of taxes saved through the program in the year previous to withdrawal was suggested in a recent proposal) and revising the methodology used in determining valuation of enrolled properties to include the intrinsic values of property and non-traditional incomes from land for activities such as charging fees for use of cross-country ski trails.¹⁴

Whereas members of the Task Force concede that it would be difficult to limit enrollment of non-residents or corporations, there are strong feelings that some of the wrong people are benefiting from the program. If the program does not revert to state funding, local officials are calling for more local control of program administration through methods such as local tax stabilization contracts.¹⁵

The following chapter will discuss methods that other states have used to ensure that land enrolled in current use programs provides public benefits, and will also look at how other states have addressed some of the issues raised by the Governor's Task Force regarding program criteria.

Notes

¹ Jack Hoffman, "Vermonters Support Gay Marriages, Favor the 'Old' Current Use," *The Times Argus*, September 25, 1996.

² Ad Hoc Associates and Resource Systems Group (1993) "Forest Property Taxation Programs: Report to the Northern Forest Lands Council," November 1993, p. 3.24.

³ Ad Hoc Associates and Resource Systems Group (1993), p. 3.30.

⁴ Peter Stein, Lyme Timber, telephone interview September 10, 1996.

⁵ Hugh O. Canham (1992) "Property Taxes and the Economics of Timberland Management in the Northern Forest Lands Region," White Paper prepared for the Property Tax Subcommittee of the Northern Forests Lands Council, February 1992, p. 3.

⁶ Canham (1992)

⁷ Ad Hoc Associates and Resource Systems Group (1993)

⁸ Phyllis Myers, "Bond Raters Impressed by Local Park Funding," *GreenSense: Financing Parks and*

Conservation, Vol. 2, No. 1, Spring 1996.

⁹ State of Vermont, Agency of Natural Resources (1993) "Vermont Recreation Plan: Assessment and Policy," p. 47.

¹⁰ Vermont Recreation Plan (1993) p. 47.

¹¹ Rosemary Shea, Catamount Trail Association, telephone interview September 11, 1996.

¹² John Bouton, Windsor County Forester, telephone interview September 10, 1996.

¹³ Governor's Task Force on Current Use, Draft discussion document, August 22, 1996.

¹⁴ Governor's Task Force on Current Use, August 22, 1996.

¹⁵ Vermont Assessors and Listers Association (1996) "Position Paper on Current Use."

IV. ALTERNATIVES — EXAMPLES FROM OTHER STATES

Open Space and Public Benefits

While the public benefits from the continued productivity of farm and forest land, many states have also recognized the benefits offered by other open lands. Programs for use value appraisal of “open space” exist in 19 states.¹ The chief difficulty in administering an open space category for use value appraisal is in the definition of open space and in ensuring that real public benefit is gained from use value appraisal of such lands. In most states that have open space programs, eligibility involves compliance with local zoning or designation by a specific agency, or land that is under a restrictive covenant such as a conservation easement.²

Recent discussions by the Governor’s Task Force have involved limiting the current program to lands in the greatest jeopardy of being developed. Suggestions have included the elimination of lands under conservation restrictions since these lands are not in danger of being developed. It may be argued, however, that many of these lands continue as productive farm and forest land and should be appraised at their use value, and may serve as valuable wildlife habitat and recreation lands in many towns. In addition, there is no danger that these lands will be held by speculators who can afford to pay the penalty for developing after several years of getting a tax reduction.

The following sections provide examples of two state programs — Maine’s Farm and Open Space Tax Law and Washington’s Current Use Assessment program — that have defined public benefits that land must provide in order to be enrolled in current use. In both programs, greater degrees of public benefit result in greater reductions in assessment value. Both programs allow assessors to appraise land eligible for open space at fair market value, then reduce those appraisals by certain percentages according to the amount of restrictions placed on the land or the amount of benefits the public receives for protection of the land. These examples are important because they provide formulas for valuation of non-productive but valuable open space and definitions of public benefits that must be met in exchange for reduced taxation. In addition, by starting with a fair market value appraisal, the final appraised value recognizes some of the intangible values included in land ownership, such as location. In coastal areas where land values have skyrocketed, for example, the resulting appraisal values are often much higher than state-appointed values for forest lands in use value appraisal, even with reductions in fair market value appraisal of as high as 90%. Both programs also provide some level of local oversight in determining which lands may be admitted for reduced taxation.

Maine’s Farm and Open Space Tax Law — Enacted in 1977, Maine’s Farm and Open Space Tax Law originally required that open space land conserve scenic resources, enhance public recreational opportunities, promote game management, or preserve wildlife or wildlife habitat.³ A 1989 amendment to the legislation added the words, “provides a public benefit” with regard to the above four areas, and gave assessors a list of fourteen specific public benefits, one of which a property must provide in order to be enrolled in

the Open Space program (see Appendix A). Benefits include preservation of scenic or historic areas, proximity to other protected lands, or compliance with local zoning or comprehensive plans, among others. If a parcel meets one or more benefits, it may be assessed at a 20% reduction in fair market value appraisal. In addition, a permanent easement on the land may receive a 50% reduction, if the landowner agrees to keep the land "forever wild" (not engaging in any timber or agricultural practices) it receives an additional 20% reduction, and an additional 25% if the landowner allows access for recreation. The value of appraised land in Open Space may not fall below values set by the state for land in Tree Growth.

Assessors have the choice of appraising land under conservation restrictions according to comparable sales data, as long as they can back up their figures in court. A recent survey of local assessors shows that most use the percent reduction formula and are pleased by the ease of administration it offers for land under conservation restrictions.⁴ In addition, a recent change in the state's Tree Growth program requires that parcels under 100 acres may no longer be harvested solely for personal use, but must either have a management plan for commercial harvesting or transfer into the Open Space program. Many landowners, especially on islands or in coastal areas, transferred land to Open Space, illustrating the more appropriate "use" of such land. While Vermont's program already requires an approved management plan for parcels of all sizes, the intangible values associated with smaller parcels could be added as a multiple of current use values.

Washington's Public Benefit Rating System — Under Washington's Current Use Assessment program for open space, agricultural, and timber lands,⁵ open space is defined as follows:

- a) land "designated by an official comprehensive land use plan adopted by a city or county and zoned accordingly" or
- b) land which, if preserved would provide the public with benefits such as:
 - conserving and enhancing natural or scenic resources
 - protecting streams or water supplies
 - promoting conservation of soils, wetlands, beaches or tidal marshes
 - enhancing the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or sanctuaries or other open space
 - enhancing recreation opportunities
 - preserving historic sites
 - preserving visual quality along highway, road, and street corridors or scenic vistas
 - retain in its natural state land situated in urban areas and open to public
- c) any land designated as farm and agricultural conservation land⁶

Each county may either use the above criteria for accepting land as open space, as long as the county assessor does not value open space land above the value of agricultural land. Or, counties have the authority to develop an open space plan, setting up criteria for acceptance of land into the program, and a public benefit rating system by which appraisal values may be calculated. In either case, acceptance as open space requires a public hearing process at the county level.

