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Is There Still a Need for the Special Assessment Program Within Oregon's Current Land-Use System?

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INTRODUCTION

The economy of Oregon has historically been highly dependent upon agriculture. Even today, in spite of the rapid growth of high technology companies around the state, agriculture is still Oregon's largest industry, producing more than \$5 billion in direct output annually. (ODOA, 1995) Related industries add even more to the Oregon economy. Considering multiplier effects, the agriculture industry is estimated to support anywhere from fifteen to twenty-five percent of the state's economy. (Knaap and Nelson, 1992) The industry is especially important in areas where Oregon leads the nation, such as in the production of grass seed, Christmas trees, hazelnuts and other specialty crops. (ODOA, 1997)

Given the importance of the agriculture industry, the preservation of farmland has long been an issue of statewide concern. To protect this valuable resource, Oregon has created a unique, multi-faceted preservation program. The components of this program include urban growth boundaries, exclusive agricultural zoning, property tax relief and "right-to-farm" laws. Because of its efforts and innovations in this area, Oregon has generally been regarded as a national leader in the movement to preserve productive farmland.

Oregon's farmland protection program is considered to be not only one of the most comprehensive in the country, but also one of the most effective. Since the state began to confront the issue directly, Oregon has been able to significantly reduce the amount of farmland lost to urban development each year. For example, in 1973, more than thirty thousand acres in the Willamette Valley alone were lost to urban conversion. (Knaap and Nelson, 1992) However, for the five-year period from 1987 to 1992, only about eighteen thousand acres were lost in the entire state. (ODOA, 1995) According to statistics from the U.S. Department of Agriculture (USDA), Oregon has succeeded better than most other states and better than the nation as a whole in protecting its valuable farmland and in limiting its conversion to urban uses. (Daniels and Nelson, 1986; ODOA, 1997; Nelson, 1992)

In attempting to discover the basis of success for Oregon's overall farmland preservation program, various components of the program have been studied over the past thirty years. (Roberts, 1967; Sullivan, 1973; Henke, 1974; RSRI, 1976; Daniels and Nelson, 1986; Nelson, 1992; Knaap and Nelson, 1992) The earliest examples of this research focused solely on the state's Special Assessment Program, as it was the only specific policy in place at the time. Begun in the early 1960's, the program offers tax incentives to farmland owners through reduced property assessments. Early studies concluded that, by themselves, such programs were relatively ineffective at preserving land for farm use. Also, it was found that the use of tax incentives could actually lead to more perverse outcomes, such as subsidized speculation and shifts in the property tax burden to non-agricultural landowners. (Knaap and Nelson, 1992; Daniels and Bowers, 1997; Henke, 1974)

More recent studies, since 1980, have focused on the state's farmland preservation program as a whole, with special emphasis on two primary components: the effects of urban growth boundaries (UGBs) and exclusive farm use (EFU) zoning. Implemented in the mid-1970's as a part of the statewide land use planning system, these two policy instruments have been shown to be generally successful at limiting development pressure from urban sprawl as well as price and tax pressures from land speculation. (Knaap and Nelson, 1992; Nelson, 1992)

Since Oregon's statewide planning system was implemented, little additional research has been done regarding the effects of Special Assessment on farmland preservation. In many reviews, the program is relegated to a secondary status and only briefly mentioned as one of several incentives for farmers to continue their operations. (Nelson, 1992; Daniels and Nelson, 1986; Knaap and Nelson, 1992)

Based on the research completed to date regarding the various components of the Oregon farmland preservation program, one question begs to be asked: "Is there still a need for the Special Assessment Program within Oregon's current land use planning system?"

This paper is an attempt to assess the role of the Special Assessment Program in the context of the overall land use planning system in Oregon. It is my contention that the Special Assessment Program no longer plays a meaningful role in the movement to preserve land in the rural areas of the state. Also, it may actually have perverse effects on the market for land in Oregon's urban areas. I believe that the state's much-heralded farmland protection program can continue to be effective at preserving land without the tax incentive component. Finally, I believe that the citizens of Oregon would be made better off by ending the program.

The paper will begin with a brief discussion of farmland loss and the various programs used to prevent that loss. Next, there will be a review of the history and legislative intent behind both the Special Assessment Program and the statewide land use planning system. This will be followed by a demonstration of how both the Assessment Program and the planning system interact. Finally, based on the analysis of their effectiveness together and apart, I will recommend that the state government should phase out the Special Assessment Program.

ISSUE

The loss of prime farmland in the United States has been an issue of great concern in recent decades. Accelerated development from rapidly expanding urban areas has steadily consumed vast amounts of valuable farmland. It is estimated that the nation has experienced an annual net loss of 1.4 million acres of cropland since 1944. (Conard, 1983) As another example of the magnitude of this loss, in the decade from 1967 to 1977, the total amount of prime farmland removed from agricultural use was equal in area to the size of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey and Delaware, combined. (Blewett and Lane, 1988)

While no one is claiming that a shortage of farmland is imminent, it is becoming increasingly clear that much of the country's most productive farmland is under extreme development pressure. More than one-third of the limited supply of prime farmland -- fertile, Class I and II soils as identified by the Natural Resources Conservation Service -- is located within or adjacent to metropolitan counties where suburban and exurban growth pressures are strongest. (Daniels and Bowers, 1997) In recent studies, the USDA and the American Farmland Trust have determined that urban-edge agriculture is responsible for more than half of all gross agricultural sales. Included in this figure are nearly half of the country's meat and poultry products, eighty percent of its dairy products and almost ninety percent of its fruits and vegetables. (Diamond and Noonan, 1996)

Farmland in Oregon is under similar pressure. The Willamette Valley is the location of much of the state's best farmland as well as being home to the overwhelming majority of its residents. Although it makes up only about ten percent of Oregon's total supply of farmland, the Willamette Valley contains more than eighty percent of the state's prime farmland and accounts for nearly half of all agricultural products. However, the valley is also the residence for nearly seventy-five percent of all Oregonians. (Knaap and Nelson, 1992) Because of this coincidence and because of the rapid population growth of the last several decades, the threat to the state's prime farmland has remained high. (ODOA, 1995)

Overall, there has been a great deal of literature about the problem of farmland loss, its potential effects on local, regional and national economies and about ways to stem the tide of development into rural areas. (Atkinson, 1977; Coughlin, et. al., 1978; Hite and Dillman, 1981; Conard, 1983; Bergstrom, et. al., 1985; Daniels and Nelson, 1986; Blewett and Lane, 1988; Nelson, 1992; Daniels and Bowers, 1997; Wunderlich, 1997) On the other hand, there have been additional writings questioning whether this loss of agricultural land is an important issue at all, whether preservation is ultimately feasible and generally

asserting that the market will take care of itself. (Vogel and Hahn, 1972; Gardner, 1977; Fischel, 1982; Lawrence, 1988)

However, most states have decided that protection of farmland is an important issue. Also, it is apparent that, for a number of reasons, the market may fail to allocate land properly. For example, the presence of positive externalities and the inefficient pricing of urban services can cause too much land to be converted to urban use by undervaluing the land and the costs of development. Similarly, conflicts at the urban-rural fringe and the "impermanence syndrome" can cause too much land to be removed from farm use because of the decreased viability of continued agricultural production. Because of these real or perceived market failures, farmland preservation programs exist to varying degrees in every state. (Knaap and Nelson, 1992; Daniels and Bowers, 1997; Coughlin, et. al., 1978)

THEORY

A number of techniques have been adopted to protect valuable resource lands. These preservation techniques represent a broad spectrum, from incentives to regulation to outright purchase.

