Environmental Law Centre's Comments on the MLA Farm Assessment Review Committee Discussion Paper

Background to Comments

The Environmental Law Centre has long championed the entire range of private conservancy efforts, from a farmer's simply informally maintaining a bit of nature on otherwise developed agricultural land, through to long term commitments such as conservation easements. Indeed, the Centre was instrumental in prompting and aiding the law reform process that eventually lead to amendments to the *Environmental Protection and Enhancement Act* [1]that enabled private landowners, in certain situations, to protect the natural values of their land in perpetuity through conservation easements. We applauded this Government incentive to conserve natural land values.

We are concerned that certain aspects of municipal property taxation discussed in the *Discussion Paper on Farm Property* Assessment (the "Discussion Paper") could act as a disincentive to conservation and lead to needless development of natural aspects of Alberta's farm land landscape. Below we voice our concerns and make recommendations. We begin by putting our concerns in an historical context

History: Assessment of Farm Land under the Municipal Taxation Act

Prior to January 1, 1995, property taxation in Alberta was assessed and charged under the *Municipal Taxation Act* [2]. The Act required all land to be assessed at "fair actual value" exclusive of improvements (s.9). The *Fair Actual Value Regulation* states that except for farm land, and other specified land, "fair actual value" means market value[3]. For farm land "fair actual value" means productive value, or agricultural use value, as set out in the *Assessments Standards Regulation* [4].

Section 2 of the *Farm Land Regulation*[5] provides a number of exceptions to assessing as farm land to ensure that certain parcels not used for farming would not enjoy the more favourable assessment. However, section 3, titled *Conservation purposes* provided an important exception. It stated:

> Notwithstanding section 2, any part of a farm land parcel that is used for conservation purposes shall be valued at the agricultural value.

---

[1] *Environmental Protection and Enhancement Act*, S.A. 1994, c.E-13.3, s.22.
[2] *Municipal Taxation Act*, R.S.A. 1980, c. M-31, R & S 1994, c. M-26.1, eff. Jan. 1, 1995.
[3] *Fair Actual Value Regulation*, Alta. Reg. 397/85, s.3.
[4] *Assessments Standards Regulation*, Alta. Reg. 394/75.
[5] *Farmland Regulation,* Alta. Reg. 166/89.

Accordingly, under the previous tax regime, farm land parcels used for conservation purposes, such as wetlands or forests kept in a natural state were by law required to be assessed at agricultural use value.

Regulations under the *Municipal Taxation Act* also required regulated assessment for conservation lands for parcels that were not actively farmed. This is found in the Fair *Actual Value Regulation*. Section 5 of this Regulation states in effect that non-farm land parcels (other than golf courses) must be assessed at fair actual value, except for any areas in excess of 3 acres, that are "...not used for any purpose, or [are] used for farming operations or conservation purposes". The Regulation required that such areas be assessed at agricultural use value.

In summary, under the *Municipal Taxation Act*, the previous property tax regime, natural lands maintained in a rural setting were assessed as farm land. Thus, the property taxation system recognized the varying fabric of rural Alberta – land in cultivation or pasture dotted with forests, seamed with windbreaks, and speckled with wetlands. Whether green spaces covered an entire parcel, such as a quarter section, or were interspersed in a farmed parcel, for property tax purposes, law recognized that they formed part of the overall farming landscape.

Assessment of Farm land under the Municipal Government Act

On January 1, 1995 the property taxation provisions of the *Municipal Government Act*[6] repealed and replaced the *Municipal Taxation Act*. The *Standards of Assessment Regulation*[7] under the Act directs the assessor to assess property that is "used for farming operations" at agricultural use value, and all other land at market value.[8] The *Alberta Farm Land Assessment Minister's Guidelines* require that in assessing agricultural use value of a parcel used for agricultural purposes an assessor must reduce value for the presence of certain natural features like wetlands, tree cover or rocky areas. The amount of reduction will depend on the nature of the natural hindrance to agricultural use. Although assessment practice may vary from municipality to municipality in this regard, generally speaking, if an assessor is satisfied that at least part of the parcel is used for an agricultural purpose, and the rest is left natural, the assessor will most likely assess the parcel as farm land.