King County, with a land area larger than the state of Rhode Island that includes rural, coastal, and densely populated urban areas, has developed a sophisticated public benefit rating system that is a model for many other counties in the state. The system contains three levels of value, each with a number of points associated with it. "High priority resources" include active or passive recreation areas, aquifer protection areas, surface water quality buffer areas, significant habitat areas, or trail linkages and receive five points. "Medium priority resources" include public lands and right-of-way buffers, special native plant sites, and eligible sites for historic landmarks or archeological features, and receive three points; "low priority sites" include only buffers to eligible archaeological or historic landmarks and receive one point. Additional points may be added for resource restoration or contiguity with parcels under separate ownership, and another category of points is added for different levels of public access. Five to ten points receives the minimum reduction of 50% of appraised value while the highest scores of 35 and above receive reductions of 90%.⁷

The tax shift caused by parcels in open space is absorbed by other taxpayers in the county. Because the King County is so large, the increase in individual tax bills is minimal. The county has set a maximum level of tax shift before land is no longer accepted in the program, but according to the program administrator, it is highly unlikely that this level will be reached.

Access for recreation

Efforts to include requirements for recreational access in Vermont's Use Value Appraisal program have not been successful in the past for a number of reasons. Landowner groups that support the program for reasons of tax equity contend that appraising land at its use value should not include requirements beyond those included in keeping land productive. In addition, although a NFLC landowner survey shows that most of the land is currently open for public access,⁸ landowners do not want to be bound into providing access that may at some point in time cause damage to their property or put them in danger of liability suits.

Several states, including all New England states with the exception of Vermont, provide additional incentives for landowners to keep their land open for recreational access in order to both reward landowners for providing an important public benefit and to prevent the continued trend of postings. Wisconsin's Managed Forest Land program requires that no more than 80 acres may be closed to the public, and closed lands must be taxed at double the rate of open lands. New Hampshire and Maine both provide an additional percent reduction in taxes — 20% in New Hampshire, 25% in Maine — for land that is left open for passive forms of public recreation. New Hampshire's law states that "there shall be no prohibition of skiing, snowshoeing, fishing, hunting, hiking or nature observation on such open space land, unless these activities would be detrimental to a specific agricultural or forest crop activity."⁹ New Hampshire addresses the liability issue by incorporating within the statute language that excludes enrolled landowners from liability. According to the statute, landowners that allow public access "shall not be liable for personal injury or property damage to any person."¹⁰

Maine's Farm and Open Space Tax Law includes a 25% reduction for public access to land enrolled as "Open Space." In order to be eligible for public access status, the

landowner must not prohibit “daytime, non-motorized and nondestructive public use.” In addition, the landowner may permit, but is not required to permit, “hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses,” and may impose temporary or localized restrictions to “prevent destruction or harm to fragile protected natural resources; or protect the recreational user from any hazardous area.”¹¹

As illustrated in the examples of the public benefits tests in Maine and Washington, recreational access provides a clearly measurable public benefit — access is either allowed, or it is not allowed. There is some concern that such an element would be difficult to monitor by the small staff currently in place in the Department of Property Valuation and Review and by the infrequent monitoring of county foresters. Recreational access is an area, however, that could be easily monitored at the local level. Groups such as the Catamount Trails Association and VAST also express concern over liability laws in the state. Attaching freedom from liability to enrollment in current use and permission of access, as New Hampshire has done, might be one solution to creating more protective liability legislation.

Program Criteria

Many of the discussions of the Governor’s Task Force on Current Use have included the concept of “managing to the money,” or limiting the program size to one that could be fully funded by the state. In addition, concerns have been voiced throughout the state that the benefits of reduced taxation have gone to landowners who do not need such benefits and for land that does give an equal amount of benefit back to the public. Suggestions for limiting program size (i.e. cost) have included increasing minimum acreage requirements, adding income or residency requirements, and adding intangible values such as investment value to use value appraisals.

Minimum acreage

The Vermont Assessors and Listers Association (VALA) and members of the Governor’s Task Force on Current Use have proposed increasing the minimum acreage requirements for managed forest land in Vermont’s Use Value Appraisal program from the current 25 acres to at least 50 acres. The argument often heard is that smaller lots are owned for reasons other than management of timber, such as privacy or for the recreational use of the landowner, and are often adjacent to a residential site owned by the landowner.

In fact, the minimum acreage required to enroll in Use Value Appraisal in Vermont or other state programs is an arbitrary number selected in order to place some limitation on the amount of people eligible to benefit from reduced taxation. One concern over choosing a minimum acreage requirement is that the parcel be an area large enough to be viable for periodic harvests. The American Tree Farm program has set 10 acres as a minimum size for a viable tree farm. As a result, many state programs also have minimum acreage requirements of 10 acres for enrollment in Current Use taxation. More than the size of the

“In fact, the minimum acreage required to enroll in Use Value Appraisal in Vermont or other state programs is an arbitrary number selected in order to place some limitation on the amount of people eligible to benefit from reduced taxation.”

parcel, the quality and number of the trees on that parcel are what make the parcel viable for harvesting. According to one county forester, there are 10-acre parcels that have better quality stands than some 25-acre parcels.¹²

Minimum acreage requirements are a criteria for enrollment in 29 state programs and range from two to fifty acres, with ten being the most common minimum requirement.¹³ Minimum acreage requirements for farm land or open space are often smaller than ten acres but additional requirements must be met such as income per acre or public benefits provided in order for smaller parcels to be eligible for use value appraisal programs. The state of Maine adopted a major change in the requirements for enrollment in Tree Growth program in 1993 because towns complained that the program was too expensive and was being abused. Whereas previously a landowner could harvest "for personal use," such as firewood or occasional harvesting, parcels under 100 acres must now have an approved management plan for commercial harvest of timber. Landowners who chose not to harvest for commercial purposes had the option of enrolling in the Open Space program, which sets appraisal levels according to the amount of restrictions placed on the land.

The public benefits tests in both Maine and King County, Washington, consider contiguity with other protected parcels a benefit worth recognizing. In King County, several owners of smaller parcels contiguous to one another may become eligible for open space assessment if they fill out a joint application. Although, in practice, Vermont's Use Value Appraisal program has focused on the productive capacity of the land, the goals for the program include the goal of protecting productive forest land "for the protection of natural ecological systems." In considering minimum size requirements for forest land, policy makers should also consider their contribution to ecological systems — their location, whether or not they are contiguous with other protected or undeveloped parcels, whether they contribute to wildlife corridors or buffer zones next to waterways, or whether they are surrounded by development.

Means testing

One proposal put forth by the Vermont League of Cities and Towns would require that agricultural land be owned or leased by a "farmer," a person who owns at least one-half of his/her gross annual income from farming. The purpose of this requirement would be to prevent "gentleman" or "hobby" farmers, people with high incomes who farm either for enjoyment or to receive a tax break, from benefiting from the program.

Adding a means test to the Use Value Appraisal program was proposed by John Carroll in the Minority Report for the 1991 Joint Legislative Current Use Value Study Committee, also as a way to reduce state spending for the Current Use program. In Carroll's proposal, local reimbursement through state aid would be replaced by an income tax credit system. All owners of farm and forest land enrolled in Use Value Appraisal would be eligible for an income tax credit equal to the amount of property taxes owed that exceeded 2.5% of the landowner's adjusted gross income. Out-of-state landowners who wanted to qualify for the program would have to file a Vermont state income tax return.