Outright Purchase

Perhaps the most effective way for a jurisdiction to preserve land is to simply buy it. Indeed, this is how many communities acquire and preserve land for parks and open space. Outright purchase provides direct control over the land and alleviates uncertainty regarding its ultimate use. However, there are some obvious problems with this approach. First of all, purchasing the land is very expensive. Secondly, outright purchase by the jurisdiction removes the land from the tax rolls, thereby reducing the overall tax base for the community.

Purchase of Development Rights (PDR)

Instead of buying the land outright, another means of preserving land is to purchase only the development rights to the land. In a PDR program, the bundle of rights associated with property ownership is split up and some are sold, often to local or state governments or to conservation organizations.

From the community's perspective, it gains a measure of control over the developability of the parcel at a much lower cost than through outright purchase. Also, since the land remains in private ownership, its value is not entirely removed from the tax base. From the landowner's viewpoint, he is able to retain ownership and use of the land and can pass it along to future generations. Also, in return for selling off the ability to develop the land in certain ways, the landowner receives a cash payment that can be used to improve farming operations. For example, the additional income can be used to upgrade equipment or reduce debt. Finally, the landowner receives a property tax reduction due to the diminished value of the land.

While the approximate value of a parcel's development rights is determined by standard appraisal methods, the actual sale price of the development rights is based on bargaining between the buyer and seller. Generally, an independent appraiser estimates the fair market value and the agricultural-use value of the land. The difference between these two figures represents the estimated value of the development rights and a starting point for negotiating a standard arms-length transaction.

While these programs are generally voluntary, they can be highly effective and beneficial for both the community and the landowner. The difficulty associated with PDR programs is in generating the support and funding necessary to begin the program. (Daniels and Bowers, 1997)

Agricultural Zoning

Another method of protecting productive farmland is through the use of exclusive agricultural zoning. This method directly regulates what uses are allowed on certain agricultural lands and restricts uses that are not compatible with the continued use of the land for farming. While this tool may be one of the most effective for farmland preservation, there are some drawbacks to its use. First, exclusive zoning can be difficult to institute because of its heavy-handed approach. Because of the tight restrictions imposed by the zoning, landowners may be severely hurt by the resulting loss in land value and are, therefore, often reluctant to support such proposals. In addition, there are concerns about the lack of permanence associated with zoning, as it can easily be changed if public sentiment turns against preservation. (Daniels and Bowers, 1997)

Urban Growth Boundaries (UGBs)

Urban growth boundaries are growth management tools that can help preserve productive resource lands by limiting urban sprawl. UGBs operate by essentially drawing a line around an existing urbanized area. Inside the boundary line, urban-type development is allowed and even encouraged. Outside the boundary, development at urban intensities is prohibited.

One of the greatest benefits of UGBs is their regional approach to growth management. The multi-jurisdictional coordination required to initiate and operate an urban growth boundary is an essential ingredient in controlling sprawl and its effects on open space land. However, the difficulty in establishing this cooperation is also a reason that many more UGB programs are not already in place. (Knaap and Nelson, 1992)

Right-to-Farm Laws

Still another way of promoting existing farming operations is to pass right-to-farm laws. Many people who move to rural areas appreciate the pastoral beauty and scenic open spaces provided by neighboring farms. However, conflicts can arise between farmers and non-farming residents at the urban-rural fringe. Farming practices today can generate considerable noise, dust and odors, which may be offensive to nearby residents. The purpose of right-to-farm statutes is to protect farmers from nuisance complaints generated by non-farming neighbors. While these laws do little to preserve land directly, they can act as a psychological and financial boost for farmers. It tells them that their way of life is still important and appreciated within the local community. (Knaap and Nelson, 1992; Daniels and Bowers, 1997)

Differential Assessment Programs

A final method of farmland preservation is through the use of property tax initiatives. It has been estimated that property taxes may consume as much as ten to twenty percent of net farm income. (Daniels and Bowers, 1997) The problem of high taxes reflects the fact that the assessed market value, upon which property taxes are determined, may be significantly higher than the value of the land for farm use due to speculation. This loss of income can seriously diminish the viability of farming and is considered by some to be an important factor in the early conversion of agricultural land to other uses. (Wunderlich, 1997)

To counter this trend, every state has instituted some form of property tax relief for farmers, generically called a "differential assessment program". In this type of program, land is assessed at its current-use value rather than at its full market value for as long as an eligible use is maintained. The intent of such programs is to shield farmers from the excess tax burdens brought on by land speculation. In this way, the property tax paid by the

landowner is more proportional to the amount of revenue he can reasonably expect to earn from farming.

The USDA has grouped variations of differential assessment programs into three categories: "preferential assessment", "deferred taxation" and "restrictive agreements". Within the preferential assessment category, land is taxed only at its current-use value rather than its full market value, which could conceivably be much higher. When a change occurs, the land no longer receives the reduced assessment, however, no other penalties are incurred.

Restrictive agreements, which are used relatively infrequently, are a contractual agreement between the landowner and the local government. The landowner agrees to restrict the use of the land for a set period of time in return for a reduced property assessment and lower taxes. While penalties may be imposed if the contract is broken, there are typically no consequences for changing uses once the contract has expired. (Atkinson, 1977; Daniels and Bowers, 1997)

The most widely used category of differential assessment is deferred taxation. Oregon's program, officially called the Special Assessment Program, falls within this category. This type of program allows agricultural land to be taxed at its current-use value for as long as an eligible use is maintained, similar to the preferential assessment variation. However, when a change to an ineligible use occurs, a tax penalty or "rollback" is imposed by the jurisdiction to recapture some or all of the tax savings that had accrued to the land. Among differential assessment programs in the U.S., rollback penalties range in length from two to fifteen years and may or may not include interest fees. (Wunderlich, 1997; Daniels and Bowers, 1997; RSRI, 1976)

HISTORY

As a result of the historic importance of farming to the Oregon economy, state and local governments have long sought ways to protect and promote the industry. The Oregon Legislature has been particularly supportive of farmers and farming over the years. The educational and extension facilities established throughout Oregon are but two examples of how the state has attempted to improve the lives of farmers as well as the productivity of farming. (Sullivan, 1973)

While the state's farmland preservation program has taken shape over the last forty years, the Legislature has been concerned about the plight of farmers for a considerably longer period. A review of the legislative initiatives with regard to farmland protection provides an interesting perspective on the intent of these programs.

