

Tax Incentives for Open Space Preservation

Examining the Costs and Benefits of Preferential Assessment

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

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

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

Determining Eligibility for Preferential Assessment

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

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



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

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

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

State Versus Local Criteria

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

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

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

Source: Significant Features of the Property Tax (2012).

The Lassen Foot-hills of California are eligible for preferential assessment under California's Farm-land and Open Space Program.



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

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

Calculating the Value of the Tax Expenditure

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

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

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

Program Duration and Penalties for Early Withdrawal

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

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

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

Economic Benefits of Open Space Preservation

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

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

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

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

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

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

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



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

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

Costs of Preferential Assessment for Open Space

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

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

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

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

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

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

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

Distributional Consequences

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

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

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

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

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

Calculating the Fiscal Cost of Preferential Assessment Expenditures

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

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

TABLE 2
Oregon Tax Expenditures for Open Space

Program	2009–10 Assessed Value of Property Exempted ¹	2009–11 Revenue Impact: Loss ¹	2009–11 Revenue Impact: Shift ¹
Wildlife Habitat	\$51 million	\$1.1 million	\$0.2 million
Conservation Easements	\$14 million	\$0.4 million	< \$0.1 million
Open Space Land	\$61 million	\$1.7 million	\$0.4 million
Totals for Open Space Programs (as rounded)	\$126 million	\$3.2 million	\$0.7 million
Private Forests²	\$5.3 billion	\$104 million	\$19.9 million
Farmland³	\$14.1 billion	\$303.9 million	\$58.2 million
Open Space, percent of total	0.6%	0.8%	0.9%

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

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

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

Such calculations also depend on other effects

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

Conclusion

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

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

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