Providing income tax credits is philosophically very different than appraising land at use value. One of the main arguments that the Current Use Tax Coalition has presented against such a system is that it would cause Use Value Appraisal to become a subsidy

rather than a system of tax equity. However, according to one of the original authors of Wisconsin's Farmland Preservation Program, the circuit breaker program makes more people better off, and focuses resources on those who really need them.¹⁴ The following sections explain in further detail Wisconsin's Farmland Preservation Program and Michigan's Farmland and Open Space Preservation Act, two circuit-breaker programs which have been in effect since the 1970's.

Michigan's Farmland and Open Space Preservation Act — The structure of Michigan's program is similar to the program proposed by John Carroll for Vermont, but includes farmland and open space and does not include timber land. In addition to complying with the following definitions of "farmland" and "open space," land use must be restricted under a development rights agreement or easement for a minimum of ten years. Farmland must be one of the following:

- a) A farm of 40 or more acres,
- b) A farm of 5 acres or more, which has produced a gross annual income from agriculture of \$200 per year or more per acre of cleared and tillable land,
- c) A "specialty farm" which has produced a gross annual income from an agricultural use of \$2,000 or more,
- d) Parcels of land in one ownership which are not contiguous but which constitute an integral part of a farming operation.¹⁵

Open space must also be protected under a development agreement registered with the state or an easement held by the town, state, or a land trust. Open space must be one of the following:

- a) Lands defined as:
 - i) Any undeveloped site included in a national registry of historic places or designated as a state or federal historic site
 - ii) Riverfront ownership subject to designation under [the Natural River Act of 1970] and located within 1/4 mile of the river.
 - iii) Undeveloped land designated as environmental areas,
- b) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources.¹⁶

Owners of land meeting the above criteria may receive an income tax credit of the amount of their property taxes less 7% of their gross annual income. For comparison, Vermont currently offers rebates for people with annual household incomes of less than \$47,000 and whose property taxes on their residence exceeds 5% of their annual income.

Wisconsin's Farmland Preservation Program — A key component of Wisconsin's circuit breaker program for farmland includes exclusive agricultural zoning at the county level. In order to be eligible for the program, land in an "urban county" — with a population density of greater than 100 people per square mile — must be located in an area of exclusive agricultural zoning. Exclusive agricultural zoning is adopted at the county level and then accepted or rejected by towns within the county. In rural counties that have not yet adopted exclusive agricultural zoning, land may be accepted into the program if the county has an agricultural preservation plan and if the landowner signs a farmland preservation agree-

ment. To qualify for an agreement, a farmer must have 35 or more acres in the parcel and the land must have produced the value of \$6,000 in the last year or \$18,000 in the last three years. The farmer must also be farming in accordance with a Natural Resource Conservation Service farm conservation plan. The agreement must last for a period of 10 to 25 years. If the landowner decides not to renew the contract or if zoning is changed, the landowner is responsible for paying back the last ten years of credit received.

According to Richard Barrows, an author of the program, one of the main purposes of the program was to create stronger protection of agricultural land through planning and zoning. Because of the zoning requirement, many farmers have taken an active role in encouraging their towns and counties to adopt exclusive agricultural zoning ordinances. Like Michigan's program, the amount of tax credit a farmer may receive is based on his/her income and the amount of property taxes owed.

"Because of the zoning requirement, many farmers have taken an active role in encouraging their towns and counties to adopt exclusive agricultural zoning ordinances."

Concerns about programs with income requirements include the possibilities for abuse by hiding income in deductions, and the disincentive to find alternate employment for fear of losing some of the tax rebate. According to Barrows, neither abuse is likely. One study specifically looking for wealthy landowners with large amounts of hidden incomes, found only a handful, and all of these were farmers. And, for each additional \$10,000 earned, only \$415 is lost in rebate, a 4% disincentive to work.

The state has recently decreased the level of rebates and adopted a use value appraisal program for agricultural land. The use value appraisal program, says Barrows, was adopted for "purely political" reasons. It is still in the development stages, therefore there is little information about its structure and criteria. The use value appraisal program will be phased in over a period of ten years.

Corporate and non-resident landowners

One complaint frequently voiced about Vermont's Use Value Appraisal program is that wealthy landowners, multi-national corporations, and non-state residents are receiving benefits that should be directed at those who are actually trying to live off the land. By linking incentives for maintaining the productive capacity of farmland to the income tax, circuit-breaker programs automatically eliminate non-state residents, unless they wish to file in-state tax returns.

While circuit-breaker programs are effective at directing aid to farmers who really need it and away from wealthy "gentleman" farmers, their effect on forest land could be potentially devastating. Large corporations and investment companies such as Champion Paper and Lyme Timber are some of the largest landowners in the state. According to Peter Stein of Lyme Timber, "Property taxes are a major expense for timberland owners." Any property tax incentive program such as

"Any property tax incentive program such as use value appraisal... tends to yield better management practices with longer management periods and less likelihood of liquidation."

value appraisal, says Stein, tends to yield better management practices with longer management periods and less likelihood of liquidation.¹⁷ In addition land held by timber companies provide the most public benefit for the least cost. Reports from the Department of Property Valuation and Review show that, in 1995, all owners of property reimbursed by the state at less than \$2.00 per acre was owned by timber companies with land holdings in the thousands of acres. Total benefits of greater than \$27 per acre were received on properties of less than 200 acres and were owned by individuals enrolled in the Working Farm Tax Abatement Program.

Sustainable management of timberland provides jobs and maintains a valuable natural resource in the long term. Even with stronger penalties for change in use, the development value of farmland is much higher than that of timberland. Selling farmland for development will, in most cases, be profitable no matter how high the penalty.

An argument commonly heard in northern New England states against raising the income tax to take some of the burden of education funding off the property tax is that revenues from non-resident property owners would be lost. The state of Michigan has addressed this problem within its education finance reform measures by imposing one state-wide property tax for residential property and one for non-residential property. "Homesteads," primary residences or qualified agricultural property, pay a state school-operations property tax of six mills. "Nonhomesteads," commercial and industrial real and personal property as well as non-primary residences, pay both the six mill school-operations tax and a local school-operations tax of 18 mills.¹⁸

Zoning

Some states require that forest land, agricultural land, or open space be located within areas specifically zoned for such purposes by county or local planning commissions. California's Williamson Act was one of the first pieces of legislation to employ the technique of zoning as a requirement for use value appraisal, and serves as a model for programs in many other states, including Wisconsin.

California's Timberland Production Zones and Agricultural Preserves – The Williamson Act, or California Land Conservation Act, was adopted in 1965. The Act enabled counties to designate "agricultural preserves" for agricultural land (including timber), recreation, and open space. Landowners living within these preserves could enter long-term contracts with the counties in order to be taxed at use value for their land. In 1977, the state passed the Forest Taxation Reform Act which exempted all standing timber from taxation, enacted a yield tax on all timber harvested from public and private land, and established a system of Timberland Preserve Zones (now Timberland Production Zones).¹⁹

Timberland Production Zones were designated through a three-step process. On the "A" list were properties that had already been assessed as having the highest and best use of growing and harvesting timber. These parcels were automatically placed in Timberland Preserve Zones unless contested by the landowners. On the "B" list were parcels that, in the opinion of the assessor, constituted timberland but were not assessed as having the highest and best use of growing and harvesting timber. Owners of land that was not included on the "A" or "B" lists could petition the city or county to have their property included in a Timberland Production Zone. Petitions had to include a management plan and meet

timber stocking standards and forest practice rules set by the state. The city or county has the authority to set minimum acreage requirements, as long as they are not above 80 acres.