Tax Relief

The issue of tax relief for farmland owners was first addressed by the Oregon Legislature in the early 1920's. A tax study committee in 1922 discovered that for a number of reasons, including speculation and population growth, the sale value of farmland did not accurately reflect the income potential of that land. At that time, the committee noted that the best approach to easing the tax burden on farmers "...would be to ascertain the true economic value of farm lands and tax accordingly." (Roberts, 1967, p. 435) However, the committee acknowledged the difficulty in determining the "true economic value" of land and instead recommended a variable ratio tax for agricultural land that would result in farmland being assessed twenty percent below other lands. (Roberts, 1967)

The assessment of farmland continued to be a difficult issue into the 1950's. However, by that time, it was clear that urbanization was becoming an ever-increasing threat to the state's resource lands. Thousands of acres of productive agricultural land were being lost to development each year as suburbanization and urban sprawl made land "ripe" for conversion.

Finally, at the end of the 1950's, the Oregon Legislature set about establishing a differential assessment program for the state's farmland. Using reports from the State Tax Commission and the State Department of Planning and Development, the Legislature decided that it was necessary to confront the issue of farmland loss more directly. (Roberts, 1967)

Oregon's initiative, known as the Special Assessment Program, officially began during the 1961 legislative session with the passage of Chapter 695, Oregon Laws 1961. The language of the statute provided that "...farm land which is zoned exclusively for farm use ... shall be assessed at its true cash value for farm uses and not at the true cash value it would have if applied to other than farm uses." (Oregon Laws 1961, Chapter 695, p. 1428) This program offered preferential assessment to farmland, with no penalties upon conversion, and applied only to parcels of five acres or more that were used for agriculture. (Sullivan, 1973)

This first attempt at differential assessment ultimately failed, however, and was repealed in 1963. While the apparent intention of the initiative was to provide tax relief for farmers, the use of zoning as the prime determinant of qualification in the program negated much of its use. One of the major pitfalls associated with the 1961 program was the fact that much of the state's land remained unzoned at that time, in spite of legislation giving both cities and counties the authority to enact zoning. Most farmers were, therefore, denied the reduced assessment and tax exemption because they were not operating on land "zoned exclusively for farm use." (Sullivan, 1973; Oregon Laws 1961, Chapter 695)

Farmland Preservation

The 1963 Legislature ultimately passed two laws, Chapters 577 and 619 Oregon Laws 1963, which would become the foundation for the Special Assessment Program still in use today. During this session, the Legislature made a distinction between land within a farm use zone and land outside such zones. The statute provided that land located within a farm use zone, and used exclusively for agriculture, was automatically qualified to be assessed under the "farm exemption approach" as specified by the legislation. The exemption approach was a form of preferential assessment in which land was to be assessed at its farm-use value and there was to be no penalty or liability associated with a change in use.

Land used for farming, but not located within a farm zone, could apply to be assessed under the "farm deferral approach" as specified by the statute. The deferral approach, a form of deferred taxation, provided for land to receive a reduced assessment for as long as it was used exclusively for farm use. However, the assessor was also required to maintain a notation of the full market value of the land in addition to its current-use value. When a parcel converted to another use, the landowner was required to pay a rollback penalty for up to five years in which the reduced assessment was received. The penalty was equal to the difference between the tax that was actually paid under the reduced assessment program and what would have been paid if the land had been assessed at its full market value. The rollback penalty, imposed on land outside exclusive farm use zones, was intended to be an added incentive to maintain the land in farm use. Also, the penalty allowed the local government to recapture some of the lost revenue. (Sullivan, 1973)

Further modifications were made to the program during the 1967 legislative session. In particular, three important amendments were adopted. First, the official definition of "farm use" was amended to include an income requirement, regardless of the land's zoning classification. Specifically, the landowner had to prove that he had made a "profit in money" of at least \$500 gross income for three of the previous five years. The purpose of the income requirement was to restrict access by "hobby farms" to the benefits of the Special Assessment Program. (Sullivan, 1973; Roberts, 1967)

The second important change of 1967 involved the specific exclusion of dwellings and other buildings typically found in conjunction with a farm use. In making this modification, the Legislature wanted to stress the point that the Special Assessment Program was a means

to preserve farmland from urban development. Therefore, the tax incentives provided by the program were intended solely for the land itself. (Sullivan, 1973)

In the final major change of the 1967 session, the Legislature reemphasized the purpose of the Special Assessment Program. With the adoption of this amendment, the full legislative intent of the program was codified as ORS 308.239[β 1] (this section is now ORS 308.345[β 1]):

Many farm properties throughout the state are being valued for ad valorem purposes based upon market data information which does not represent the sale of comparable property for comparable uses and the particular sales which are utilized as indicators of the value of other farm properties, upon independent investigation, have been shown to represent sales for investment or other purposes not connected with bona fide farm use. It is the legislative intent that bona fide properties shall be assessed at a value that is exclusive of values attributable to urban influences or speculative purchases. (Oregon Laws 1967, Chapter 633, p. 1577)

With the addition of this directive, the Oregon Legislature left little doubt as to its ultimate intention in establishing and maintaining the Special Assessment Program. This point was reiterated succinctly by the Oregon Tax Court in a decision from 1971. In the case of *Hulburt v. Department of Revenue* [4 OTR 475, (1971)], the court concluded that:

The major purpose of the legislation is to defeat the effect on the bona fide farmer of increased assessments growing out of the 'highest and best use' requirement. Farming operations are to be encouraged by diminution of taxes in the face of urban expansion, land speculation, determinations of 'higher and better use' and the like. (Oregon Tax Reports 1969-1971, p. 479)

The Oregon Legislature has periodically modified the Special Assessment Program since its inception, and today the program varies somewhat from its original form. One notable change in the program is that land located within exclusive farm use (EFU) zones is no longer subject to an income requirement. However, the major change to the Special Assessment Program from its early years is that the state has done away with the farm exemption approach. Presently, all eligible land is assessed under the farm deferral approach and, therefore, a rollback penalty is now imposed against all farmland when it converts to an ineligible use. While the penalty for conversion on land located outside EFU zones has remained at five years, land inside such zones is now subject to a 10-year rollback. This larger penalty on land inside exclusive farm use zones represents an attempt by the state to maintain large, contiguous parcels within productive farm zones. (ORS 308.345 - 308.407, 1997)

Statewide Land Use Planning

Like the Special Assessment Program, Oregon's current land use system was driven largely by concerns about the future of farming in the state and by the fact that previous programs had failed to stem the tide of dispersed development. Rapid urbanization during the 1960's and 1970's, particularly in the Willamette Valley, led increasingly to conflicts at the urban-rural border. More importantly, prime farmland in the state was being lost to urban uses at a very high pace. One study released in 1972 showed that the amount of urban land in the Willamette Valley was projected to increase by nearly 350,000 acres by

the year 2020. (Knaap and Nelson, 1992) Of greatest concern, however, was that virtually all of this new urban development would occur on prime farmland, resulting in the loss of a significant portion of the state's most productive agricultural land. (Daniels and Nelson, 1986)

Until 1973, land use planning within Oregon was mostly a voluntary operation conducted at the local level. While planning and zoning authority had long since been granted to cities and counties -- 1919 and 1947, respectively -- most local governments had no interest in committing resources to draft or enforce comprehensive plans. However, during the late 1960's and early 1970's, the state government began to reassert control over the land use decision-making process within Oregon. (Knaap and Nelson, 1992)

The Oregon Legislature first attempted to enact a statewide land use planning system in 1969, with the passage of Senate Bill 10. That bill required cities and counties to prepare comprehensive plans that conformed to ten general goals set by the state. However, it ultimately failed for several reasons. First, the timeline for compliance was entirely too short; local jurisdictions were given less than two years to draft and begin implementation of comprehensive plans. Secondly, the state failed to provide financial resources to assist planning efforts at the local level. Finally, the legislation failed to create a means for adequate review and evaluation of the completed plans by the state.

Although this first attempt at statewide planning failed to achieve its primary goals, it became the foundation for Senate Bill 100, which created the land use system in place today. Additionally, the early effort provided the framers of Senate Bill 100 with their first test of public support for the idea of statewide land use planning. In 1970, fifty-five percent of voters rejected an initiative to repeal SB 10. (Abbott and Howe, 1993)

Senate Bill 100, known as the Oregon Land Use Act, was adopted in 1973 and was the bellwether event in Oregon planning. Under the act, local, regional and state agencies were required to prepare comprehensive plans that provided for adoption, implementation and enforcement. Moreover, each comprehensive plan had to conform to a set of fourteen statewide planning goals -- later expanded to nineteen goals -- in order to ensure a coordinated effort with regard to issues of statewide importance.

The Oregon Land Use Act provided for sweeping changes in state planning and laid the foundation for much of the current land use system. However, many of the reforms introduced by Senate Bill 100 are beyond the scope of this paper. To that end, I shall focus my analysis on two important facets of the Oregon land use system: mandatory zoning of all resource lands in the state and the urban growth boundary.

As mentioned earlier, much of the impetus for statewide planning in Oregon came from concerns about urbanization and the future of farming in the state. The relative importance of the agriculture industry was underscored by two of the statewide planning goals: Goal 3 - Agricultural Lands and Goal 14 - Urbanization. (Knaap and Nelson, 1992)

Exclusive Farm Use (EFU) Zoning

Goal 3 clearly states that it is of statewide significance "[t]o preserve and maintain agricultural lands." More specifically, "[a]gricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy...." (DLCD, 1995, p. 6)

One important aspect of the statewide planning program was the mandatory zoning of all land. According to Goal 3, zoning was to be applied to agricultural resource land in order to "...limit uses which [could] have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices." (DLCD, 1995, p. 6) In other words, local governments were required to establish exclusive farm use zones and to place all farmland outside of established urban growth boundaries into those zones, unless otherwise exempted. With exclusive agricultural zoning in place, productive rural

land was more readily preserved, because the alternative uses allowed for such land were substantially limited. (Knaap and Nelson, 1992)

Urban Growth Boundaries (UGBs)

Goal 14 seeks "[t]o provide for an orderly and efficient transition from rural to urban land use." (DLCD, 1995, p. 21) In order to accomplish this goal, the Oregon Land Conservation and Development Commission (LCDC) required that every urban area within the state should develop an urban growth boundary to delineate where urban development could and could not occur.

From the beginning, the urban growth boundaries were intended to manage growth, not to restrict growth. It was expected that by simply channeling development into specific areas, more efficient land use would be achieved. Among the fundamental objectives of the UGBs, as promoted by the LCDC, was retention of prime agricultural lands, the efficient use of land at the urban fringe and the economic provision of public services. (DLCD, 1995)

One of the unique features of the urban growth boundary is that it virtually mandates an intergovernmental approach to land use decision-making. Local governments inside the UGB must agree to provide infrastructure and public services to make development possible. Jurisdictions controlling land outside the UGB must agree to limit the amount and type of development they will allow so as not to undermine the effectiveness of the boundary. In this way, state and local governments must work together to enforce the urban growth boundary and, thereby, manage growth while preserving important statewide resources. (Knaap and Nelson, 1992; Daniels and Bowers, 1997)

ANALYSIS

Since the first differential assessment program was put in place in Maryland in 1956, numerous studies have attempted to determine the effectiveness of such programs at preserving land for agricultural use. The majority of researchers have found that, although they are widely used, differential assessment programs appear to have had little effect on the decisions of landowners.

Similarly, many studies have been undertaken to test the economic theories behind urban growth boundaries and exclusive farm use zoning. Unlike the assessment programs, however, the theories behind the UGBs and EFU zoning appear to hold true and they have been shown to be generally effective at preserving farmland.

Effectiveness of the Special Assessment Program

In spite of the fact that it has been in place for nearly four decades, relatively little is known about the true effectiveness of the Special Assessment Program in Oregon. This is due, in large part, to a lack of adequate data about the program.

Early in the program's history, detailed statistics were kept about the use of the Special Assessment. At the local level, state law required county tax assessors to record not only the farm-use value, but also the full market value of every parcel participating in the program. In addition, the assessors kept track of how much land received the reduced assessment and where the land was located.

However, in the early 1970's, the agriculture industry successfully lobbied the State Legislature to remove the requirement that county assessors keep records of both farm-use and full market valuations of the land. (Oregon Laws 1971, Chapter 629) It has been suggested that agricultural interests sought the change because they "...preferred not to have the precise magnitude of their tax benefits a matter of readily accessible public record." (RSRI, 1976, p. 206) After the change in the statute, most local assessors no

longer kept data concerning the amount and location of acreage included in the Special Assessment Program.