If the landowner, or the county or city decides to rezone an area, a public hearing is held and the land is rezoned by a majority vote of the board or council. The rezoning goes into effect ten years from the vote. Immediate rezoning may occur at the request of the landowner only if the following conditions are met:

- 1) The immediate rezoning would be in the public interest.
- 2) The immediate rezoning does not have a substantial adverse effect upon the continued timber-growing use or open-space use of other land similarly zoned within one mile from the parcel that is to be rezoned.
- 3) The soils, slopes and watershed conditions will be suitable for the uses proposed by the applicant if the immediate rezoning is approved.²⁰

Upon approval of immediate rezoning, the landowner must pay a tax recoupment fee of the difference between the tax at the new use value and the tax owed if the land were valued as timberland multiplied by the number of years the land has been zoned timberland production.

Landowners may contract with the city or county for the preservation, and resulting taxation, of agricultural or open space land if their land falls within the boundaries of an "Agricultural Preserve." Unlike timberland production zones, owners of land not included within a preserve may not petition for inclusion. According to statute, agricultural preserves may include land which meets specific income or soil quality classifications, land for recreation use, and open space land defined as any of the following:

- 1) a scenic highway corridor,
- 2) a designated wildlife habitat area,
- 3) a saltpond (used for the production of salt)
- 4) a managed wetland area, or
- 5) a submerged area (subject to tidal action and found by the board or council to be of great value to the state as open space).

The state reimburses cities or counties \$5 per acre for land designated as "prime agricultural land" and \$1 per acre for open space that is "devoted to open-space uses of statewide significance." Open-space lands eligible for reimbursement include land that could be developed as prime agricultural land or open-space land "which constitutes a resource whose preservation is of more than local importance for ecological, economic, educational, or other purposes." The Secretary of Natural Resources is the final judge of whether land is being used for purposes of statewide significance.

Elements of California's program would be useful to follow in Vermont — primarily the examination of land already enrolled in Use Value Appraisal and the determination of what areas are most important to preserve in agricultural or forestry use. Initially, however, such a program would be administratively cumbersome and would require an extended phase-in process.

Other States — As mentioned above, several states that have open space categories in their current use programs require that land be included in an open space plan in order to be eligible for use value appraisal. Washington requires compliance with an open space plan unless a county has developed a public benefit rating system. Maine includes compliance with zoning on the list of fourteen benefits, of which one must be met in order to be eligible for taxation as Open Space.

“... several states that have open space categories in their current use programs require that land be included in an open space plan in order to be eligible for use value appraisal ”

Wisconsin's Farmland Preservation program requires that farmland in counties with a population density greater than 100 people per square mile be located in areas zoned by the county under an exclusive agricultural zoning ordinance. Rural counties that have developed agricultural preservation plans may allow farmers with at least 35 acres of farmland to enter into “farmland agreements” with the county for a minimum of 10 years in exchange for eligibility for income tax credits.

In addition to the above examples, the states of Connecticut, Indiana, Michigan, Nevada, North Dakota, Oregon, Tennessee, and Virginia, employ land use planning, conservation, or environmental agencies at one or more levels of government to assist in determining eligibility or in establishing zoning, exclusive districts, or land use plans.²¹

Nonproductive Land

One proposal offered by the Vermont League of Cities and Towns for reducing the cost of the Use Value Appraisal program would exclude “land that is undevelopable” from eligibility for use value appraisal.²² Examples given include wetlands, protected lands, steep slopes, and lands for which development rights have been transferred. As mentioned above in the discussion on the public benefits of open space, the transferal of development rights is considered by programs in many other states a strong public benefit that should be recognized by use value appraisal programs. This land may also be valuable as productive farm or forest land and should be recognized as such.

“... the transferal of development rights is considered by programs in many other states a strong public benefit that should be recognized by use value appraisal programs.”

Original legislation for Vermont's Use Value Appraisal program allowed 50% of a parcel enrolled as forest land to be unproductive. The intent of this provision was “to acknowledge that on most Vermont forest holdings, some significant portion of the land is typically incapable of being managed for merchantable timber production but nonetheless must be accounted for by the forest operator as part of an overall economic unit of forest land.”²³ The allowable percentage of unproductive land has decreased to 20%.

Other states deal with unproductive land in a variety of ways. Maine does not allow unproductive land into the program, but requires a minimum of 10 acres for enrollment in the Tree Growth program. New Hampshire values all “unproductive land,” including wetlands and “land which is incapable of producing agricultural or forest crops and which is

being left in its natural state without interference with the natural ecological process”²⁴ at \$15 per acre.

Appraisals of wetlands or land on which development rights have been transferred are often higher than might be expected. Valuing these lands at use value may not be consistent with the purposes of maintaining the productive capacity of the land (in the case of wetlands) or “preventing the conversion of these lands to more intensive uses” (for lands protected by conservation restrictions), however the public benefits provided by not developing these lands should be considered.

Valuation techniques

Capitalization of income approach — Preferential or use value appraisal programs in most states require that land be appraised at “use value,” a figure that is reached primarily through the income producing ability of the land, rather than “highest and best use” or fair market value. Use value for agriculture is usually calculated through a capitalization of income approach. In many states, different soil groupings receive different appraisal values based on their respective income capabilities. Yields, prices, and costs are averaged over a number of years in order to come up with a use value.²⁵

“Preferential or use value appraisal programs in most states require that land be appraised at ‘use value,’ a figure that is reached primarily through the income producing ability of the land, rather than ‘highest and best use’ or fair market value.”

Valuation of timber land is treated similar to that of agricultural land, using the capitalization of income or “sustained yield” approach, in twenty-two states. Since timber may be harvested every fifty years rather than every year, however, income must be capitalized over a longer period.

Yield taxes — Many states use the “bare land” approach for timber land, in which land is treated separately from the timber grown on it. In the bare land approach, the landowner pays a fixed property tax on the land and a separate yield tax at the time timber is harvested. New York’s 480-a program taxes timber land at 20% of fair market value and charges a yield tax of 6%.

The advantage of yield taxes for landowners is that the bulk of taxes are due at time of harvest, when income is realized. The disadvantage for taxing jurisdictions is that revenues are not consistent. Currently, at least 25 states require payment of a yield tax, including the states of New Hampshire, Maine, and New York.

New Hampshire charges a yield tax in addition to taxing forest land at use value. All timber harvests, except very small ones for a landowner’s personal use, are taxed at 10% with the proceeds of the yield tax go directly to the towns in which the timber is harvested. An additional 2% was collected by the state until 1980. According to a representative of the New Hampshire Timberland Owners Association (NHTOA), the elimination of the state’s share was a mistake, as the program requires some degree of state monitoring and training of local officials.²⁶ Local listers are responsible for administering the yield tax, allowing for close monitoring of timber harvests. But, according to the NHTOA represen-

tative, towns should appoint timber tax monitors in order to ensure that all logging operations are monitored and taxes collected. While the original purpose of New Hampshire's yield tax was to prevent timberland owners from harvesting prematurely in order to reduce property taxes, that purpose is no longer as relevant. Officials recommend that some portion of the tax go into a conservation fund.