The relatively recent passage of Measures 5 and 50 has again changed the way county tax assessors do their jobs and there is once again a requirement to keep records of both farm-use and full market valuations. However, as these mandates are relatively new, significant portions of the state still have not been reassessed for full market value and county tax rolls are in a state of flux.

Although better records are again being kept at the county level, the loss of more than twenty years of property value information has resulted in an extensive gap in available data. Consequently, it is very difficult, if not impossible, to determine the exact effects of the Special Assessment policy with regard to farmland preservation in Oregon. For this reason, it is necessary to consider the effectiveness of differential assessment programs from a more general point of view.

For an indication of the Special Assessment Program's actual effectiveness in Oregon, it may be possible to use statistical analysis. For example, a regression analysis of data from 1963 to 1971 could demonstrate the impact that the program had on the conversion of land in the absence of other policies currently in place today. Such an analysis could be the basis for further research on this topic.

Differential assessment programs are widely used and typically popular with those who are eligible. This popularity likely stems from the use of such programs as a property tax relief measure. However, for a number of reasons, differential assessment programs, by themselves, have generally been found to be ineffective at preserving productive farmland. First, these programs are not well targeted for influencing land use decisions. Second, because such programs often have lenient qualification standards, widespread abuse has occurred and much of the intended benefits end up subsidizing speculation. Finally, because differential assessment programs artificially reduce the assessed value of land, tax revenues for local jurisdictions are often reduced and significant shifts in tax burden can occur. (Daniels and Bowers, 1997)

Tax Relief is Misdirected

One criticism against differential assessment programs is that they are not suitably targeted for influencing land use decisions. In particular, some opponents say that property taxes are not a major impetus for the premature conversion of farmland. Even farmers themselves do not often claim high property taxes as the primary reason for no longer farming. Instead, they are more likely to cite lifecycle factors, such as retirement, as the main rationale. (Brown, et. al., 1981) Other farmers point to the rising costs of equipment, fuel, fertilizers and pesticides as the justification for ceasing their operations. (RSRI, 1976) Still others claim that they sold their property because they received an offer that could not be refused. To this last point, one critic of differential assessment programs notes that, in comparison to the opportunity to sell their land for huge sums of money, a relatively small tax differential is a light burden for most landowners. (Stocker, 1976)

An analysis of the dynamics of the urban fringe real estate market reveals other ways in which property tax relief policies are misdirected. One study surveyed urban fringe landowners in metropolitan areas in both the United States and Canada looking for patterns in ownership and use of land. The researchers found that changes in rural land ownership may begin as much as twenty years before the land is actually removed from farm use. In other words, long before development pressures approach some rural areas, investors and developers begin to buy up land at the urban fringe. (Brown, et. al., 1981)

In particular, investors and developers were found to own more than forty percent of fringe land in U.S. metropolitan areas under intense development pressure. Even in fringe areas where development pressure was not expected for ten or more years, investors and developers were found to already own nearly twenty percent of the land. While these new owners may keep the land in agricultural production, they are typically not farmers

themselves. Instead, they seek only a nominal income from the land by leasing it to farmers while waiting for its development value to rise. (Brown, et. al., 1981)

The increasing use of "purchase options" by developers further clouds the issue of fringe land ownership. Purchase options are a preliminary financial arrangement between a landowner and a prospective buyer that gives the latter the first option of purchasing a parcel. Such an agreement typically specifies the purchase price of the land as well as the time period in which the prospective buyer must act or lose the right to the option. Under the terms of such purchase agreements, farmers still legally own the property, but developers and investors may have an important say in how land is used even before buying it.

As development pressure rises, the likelihood of selling or developing the land also increases. Brown, et. al., (1981) found that only about forty percent of landowners facing intense development pressure expected to own their land five years into the future. It is to be expected that developers and investors would seek to sell or develop their land during that time. However, the study suggests that at least thirty percent of the farmer-landowners also expect to sell within five years. It is not known whether the farmer's expectation to sell is based on an anticipation of rising costs, diminished productivity or some other reason. However, from this study it seems clear that differential assessment programs have only a limited opportunity to influence land use decisions by farmers and an equally limited ability to actually preserve farmland at the urban fringe.

Subsidy to Speculation

The differential assessment technique may, at best, only delay the conversion of land from rural to urban use. At worst, it may actually encourage and subsidize the process. (Blewett and Lane, 1988; Wunderlich, 1997; Coughlin, et. al., 1978) By reducing the property taxes on land, its purchase price increases even as its holding costs decrease. Investors and developers are then willing to outbid farmers for fringe property because the reduced taxes makes it more affordable to hold the land while it "ripens" for development. (Chicoine, et. al., 1982)

As development pressure approaches land beyond the urban fringe, the market value will begin to significantly deviate from the farm-use value because of increased speculation regarding non-farm uses. However, by that time many of the landowners are no longer farmers, but are investors or developers. Therefore, by the time that the differential assessment program is actually producing a benefit to the landowner, much of that benefit is accruing to investors and developers who have no intention of preserving the existing farm uses. Therefore, the tax reduction on farmland inadvertently subsidizes speculation and changes in patterns of ownership at the urban fringe.

As a subsidy, differential assessment may be viewed as a tax expenditure to the owners of agricultural land. In other words, the public sector is essentially renting or leasing the development rights of the land. However, this occurs only for as long as the landowner chooses to participate in the program. Most farmers and investors will take advantage of the tax incentive, but only to the extent that it does not limit their ability to develop their land. In this sense, such a policy may only serve to delay the conversion process without actually stopping it. (Blewett and Lane, 1988; Stocker, 1976)

Additionally, where differential assessment programs are voluntary, the owners of land closer to urban areas may be more reluctant to participate in the incentive program. Especially in the face of intense development pressure, they are likely to be hesitant about limiting their potential alternatives. Instead, the tax relief program is used to benefit farmers who are not experiencing significant development pressure. In this way, public money may be "wasted" in preserving farmland that is under no pressure to convert to non-farm uses. (Coughlin, et. al., 1978)

Unexpected Consequences

The inclusion or exclusion of tax penalties can also affect the usefulness of differential assessment programs. In situations where the program does not include a penalty or only a small rollback upon conversion to an ineligible use, the likelihood of influencing development decisions is even further diminished. In these cases, the deferment of taxes acts as a de facto interest-free or low-interest loan to the landowner. (Coughlin, et. al., 1978)

However, in cases where there is a significant tax penalty, the results can be even more perverse. In some cases, such a policy may actually exacerbate the loss of prime farmland and induce sprawl. For example, in many differential assessment programs, the current-use value of farmland is determined largely by its productivity. Since prime farmland is more productive than marginal farmland, it will generally have a higher current-use value. Therefore, the difference between the current-use value for farm use and the market value for non-farm use will be smaller for the prime farmland. This smaller difference means that rollback penalties will be smaller on the prime farmland than on marginal farmland, which could encourage its conversion before that of the lesser quality agricultural land. (Henke, 1974)

Similarly, the higher rollback penalty could induce sprawl. If the difference between market value and farm-use value decreases with distance from the urban area, then penalties will be smaller for land farther from the city. This effect could encourage the premature conversion of land away from the urban area, resulting in "leapfrog" development. (Henke, 1974)

Finally, differential assessment programs may actually cause farmland to be taken out of production earlier than would be the case without the tax benefit. In programs where there are few or no requirements regulating the continued use of the land for farming -- such as annual gross income requirements -- farmers are implicitly encouraged to reduce production on the land. For example, high quality farmland may be used only for field crops, such as corn, hay or wheat, which require minimal investments of time and money. Other landowners may choose to end farm production altogether while still enjoying the tax benefits. In these instances, highly productive farmland may sit completely idle while its value for other uses increases. (Lawrence, 1988)

Loss of Tax Revenue

Tax equity is a benefit often cited by advocates of differential assessment programs. Because farmers and ranchers typically have vast land holdings, they tend to pay a disproportionate share of property taxes while consuming relatively little in the way of public services. Research by the American Farmland Trust has shown that owners of farmland may pay three to four times as much in property taxes as they receive in community services. (Daniels and Bowers, 1997) Considering the concept of paying taxes in proportion to benefits received, this overpayment may justify some property tax relief for farmers. (Atkinson, 1977; Coughlin, et. al., 1978)

However, what is intended as a tax break for agricultural landowners can often cause difficulties for local jurisdictions. When the assessed value of taxable land is decreased because of the differential assessment program, significant reductions in the local tax base can occur.

Sometimes the reduction in the tax base can be significant. In Oregon, for the 1970-1971 tax year, the difference between the market value and the farm-use value of land included in the program was almost \$445 million. (Henke, 1974) Estimating the average county tax rate at two percent, this reduction in assessed value represented a loss of almost \$9 million for local governments statewide. A study prepared for the Council on Environmental Quality estimated that, by 1975, the loss of tax revenue to local jurisdictions in Oregon might have been as high as \$24 million annually. (RSRI, 1976)

The effect of this revenue loss can be especially devastating when considered from the aspect of individual jurisdictions. Urban counties are generally spared substantial losses of revenue because they tend to have very little agricultural land. However, rural counties can often see dramatic reductions because much of their tax revenue is generated from farmland. For example, in 1970, Multnomah County, Oregon lost over \$17 million in taxable land value due to the Special Assessment Program, while Morrow County, Oregon lost just over \$20 million. However, for prosperous Multnomah County, the revenue loss represented less than one-half of one percent of its total tax base. For agriculturally-dependent Morrow County, on the other hand, the revenue loss represented nearly twenty-five percent of its total tax base. Other rural counties in Oregon similarly lost large percentages of revenue due to the Special Assessment Program in 1970: Umatilla County - thirteen percent and Harney County - seventeen percent. (Henke, 1974; Dunford and Marousek, 1981)

Shift of Tax Burden

As a result of the loss of revenue at the local level, either public services must be diminished or the tax rate on all properties must be increased to make up for the shortfall. The increased tax rate not only negates some of the intended benefits for farmland owners, but can also mean a substantial increase in taxes for owners of non-agricultural properties.

The size of the tax shift depends, in large part, on the percentage of the total tax base that is eligible for the reduced assessment and the percentage of property owners who enroll their land in the differential assessment program. Small tax shifts will occur in areas where only a small percentage of the land is eligible for and participates in the program. Conversely, large shifts will occur where a large percentage of the land is eligible and enrolled. In the case of rural Morrow County mentioned above, tax rates on all properties would have had to increase by thirty-three percent to make up the lost revenue. (Henke, 1974; Dunford and Marousek, 1981)

Clearly, there are issues of equity involved with providing a potentially significant tax reduction for one segment of the population while increasing the taxes of all other groups to make up the difference. Such programs have the appearance of government-giveaways where one preferred class of landowner is allowed to pay a reduced property tax without suffering any actual loss in property value. Differential assessment programs obviously stray from the concept of taxing all properties in the same proportion to market value, which is considered by many to be a basic measure of fairness. While the percentage of taxes paid for services received may undoubtedly be fairer and closer to reality because of the reduced assessment, the artificial means by which it is accomplished seems to be poor public policy. (Henke, 1974; Stocker, 1976; RSRI, 1976)

Effectiveness of Urban Growth Boundaries and Exclusive Farm Use Zoning

Just as differential assessment programs have been widely studied since their inception, so too have the other policy instruments that were instituted as part of the Oregon Land Use Act. Within only a few years of the implementation of statewide land use planning, studies were already underway to determine the effects of the urban growth boundaries and exclusive farm use zoning. Evidence to date suggests that these preservation tools have caused development pressure on farmland in Oregon to decrease and agricultural land is now being lost somewhat more slowly than in other parts of the country.

Urban Growth Boundary Delineates Rural from Urbanizable

Early research demonstrated how the urban growth boundaries (UGBs) should theoretically transform the real estate market. Whitelaw, in 1980, explained that if the UGB were truly an effective tool for influencing land use decision-making, then the price of land

inside and outside the boundary would reflect this. Specifically, since urban-type development would no longer be allowed outside the UGB, the price of land outside the boundary should fall relative to the price of land inside the boundary. This is because developers and investors, who would have bid for land outside the boundary, were now constrained to bid on the limited supply of land within the boundary. (Knaap and Nelson, 1992; Nelson, 1992)

Nelson (1985-1986) extended the basic theory of Whitelaw by including an additional hypothesis for land in close proximity to the growth boundary. Nelson suggested that land prices inside the UGB would rise slightly for some distance approaching the boundary as the amenity benefits of nearby open space and privacy were capitalized into the land value. Alternatively, he suggested that land prices outside the UGB would fall slightly for some distance approaching the boundary as the disamenity effects of nearby urban activities were capitalized into farmland values. (Knaap and Nelson, 1992)

Empirical studies of the Salem and Portland-area urban growth boundaries have demonstrated that the basic economic theories underlying the UGB do indeed hold true. After the boundary lines were drawn, developers and investors began to perceive that the UGB was a fixed line separating rural land from urbanizable land. Once this perception took hold, it began to impact the market for developable land and prices inside the boundary were shown to be higher than prices for comparable land outside, as Whitelaw had predicted. From this result, it is clear that urban growth boundaries are successful in transferring urban demand away from farmland. (Knaap and Nelson, 1992; Nelson, 1992)

In the Salem study, Nelson was successful in demonstrating that proximity to the UGB also affects land values. Specifically, the value of urban land rose within approximately one mile of the UGB, as residents were willing to pay extra to locate near the open space outside the boundary. Also, the value of rural land fell within approximately three miles of the UGB, as farmers were willing to pay extra for land away from the congestion and pollution inside the boundary. This proximity-effect further signifies that the boundary is perceived to be a fixed line and that no development is expected outside it. (Knaap and Nelson, 1992; Nelson, 1992)

Adequate Suppression of Speculation

In combination with the urban growth boundaries, exclusive farm use (EFU) zoning has been shown to be relatively effective at minimizing speculation on farmland in rural areas. Nelson hypothesized that for EFU zones to be effective policy instruments, they must impact the expectation of developability. Specifically, the reduction of development expectations would manifest itself as a loss in value for the land just outside the boundary.