Inclusion of intangibles in use value — The Governor's Task Force on Current Use has discussed whether or not use values are set too low. The focus of this debate centers on the statutory language defining use value appraisal. Current and former administrators of the Use Value Appraisal program recognize that use values assigned by the Current Use Advisory Board do not reflect those of farm and forest land on which development rights have been donated or sold. The definition of "use value appraisal" in the statute reads as follows:

*. . . the price per acre which the land would command if it were required to remain henceforth in agriculture or forest use. . .*²⁷

Under this definition, use value should reflect the fair market value of farm or forest land on which development rights have been sold or donated, not the income producing ability of the land as has been used for use values since the program's initiation.

The values for farm and forest land in Vermont set by the Current Use Advisory Board are somewhat lower than use values in many other states. Originally, Vermont's program set values according to the productive capacity of the land. In 1981 an added factor of distance from a Class One, Two or Three road was added for forest land. Parcels greater than one mile from a road were valued at 75% of use value. This system was administratively cumbersome, however, and in 1989 was refined to include only two values each for timber and agriculture, one for productive land and one for nonproductive land. In 1992, the category of unproductive land was removed, leaving one value for agricultural land, one for forest land, and one for forest land greater than one mile from a road. In 1996 those values were \$89 per acre for forest land and \$192 for agricultural land.

The Governor's Task Force has discussed the possibility of adding some of the "intangible" values, such as privacy and investment values associated with owning land, to use value appraisal. While calculating these values with any degree of accuracy would be virtually impossible, some states have included value ranges which assessors may use in order to value land in their particular towns or counties. Maine's farmland program offers ranges for different categories of agricultural land. Pasture land, for example, has a suggested value of \$325 per acre with an observed range of \$100 to \$525 per acre.²⁸ Three values for forest land — hardwood, softwood, and mixed wood — are given for each county. Counties with higher property values have higher tree growth values.

A few states allow the use of sales data in the determining appraisal values. In Minnesota, sales data on agricultural land outside urban areas may be used. In Oregon, sales of bona fide farm properties may be used, but the income capitalization approach must be used if this data is not available.²⁹

Several sources³⁰ suggest that smaller parcels have value to the landowner above and beyond "use value" as determined by income. These values may include privacy, personal

recreation, and investment value. Proposals have been made to value smaller parcels at 150% of use value,³¹ or to treat smaller parcels associated with personal residences differently from those with no adjacent homestead.³²

Open space programs, such as Maine's and Washington's described above, value land at a percentage of fair market value. Georgia uses this method for agricultural land, valuing it at 75% of fair market value.³³

Horizontal equity — An additional problem in the system of valuation and taxation in Vermont and many other states is that, although productive land is uniformly appraised, tax rates vary widely from town to town. This becomes a potentially great problem for timber operations which, as mentioned above, cannot operate profitably with property taxes greater than \$2 per acre. Wisconsin's Managed Forest Land program uses a uniform tax rate on forest land. Owners of managed forest land pay \$0.85 per acre for land that is open to the public and an additional \$1.15 per acre for land that is closed to public access. A yield tax of 5% is assessed at the time of harvest.³⁴

Penalties for Withdrawal

Nationwide, there are several variations of use value appraisal programs. In a review of current use programs across the country, Jane Malme of the Lincoln Institute for Land Policy breaks the programs down into three categories: "pure preferential, preferential with deferred taxation, and preferential with restrictive agreements or exclusive zoning and deferred taxation." Twenty states have pure preferential taxation programs for agricultural land, assessing land at use value and not imposing a penalty when the land use changes. In most state programs, including Vermont's, a penalty of either a "roll-back" tax or a "conveyance" or "development" tax is levied when the land is developed.

In determining a penalty level, a balance must be achieved between making the penalty too strong, and thereby discouraging enrollment, and making the penalty too weak, and therefore ineffective. The Northern Forest Lands Council Tax Study, completed in 1993, uses two different measures to determine the effectiveness of penalties in a number of states: the break-even point and the profitability of conversion. The break-even point is "the number of years which a parcel must be enrolled before the accumulated tax savings plus interest would equal the conversion penalty."³⁵ This measure might be considered by landowners before enrolling in use value appraisal programs — the longer the time period that land must be enrolled in order for the penalty to equal the savings, the less likely a landowner is to enroll land. The second measure looks at the profit potential of conversion — even if the land has not yet been enrolled long enough to reach the break-even point, if a landowner may convert land if he or she can make a substantial profit from doing so.

"Of the four Northern Forest states examined in the NFLC study (Maine, New Hampshire, Vermont and New York), Vermont's break-even point was one of the shortest, at 10 years."

Of the four Northern Forest states examined in the NFLC study (Maine, New Hampshire, Vermont and New York), Vermont's break-even point was one of the shortest, at 10 years. At full funding, Vermont's program imposes a penalty equal to 10% of the

equalized listed value of the land, prorated according to the size of the parcel. Because the parcel sold for development is often the most valuable piece of land, the penalty does not always equal 10% of the actual value of the land developed. New Hampshire also charges a 10% penalty for withdrawal, but the penalty is based on the local assessor's appraisal of the land, making the break-even point variable depending on the intended use of the land. New York and Maine charge significantly greater penalties and, therefore, show longer break-even points. Maine charges 30% of the difference between use value and fair market value at the time of conversion for land that has been in the program for ten years or less; the percentage decreases incrementally the longer land has been in the program, with the minimum penalty of 20%. New York's 480-a program charges 2.5 times the tax savings over ten years for conversion of an entire parcel, double that amount for the conversion of a partial parcel.

Table 5. Typical Break-Even Points in the Northern Forest States*

State	Typical Break-Even Point	
	Assuming FMV does not increase at point of conversion/withdrawal	Assuming FMV doubles at point of conversion/withdrawal
Maine incorporated	15 years	36 years
Maine unincorporated	20 years	> 100 years
New Hampshire	6 years	12 years
New York	33 years	33 years
Vermont	10 years	10 years

*From Ad Hoc Associates (1993) "Northern Forest Lands Council Forest Taxation Project."

The NFLC tax study also compares penalties of state programs to the difference between use value and fair market value (FMV) — in other words, how much will the penalty affect a landowner's decision to sell land at market value. The study looked at FMV as being double use value and, to simulate areas where land values are high, nine times use value. In Vermont, the penalty was 10% to 20% of FMV at double use value, 6% to 11% at nine times use value. New York's penalty showed the greatest difference with the penalty being 100% of the difference between FMV and use value at double use value and 55% at nine times use value. Since Maine's program is calculated based on the difference between FMV and use value, the percentage remained at 20% to 30% for both scenarios.

As shown in the NFLC study, there is great variation among penalties charged in different state programs. Clearly the determination must relate to the goals of the program: Is the program's purpose to encourage enrollment of lands to establish equity of taxation or is it to encourage enrollment only of those who intend to keep their land productive for many years? Administrators of Vermont's Use Value Appraisal program and organizations representing local government have called for stronger penalties. Some groups representing farmers and forest land owners, however, fear that stronger penalties will scare potential enrollees to keep their land out of the program and put it in imminent danger of conversion.