Having already demonstrated the proximity-effect in Salem, Nelson studied portions of rural Washington County, Oregon in the mid-1980's. This time, Nelson found that land values in exclusive farm use zones varied as they approached the boundary with exurban land. The variations were dependent upon the minimum lot size in the neighboring exurban zone. Where the minimum lot size was five to ten acres, the value of the EFU land rose as it approached the boundary line. Where the minimum lot size in the neighboring exurban zone was at least twenty acres, however, the value of the EFU land fell as it approached the boundary.

Taken together, the Salem and Washington County studies demonstrate that the combination of urban growth boundaries and exclusive farm use zoning are generally effective at transferring speculative pressure from farmland to urban or large-lot exurban areas. (Knaap and Nelson, 1992; Nelson, 1992)

Interaction of Special Assessment and Land Use Planning System

In analyzing the manner in which the two programs interact, it can be argued that Special Assessment is not only ineffective, but may actually be counterproductive to the public interest.

Interaction Outside the Urban Growth Boundary

As mentioned above, the combination of urban growth boundaries and exclusive agricultural zoning has been found to be generally effective in mitigating urbanization pressures on rural lands. Specifically, by reducing the expectations for development, the two policy instruments have largely succeeded in eliminating speculation on farmland outside the UGB.

With little or no speculative pressures on the property, market values for the land remain at, or very close to, the current-use value as farmland. Landowners, no longer subjected to extreme variations between market and current-use value, are not burdened by the unfairly high property taxes caused by speculation for non-farm purposes. Clearly then, economic theory suggests that, in conjunction with the current land use system, the Special Assessment Program has little or no effect on land conversion outside the urban growth boundary.

Interaction Inside the Urban Growth Boundary

While it can be reasoned that the Special Assessment Program no longer has an impact outside the urban growth boundary, it may also be shown that the program is actually counterproductive to the public interest inside the boundary. In order to understand this point, it is necessary to examine how the Special Assessment Program and the urban growth boundary influence the urban land market.

The urban growth boundary essentially acts to constrain the supply of developable land within a defined, contiguous area. To the extent that the boundary is rarely expanded, and then only by relatively small increments, available land inside the UGB may be seen as an exhaustible resource. For this reason, the operation of the land market is likely to be significantly altered.

As with any exhaustible resource for which there is no adequate substitute, the price will rise as the available supply decreases. The owners of the remaining land are faced only with the decision of when to make their resource available to the marketplace. With a profit-making motive in mind, and knowing that the value of the resource will only increase as it becomes more scarce, most owners will likely refrain from selling in the near-term with the expectation of obtaining a higher price later. (Hotelling, 1931)

As discussed earlier, the Special Assessment may be viewed as a subsidy that makes it cheaper for landowners and speculators to hold land prior to its "ripening" for development. In the context of an exhaustible resource, the tax relief brought about by the Special Assessment Program makes it easier for landowners to act in a socially-suboptimal manner. By reducing the cost of holding land, one of the primary means of inducement to sell earlier is undercut. The result is that land is held off the market longer than would otherwise be the case. Therefore, the price of land to society becomes higher and any subsequent use to which the land might be put, whether public or private, becomes more expensive. In the absence of the Special Assessment Program inside the urban growth boundary, land would theoretically be made available to the marketplace sooner and, therefore, would be less expensive to develop.

POLICY RECOMMENDATION

Based on the previous analysis, it seems apparent that there is no longer a need for the Special Assessment Program within Oregon's current land use system. For that reason, the State of Oregon should phase out the program. This suggestion is based primarily on the interaction of the assessment program and the statewide land use system. However, other factors, such as less government interference with the marketplace and better public policy, also play a part in calling for an end to the program.

As has been demonstrated, economic theory suggests that, outside the urban growth boundary, the Special Assessment Program has little or no impact. This is due to the fact that other policy instruments in the state's overall farmland preservation program are already eliminating development and speculative pressure on agricultural lands. The absence of such pressures means that the market value of the land stays at, or very close to, the farm-use value of the land. "The result is that the price of land - agriculture's biggest capital input - reflects [only] agricultural values." (Diamond and Noonan, 1996, p. 239)

Clearly then, the original legislative intent of the Special Assessment Program is being met as farmland values are generally "exclusive of values attributable to urban influences or speculative purchases." (ORS 308.345 [β 1]) Farmland owners are being shielded from the excess tax burdens associated with speculative pressure. Therefore, there is no longer a reason why farmland outside the UGB should not be assessed at its full market value since agricultural use is the "highest and best use" for the land.

Another reason for terminating the Special Assessment Program is that the overall farmland preservation effort should not be harmed in any way. The goals and intentions prescribed for the Special Assessment Program will continue to be met by the combination of the urban growth boundary and exclusive farm use zoning. Therefore, the preservation movement should continue to function efficiently as if unaffected by the loss of one of its components. As a whole, the Oregon preservation program should continue to be as successful in the future as it has been over the past twenty years.

While the effort to retain farmland outside the urban growth boundary continues essentially unchanged, the operation of the urban land market inside the boundary should improve. Since land within the UGB can be seen as an exhaustible resource, it is socially-optimal to make it available for development sooner rather than later.

As property taxes act to encourage such socially-optimal behavior, the Special Assessment Program undercuts that effort. Instead, the tax incentive makes it cheaper for land to be held off the market longer than it would be without the program. By ending the Special Assessment Program, future land prices within the urban growth boundary should theoretically be reduced. In this way, the citizens of the state would be made better off.

Yet another reason for phasing out the program follows from the fact that land inside the urban growth boundary is supposed to become urbanized. Much of the work that goes into setting and expanding the UGB is based on determinations of how much urbanizable land will be required during a given planning horizon. If some land within the UGB remains undeveloped, then the projections of buildable land and housing unit capacity, upon which the boundary is based, may be seriously undermined. Therefore, to the extent that the Special Assessment Program effects the timing of land coming onto the market and the price at which it is made available, then it could significantly alter the effectiveness of the UGB. (Mildner, et. al., 1986)

In addition to allowing the urban land markets to function somewhat more freely, ending the Special Assessment Program would have other public policy benefits. As described earlier, the shifting of tax burden at the local level is one of the primary criticisms against differential assessment programs. As the local tax base declines, the tax rate on all property must rise if services are to continue at existing levels. The rising tax rate not only negates some of the original tax break for farmland owners, but it can represent a sizable tax increase for all other property owners. (Dunford and Marousek, 1981)

However, perhaps the most contentious aspect of this shift is that it is artificially induced. Such a government-sponsored action is questionable at best and tax equity becomes a primary concern. With Oregon's land use system in place, ending the Special Assessment Program would bring about the appearance of greater fairness and less government interference without hurting farmers. Farmland owners would continue to pay taxes based on the farm-use value of their land. However, the reduced taxes would now be the "...fair and rational by-product of lower assessment value." (Henke, 1974, p. 130)

The appearance of greater fairness will likely make whatever shifts in burden that have occurred more palatable to those who pay increased taxes. Certainly, it is better public policy to allow all land to be taxed at its true market value rather than having the government artificially favor one class of property over all others.

Considering the arguments presented above it seems apparent that there are no longer significant reasons for the Special Assessment Program to continue. However, since the program is still in existence there must be some compelling reasons for extending its use. One such reason may be that the program is still necessary because the same factors continue to operate against owners of farmland. Perhaps there is still an element of speculation and urban pressure on the state's farmland. While this may represent the basis for further research on the topic, the hypothesis of continued speculation seems contrary to economic theories and the majority of existing evidence.

Another possible reason for preserving the program could be associated with the perceived impermanence of the Urban Growth Boundary. For example, it may be argued that speculation might reappear on land located outside urban growth boundaries during periods in which a shift in the boundary is contemplated. Any adjustment of the UGB from its original position may be a signal to developers that future movements will always be possible. In this way, movement of the UGB may destroy the perception that it is a fixed line that cannot be violated. At that point, developers will begin to believe that any land outside the UGB is potentially fair game and that it is only a matter of time before their investments pay off. However, as the planning horizon for such boundary modifications is on the order of twenty years, such periods of speculation should be relatively infrequent.

Additionally, the long planning horizon should limit the amount of speculation that occurs prior to the designation of the urban reserves. Most investors and developers are active in the urban land market and they generally have clear intentions for selling or developing their land within the near future. (Brown, et. al., 1981) Considering these characteristics, it seems unlikely that most investors and developers would be willing to speculate on land that may not be developable for more than twenty years. Instead, they may be likely to wait for urban reserves to be designated so that they have some assurance that any land they purchase will be developable within a reasonable timeframe. However, once land is included within an urban reserve area, future development is to be expected and so it's ultimate conversion is not entirely premature.

Still another possible reason for the program's continuance may be that it is simply entrenched as a tax benefit for farmland owners, who constitute a strong force in the state's politics. For several reasons, this may be the most likely explanation for the continuation of the program. Indeed, the farm lobby has been relatively successful in advancing favorable tax legislation and policy amendments since the early years of the Special Assessment Program. (Sullivan, 1973; RSRI, 1976)

One example of the program's continuing benefit to farmland owners is the method used to determine the farm-use value of the lands within the program. Instead of determining the farm value through the use of "comparables" as is typically done with residential developments, the value is determined by using an income approach. In this method, the value of the farm is determined by the income that can be reasonably derived from agricultural activities on the specific parcel itself. By evaluating the farm value in this manner, the assessors virtually negate the effects of urban influences or speculative pressures. In this way, it is possible to generate a tax benefit for farmland owners whether or not their parcel is actually affected by urban influences.

Therefore, even if development and speculative pressures have already been removed from farmland through the use of the urban growth boundaries and exclusive agricultural zoning, the Special Assessment Program may still generate a tax benefit to landowners. However, this seems to go against the original intent of the program as described by the Oregon Tax Court in *Kellems v. Department of Revenue* [4 OTR 561, (1971)]. In that case, the court noted that "[t]he legislative policy manifested by statute is to give a tax benefit which will stimulate the retention for agricultural use of currently productive agricultural land." (Oregon Tax Reports 1969-1971, p. 564)

The situation now before the state and county governments is to determine whether the reduction of taxes is still necessary in spite of the fact that urban expansion and land speculation have largely been curtailed. If the answer is yes, then the program is simply a tax benefit program for owners of farmland. Such an answer does not necessarily represent bad public policy as long as it is explained to and approved by the rest of the general public which is making up for the lost revenue. However, the legislative mandate of the program should be modified to reflect this new purpose and it should no longer be passed off as a way of protecting farmland from urban sprawl. If the answer is no, then the program may be thought to have outlived its useful life and should, therefore, be ended.

CONCLUSION

Writing in 1974 about the preferential tax treatment of farmland, Joseph Henke concluded that:

Regional land control agencies with a clear mandate to control sprawl and preserve undeveloped land are necessary. To achieve a meaningful program of open land preservation, state and local governments should join in comprehensive restrictions on development of farmland.... Where speculation is dampened by a credible long-term public commitment to preserve open space, land prices and assessed values should moderate. Across-the-board tax breaks for farm owners should then be reexamined. (Henke, 1974, p. 130)

This paper has attempted to begin the process of reexamination. It has used simple economic analysis to determine what effect the Special Assessment Program has within the context of the state's land use planning system.

At the time of Henke's article, the details of Oregon's land use system were only just beginning to take shape. No one knew at that time that the combination of urban growth boundaries and exclusive farm use zoning would be so successful at preserving farmland or that the public commitment would remain so strong. However, evidence from various studies suggests that development and speculative pressures have been largely eliminated through the instruments of the statewide planning system. Also, history has shown that the public commitment has remained strong as the state planning system has withstood several legal challenges.

It seems apparent that the Special Assessment Program in Oregon has exceeded its useful life as a preservation technique. Generic studies have indicated that such programs have, at best, a limited ability to preserve land for agricultural use. Moreover, a simple economic evaluation of Oregon's land use system demonstrates that the tax incentive program has no theoretical effect in the state's rural areas. On the other hand, in the state's urban areas, the Special Assessment Program may actually undermine the effectiveness of the urban growth boundaries and cause harm to the overall public interest.

The time has come for Oregon to end the preferential treatment of farmland and return to the "highest and best use" methodology in assessing all of its land. At the very least, the

legislative mandate of the program should be reevaluated to reflect its function solely as a tax benefit program for owners of farmland. It seems clear that such a change will not hurt the overall effort to preserve farmland within the state. Farmland owners will continue to pay taxes based on the farm-use value of their land. However, the state will end a dubious program of favoring one set of landowners over all others and the scale of fairness will be more balanced.

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