When considering current use as a means of discouraging development of open space, clearly a stronger penalty is in order. Although current use will never be a substitute for the

transfer of development rights, it should include a penalty that is strong enough that a landowner will not receive the benefits of reduced taxation without returning to the public the benefits of several additional years of open space.

State vs. Local Control

The Vermont League of Cities and Towns has proposed that, if the state does not take back funding for the Use Value Appraisal program, towns should have a greater degree of control over land that is admitted to the program through the vehicle of local tax stabilization contracts. Foreseeable problems with such a change include the number of different definitions of eligibility that could be created and the increased administrative burden on local governments. Early in the life of the Use Value Appraisal program, local administrators favored the transfer of administrative duties to the state. It is also likely that the amount of land would be drastically cut back because of a need to balance local budgets. Keeping land open may be a priority for the state and visitors to the state more than for towns that must call multiple town meetings to pass a bare bones version of a school budget.

Local governments should have some role, however, in determining areas within their communities that are in the greatest need of protection. In addition, agencies involved in the benefits of Use Value Appraisal beyond the productive capacity of the land — deferral of development and protection of ecological systems — should be involved in program administration or eligibility requirements.

According to Jane Malme, “It seems appropriate to assign some role in the development of state guidelines or in the determination of eligibility to a public entity concerned with land use planning, conservation, or environmental protection.” In addition to California, the states of Connecticut, Indiana, Michigan, Nevada, New Hampshire, North Dakota, Oregon, Tennessee, Virginia, and Washington employ land use planning, conservation, or environmental agencies at one or more levels of government to assist in determining eligibility or in establishing zoning, exclusive districts, or land use plans in which land must be located in order to be eligible for use value appraisal. State environmental agencies in Florida and Georgia are responsible for certifying environmentally sensitive areas.

The benefits of Use Value Appraisal are realized at both the state and local levels and should be funded accordingly. Until the 1996 legislature shifted much of the burden of Use Value Appraisal to the local level, Vermont is the only state that attempted to fund all

aspects of the program. Maine’s program reimburses towns only for land in the Tree Growth program, and only the difference between the Tree Growth value and an equalized value for undeveloped land, not fair market value as in Vermont. California’s program reimburses towns for farm and forest land that is of “significance to the state.” Policy makers at the state level need to determine what lands are important to the economy and well-

“According to Jane Malme, ‘It seems appropriate to assign some role in the development of state guidelines or in the determination of eligibility to a public entity concerned with land use planning, conservation, or environmental protection.’”

“The benefits of Use Value Appraisal are realized at both the state and local levels and should be funded accordingly.”

being of the state as a whole, and leave the towns to decide what additional lands they are willing to protect and fund at the local level.

Education Finance Reform and Alternative Funding Sources

Some states have addressed the heavy property tax burdens through increased broad-based funding for education. Most parties in the current debate over Use Value Appraisal support comprehensive tax reform and see the program as an interim measure that will relieve the tax burden on owners of farm and forest land. Whether additional broad-based funding sources are tapped to fund education or the Use Value Appraisal program, the possibilities are worth examining.

Education finance reform — the Michigan example — In 1993, the state of Michigan adopted a comprehensive education finance reform package which included a number of increases in broad-based taxes and an adjustment in the statewide property tax. Changes in Michigan's tax structure included the following: an increase in sales and use taxes from 4% to 6%, a tax on interstate phone calls, the addition of a .75% real estate transfer tax, a state education property tax of 6 mills on all homesteads and an additional 18 mill local property tax on nonhomesteads, an increase in the cigarette tax from 25 cents to 75 cents a pack and a tax on all other tobacco products of 16% of wholesale price, an increase in renter's credit and a decrease in the income tax from 4.6% to 4.4%. In addition, annual assessment increases were limited to the lesser of 5% or the rate of inflation until property is transferred.³⁶ With these changes, the state's share of education funding was estimated to increase from 37.1% in 1993-94 to 80% in 1994-95. Local property taxes for school operating purposes were estimated to drop from 62.9% in 1993-94 to 20% in 1994-95.

Early studies on the effects of Michigan's education finance reform package on pupil equity and taxpayer equity have been positive. There has been progress made in reducing the revenue gap between high-revenue and low-revenue school districts, and there has been improvement in horizontal equity of taxation between taxpayers.

BTU tax — Ecological tax reform in Minnesota — The state of Minnesota is working to offset the impact of property taxes through pollution taxes, with most additional taxes placed on carbon-based fuels. While such a tax is effective in encouraging people to conserve fuel or turn to cleaner technologies, it must be accompanied with tax relief for lower income classes as an additional tax on fuel for heating can become a substantial percentage of a family's income.

Rooms and Meals tax — Vermont currently charges a 7% tax on rooms and meals. In 1994, the rooms and meals tax raised a total of \$58 million, in 1995 a total of \$58.9 million. Based on 1995 figures, each percentage point of rooms and meals tax raises approximately \$8,420,363. Since visitors to the state are major beneficiaries of much the land that Use Value Appraisal allows to remain open, increasing the rooms and meals tax would be a logical choice of taxes to tap in order to directly fund the program.

There are a number of other broad-based taxes which could be targeted for the funding of the Use Value Appraisal program or education in the state. Studies currently in progress by the Vermont Natural Resources Council on pollution taxes and the Joint Fiscal Office concerning market competition from neighboring states will be helpful in decisions for where to expand broad-based taxes in the coming year.

Notes

- ¹ CT, FL, GA, HI, IL, IN, ME, MD, MA, MN, NV, NH, OR, PA, RI, IN, TX, VA, WA (Malme, 1993).
- ² States with such requirements include CA, CT, FL, GA, IN, MI, NV, NH, OR, TN, VA, WA (Malme, 1993)
- ³ ME RSA Title 36 § 1102.
- ⁴ Rebecca Basch (1996) "Assessing land with conservation easements: Lessons from Maine," Tufts University Master's Thesis, May 1996.
- ⁵ RCW Tit. 84 § 34
- ⁶ RCW Tit. 84 § 34.020, effective Jan. 1, 1993.
- ⁷ King County Department of Natural Resources document "The Public Benefit Rating System."
- ⁸ Ad Hoc Associates and Resource Systems Group (1993)
- ⁹ NH RSA 79-A:4.
- ¹⁰ NH RSA 79-A:4.
- ¹¹ State of Maine, Bureau of Taxation, Property Tax Bulletin No. 18, August 26, 1993.
- ¹² John Bouton, Windsor County Forester, telephone interview September 10, 1996.
- ¹³ Malme (1993)
- ¹⁴ Richard Barrows, Dean of the School of Agriculture, University of Wisconsin, telephone interview September 20, 1996.
- ¹⁵ Mich. CLA Tit. 554 § 702
- ¹⁶ Mich. CLA Tit. 554 § 704
- ¹⁷ Peter Stein, Lyme Timber Company, telephone interview September 10, 1996.
- ¹⁸ Henry Prince and Mitchell Bean (1996) "Equity in Michigan: What Have Two Years of Finance Reform Achieved?" unpublished work in progress, House Fiscal Agency, Lansing, MI, March 1996, p. 14.
- ¹⁹ Ad Hoc Associates, NFLC Taxation Project, 1993, p. A-5.2.
- ²⁰ CGC § 51134
- ²¹ Malme (1993)
- ²² VLCT draft recommendations submitted to the Governor's Task Force on Current Use, September 17, 1996.
- ²³ Memo from Benjamin L. Huffman, Fair Tax and Equal Education Coalition, August 24, 1978.
- ²⁴ State of New Hampshire Current Use Criteria Booklet for April 1, 1996 - March 31, 1997. Current Use Administrative Rules, CUB 304.04
- ²⁵ Malme, p. 16.
- ²⁶ Memorandum from Darby Bradley to the Forest Resources Advisory Council,
- ²⁷ V.S.A. Tit. 32 § 3752.
- ²⁸ State of Maine Property Tax Bulletin No. 18, August 26, 1993.
- ²⁹ Malme (1993)
- ³⁰ Ad Hoc Associates and Resource Systems Group (1993) and personal interview with Darby Bradley of the Vermont Land Trust, September 1996.
- ³¹ Ad Hoc Associates and Resource Systems Group (1993) p. A-4.8
- ³² Governor's Task Force meeting, September 17, 1996.
- ³³ Malme (1993)
- ³⁴ Ad Hoc Associates and Resource Systems Group (1993) p. A-7.6
- ³⁵ Ad Hoc Associates and Resource Systems Group (1993) p. 2.6.
- ³⁶ Senate Fiscal Agency (1994) "Michigan School Finance Reform: Analysis of the Enacted School Finance Education Reform Package," October 1994.

V. CONCLUSION AND RECOMMENDATIONS

As shown by the recent *Rutland Herald* poll, most Vermonters value the Use Value Appraisal Program and most believe that the program should be funded by the state. State funding is what has made Vermont's program different from all other use value appraisal and preferential taxation programs in the U.S. Underfunding by the state was ultimately the cause for the 1996 changes in the program that shifted some of the funding onto local budgets, and funding will continue to be the main issue of discussion in the upcoming legislative session. While state funding demonstrates the importance of the benefits of Use Value Appraisal at the state level, the costs of the program in its 1995 form exceed the state's ability to pay for reimbursement. Legislators will have to address one or all of the following issues in order to enable the Use Value Appraisal Program to achieve its goals effectively and efficiently:

- Adopt a program of comprehensive education finance reform, in order to take the burden of education funding off of the local property tax and eliminate much of the need (and cost) for property tax relief for farm and forest land owners, or
- Find a way to fully fund the Use Value Appraisal program. In the absence of comprehensive tax reform, the Use Value Appraisal program should be fully funded. Funding may come from some combination of state and local taxes, with additional local control over those portions of the program funded at the local level. Or, broad-based taxes should be increased in order to fully fund Use Value Appraisal at the state level.
- In either funding scenario, the cost of Use Value Appraisal must be examined. The criteria for enrollment are, and always have been, arbitrarily selected. Additional narrowing of these criteria through income requirements or minimum acreage requirements would also be politically based and arbitrary. Any additional scrutinizing of enrolled parcels should include a public benefits test as a means of balancing tax relief with public benefits gained through keeping land in Use Value Appraisal.
- Legislators should consider how land is valued in the Use Value Appraisal program before eliminating land through eligibility criteria. The cost of reimbursement may be reduced either through increasing use values on enrolled land to include some of the intangible values of land ownership, or by limiting the fair market value appraisal levels of eligible farm and forest land.
- Penalties for withdrawal of land or change of use must be increased in order to ensure a landowner's commitment to stewardship and long-term benefit to the public. In addition, an incentive for landowners to keep land open to public access for passive recreation should be added to the Use Value Appraisal program in order to reward and encourage landowners to provide an important public benefit. In considering the assignment of higher use values to all properties, this incentive could come in the form of a percent reduction in appraised value on land left open.

Because Vermont's program for taxation of farm and forest land has always included some form of state reimbursement, funding or program size will continue to be the main issues of concern in considering the future and reform of the program. In light of the issues and

examples from other state programs presented in Chapter IV, however, legislators may also consider the following items with regard to Vermont's Use Value Appraisal program:

- **Open space and public benefits.** As land in Vermont continues to be desirable for second homes and technology such as telecommunications brings more residents to the state, open space and the rural landscape will be placed in jeopardy. With this in mind, legislators should begin to consider an open space component to Use Value Appraisal as a mechanism to encourage landowners to keep valuable land open for reasons beyond the productive capacity of the land such as preserving wildlife habitat, important natural resource buffer areas, recreation land, or scenic views.
- **Minimum acreage.** Before arbitrarily increasing the acreage requirements for enrolled land, policy makers should look at the land currently enrolled, and how that land might be affected. There has been significant testimony stating that some smaller parcels offer the most productive soils and highest productivity, attributes that will continue to diminish with or without Use Value Appraisal. When considering the criteria for enrollment, legislators should first consider the potential loss of public benefits.
- **Means testing.** The strength of Vermont's Use Value Appraisal program has been its primary attachment to the land rather than the individual landowner. While programs for means testing have been useful in the distribution of funds to those who really need them, they do not provide incentive for all landowners to consider careful management of their land.
- **Corporate and non-resident landowners.** Once again, these criteria consider the landowner, not the land. Timber companies own some of the largest parcels of land in the state, keeping one sector of the manufacturing economy alive while maintaining the primary use of the land for the growing of trees. While not all timber companies manage their land sustainably and for the long-term benefit of the public, those enrolled in Use Value Appraisal must manage according to an approved plan and are penalized for not following that plan. Timber company representatives maintain that property tax relief programs are a primary factor in a company's willingness to manage for the long-term health of the forest.
- **Zoning and comprehensive plans.** Zoning for agriculture and forest use is difficult in the recent climate of property rights and "takings" litigation. Many towns in Vermont do not have zoning ordinances or have fairly vague comprehensive plans. On the one hand, adding zoning requirements to current use legislation might encourage towns to designate areas for prime agriculture, forest or open space use; but landowners who don't wish to have their land exclusively zoned could have grounds to appeal. Zoning bylaws or open space plans could play a valuable role, however, in determining the public benefits offered by a parcel of land. Policy makers should consider whether parcels are contiguous to other protected lands, or whether they encompass important habitat or natural areas. Additionally, towns that may wish to add agricultural or forest land to zoning bylaws or open space plans may look first at parcels currently enrolled in Use Value Appraisal.
- **Valuation techniques.** As mentioned in Chapter IV, the methods for how use values are determined may be subject to some scrutiny in the upcoming legislative session. There are arguments that smaller parcels should be valued at a level higher than those

set using only the capitalization of income approach, in order to incorporate some of the intangible amenities such as privacy, location, and personal recreation that a landowner values in his or her land. Other issues should also be considered concerning land valuation, such as limits on the level of fair market value assessment of farm and forest land. Policy makers may also wish to consider issues of horizontal equity of taxation, the variability in tax rates that occurs from one town to the next. This issue could be solved through comprehensive property tax or education funding reform.

- **Penalties for withdrawal.** When setting the level of penalty for change in use, policy makers must determine whether the primary goal of the Use Value Appraisal program is to encourage landowners to keep their land productive and to manage it with an approved plan (in the case of timber use) or whether the goal is to ensure that land remains productive for a number of years, if not permanently. Both goals are beneficial to the public, but it is arguable that in the long run the public gains more benefit from land that remains undeveloped, as farmland, forest land, or open space.
- **Alternative funding sources.** There are a number of creative ways in which broad-based taxes may be broadened further to raise funding for Use Value Appraisal or funding of education. The rooms and meals tax, with its connection to the land as a magnet for tourism, is an obvious source of support for Use Value Appraisal. Taxes such as a carbon-based fuel tax could also raise funding to preserve the landscape while decreasing air pollution.

While Vermont's Use Value Appraisal program has thus far been an effective mechanism for encouraging landowner stewardship, slowing the pace of development, and encouraging the productive capabilities of the land, this paper has presented a number of ways in which the program might be made more efficient and effective.

Some specific recommendations for policy makers to consider are as follows:

- 1) **Funding sources** — In the absence of comprehensive property tax reform, the Use Value Appraisal Program could be fully funded with the \$8 million allocated in 1996 and a one percent increase in the Rooms and Meals tax (approximately \$8.4 million).
Additional funding sources to consider for Use Value Appraisal or education finance reform include severance taxes on all timber harvested in state, pollution taxes, a statewide property tax (possibly different levels for residents and nonresidents), and a broadening of the sales tax.
- 2) **Increase use values** — Use values of farm and forest land as determined by the CUAB are currently at rock bottom. Eligible farmers, as defined by statute should continue to have land appraised at these use values. All other land in the program should be increased in value. For ease of administration, use values on all parcels under 100 acres should be doubled; all parcels of 100 acres and greater should be multiplied by 1.5.
- 3) **Provide incentives for public access** — Land that is not posted should receive a reduction of 25% from the use values as calculated above. Monitoring of land postings should occur at the local level.

- 4) **Cap on appraisal levels** — In order to reduce the wide variations in reimbursement allocations received by different towns, fair market appraisals of farm and forest land should be capped at uniform values for each land type as determined by the Current Use Advisory Board, or at a multiple of four times use value.
- 5) **Look at the public benefits** provided by Use Value Appraisal when considering any changes to eligibility, and look at the positive effects that the program has had on the landscape. Some funding should be appropriated for the Division of Property Valuation and Review to map parcels enrolled in Use Value Appraisal.

GLOSSARY

Assessment/Sales Ratio Study — Compares the assessed values to the selling prices of bona fide transactions of real property.

Capitalization of income — The discounting of future expected income by a set rate to determine the net present value.

Current use — *See Use Value Appraisal.*

Deferred taxation — Taxation at use value as long as land remains in certain uses, such as agriculture and forestry. When use of land changes, usually a penalty such as a roll-back tax is charged to owner of land.

Gold towns — Towns designated by the state board of education as not needing state aid, based on wealth and expenditures per pupil.

Grand List — The cumulative assessment of all real property in a town. Property tax rates are determined by dividing the amount of revenue a town needs to balance an annual budget by the grand list, after all other income (such as state and federal funding) is realized.

Hold harmless — Funding allocated to all towns except “gold towns” to offset the tax burden shifted to towns after the 1996 changes to Use Value Appraisal. Hold harmless funding was intended to keep the tax shift at 1.8%. However, since the state calculated the funding according to previous year budgets, some towns saw greater increases in local taxes due to the changes in Use Value Appraisal.

Horizontal equity — Equivalent tax rates charged from one town to the next. Currently, Vermont does not have a system of horizontal equity for the taxation of property.

Land use change tax — The tax charged to a landowner when land that has been enrolled in a use value appraisal or current use program is developed.

Mill — A term used in the taxation of real property. One mill represents \$1 of tax per \$1000 of property value assessment.

Preferential taxation — Taxation policy affecting land with preferred uses, such as for agriculture or forestry. “Pure preferential taxation” programs tax land in preferred use as long as it is in that use and do not charge penalties for change in use.

Tax equity — *See Horizontal equity and Vertical equity.*

Use value appraisal — According to the Vermont statute, “the price per acre which the land would command if it were required to remain henceforth in agriculture or forest use.” Also commonly referred to as “current use.”

Vertical equity — The taxation of land according to the ability to pay and the services received. One purpose for Vermont’s Use Value Appraisal program is to establish vertical equity in the taxation of farm and forest land.

Yield tax — Taxation of timber at the time it is harvested. Also called a “severance tax.”

APPENDIX A

Maine's Open Space public benefits test*

- A.** The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;
- B.** The likelihood that development of the land would contribute to degradation of the scenic, natural, historic, or archeological character of the area;
- C.** The opportunity of the general public to appreciate significant scenic values of the land;
- D.** The opportunity for regular and substantial use of the land by the general public for recreational or educational use;
- E.** The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- F.** The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;
- G.** Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;
- H.** The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic, or open character;
- I.** The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;
- J.** The likelihood that protection of the land will contribute to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;
- K.** The existence on the land of habitat for rare, endangered or threatened species of animals, fish or plants or of a high quality example of a terrestrial or aquatic community;
- L.** The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management or recreation in the region;
- M.** The identification of the land or of outstanding natural resources on the land by a legislatively mandated program on the state, local, or federal level, as particular areas, parcels, land types or natural resources for protection including, but not limited to, the Register of Critical Areas under Title 5, chapter 312; the laws governing wildlife sanctuaries and management areas under Title 12, sections 7651 and 7652; the laws governing the State's rivers under Title 12, chapter 200; the natural resource protection laws under Title 38, chapter 3, subchapter I, article 5-A; and the Maine Coastal Barrier Resources Systems under Title 38, chapter 21; or
- N.** Whether the land contains historic or archeological resources listed in the National Register of Historic Places or is determined eligible for such a listing by the Maine Historic Preservation Commission, either in its own right or as contributing to the significance of an adjacent historic or archeological resource listed, or eligible to be listed in the National Register of Historic Places.

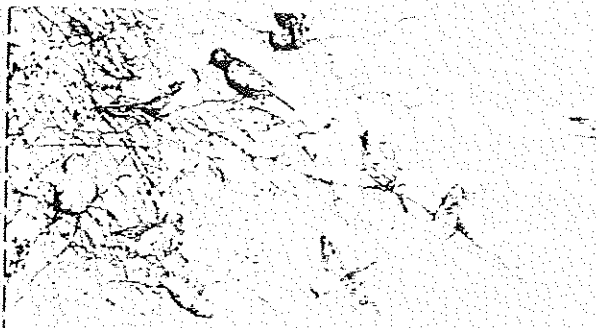
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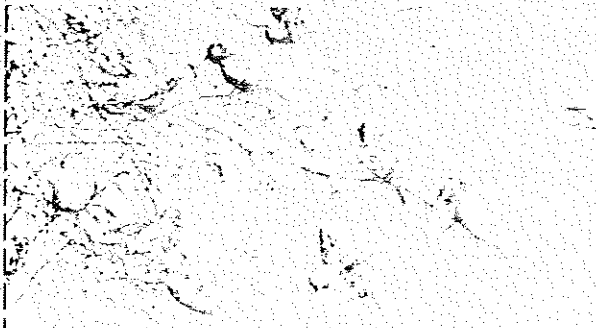
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