So far, the present regime follows the *Municipal Taxation Act* treatment of agricultural lands. However there is a substantial difference between the Acts that can pose a formidable disincentive from simply leaving parcels of undeveloped farm land natural to imposing permanent conservation easement restrictions on parcels. The difference is, unlike the *Municipal Taxation Act*, the *Municipal Government Act* contains no exception for conservation lands. This difference will cause the most disincentive for entire taxable parcels where no farming operations occur, since, as noted earlier, if some farming operations occur in a parcel the entire parcel most likely will be assessed on its

[6] *Municipal Government Act*, S.A. 1994, c. M-26.1.
[7] *Ibid.,* s.292(2). *Standards of Assessment Regulation*, Alta. Reg. 365/94.
[8] *Standards of Assessment Regulation*, Alta. Reg. 365/94, s.2(1).

productive value. However, a change in valuation standard from agricultural use value to market value can be considerable. For example, the Discussion Paper notes that a certain parcel of treed land in Wetaskiwin at market value would be taxed at $2000, but at agricultural use value, the same parcel would be taxed at only $50.[9]

The Discussion Paper

Definition of "farming operations" and woodlots

The Discussion Paper is an improvement over the current property tax regime insofar as it includes managed woodlots under the definition of "farming operations". However, this does not go far to remove disincentives to leaving a bit of nature here and there. To qualify woodlots must be commercial lots managed under a professional forester's plan. The inclusion of woodlots does not remove incentives to develop parcels of bush or small forested areas within the agricultural landscape. Nor does the inclusion address potential penalties on those who choose to place development restrictions on parcels for conservation purposes by way of conservation easements.

Taxation of parcels of land not used for farming operations

Section 5 of the Discussion Paper is titled "Assessment of Land Not Used for Farming Operations". This section relates how under the *Municipal Taxation Act* taxed rural land not used in for farming operations was assessed on the basis of the "...first three acres at market value and the balance at productive value as if it were farmland" (page 16). The Discussion Paper states how owners of land not used for farming operations in rural municipalities have expressed concern over the change in the *Municipal Government Act* that requires the entire parcel must be assessed at market value. The Committee however, without explanation, recommends that all land not used in farming continue be assessed and taxed on the basis of its market value.

Thus, under the recommended property tax regime the incentive to develop parcels of green spaces would remain and Albertans are still given reason to refrain from voluntarily restricting development to maintain natural values by way, for example, of conservation easements or other instruments.

Assessment and taxation of parts <u>of parcels</u> not used for farming purposes.

The Discussion Paper seeks to ensure that only property that is being used for farming operations be assessed as farm property. Under the Discussion Paper, all property other than property used for farming is to be assessed at market value. In this regard, except for the new definition of "farm property" the Discussion Paper reflects current law. However, a provision in the Discussion Paper, if carried into law, could act as a further

[9] Discussion Paper, at 9.

disincentive to conservation and to needless alteration of Alberta's agricultural landscape. Page 9 of the Discussion Paper states

> "All property or **parts of property** not qualifying as farm property will be assessed and taxed on the basis of market value. This will include both land and improvements (buildings)" [emphasis added].

Under current law, an assessor may not reach within a parcel to assess part of a parcel on the agricultural use standard and part on the market value standard unless specifically authorized by the legislation. The *Standards of Assessment Regulation* contains such authorization with respect to specified areas within a farm land parcel such as three acres used for residential purposes and areas used for industrial or commercial purposes. Under current legislation, these areas must be assessed as if a separate parcel of land so that, in the end, each parcel, or deemed parcel is assessed by the valuation standard or market value standard.

The quote above from the Discussion Paper suggests that an assessor may go within any parcel of land that otherwise is to be assessed at agricultural use value and assess it at market value. The Discussion Paper does not indicate whether there will be limitations on this power such as currently is imposed by the *Standard of Assessment Regulation*.

Keeping this power in without limitations could have profound undesirable effects. Consider a hypothetical where a parcel, a quarter section of land, is partly put to agricultural use and is partly left in a natural state, say bush, ponds and forests. Unless limited, under the proposal an assessor would have the right to assess the portion actually used for agricultural purposes at agricultural use value and assess the balance at market value. As mentioned earlier, the difference between an agricultural use assessment and market value assessment can be startling. To avoid having natural areas assessed and taxed at market value, farmers and rural residents justifiably would be moved to develop green areas and wetlands, and conduct farming operations on land not suitable for farming.

Recommendations

Two recommendations

In view of our concerns we make three recommendations on farm property assessment and tax law reform:

1. That revised legislation requires assessment and/or taxation of conservation lands so that landowners will not be potentially penalized for maintaining natural areas at the parcel level.

2. That revised legislation specifically limits an assessor's power to reach within parcels to assess natural areas at market value.

What form should revised legislation take regarding assessment and taxation of farm parcels not being used for agricultural operations?

(i) Assess natural conservation areas on the agricultural use valuation standard

Three options must be considered. The first and easiest option would be assess and tax farm lands/natural rural areas not actively used for agricultural operations on the agricultural use valuations standard. There are several good reasons for implementing this option:

A. The first reason is grounded in policy, and perhaps, philosophy. It makes sense to make the same exception from the market assessment model for natural lands as is made for lands used for agricultural purposes.

- For one, the economic model on which market value assessment is based fits neither agricultural lands, nor lands kept in a natural state. The economic market model presumes that *rational* persons act in a way to increase the market value of their property. It follows that under the market model rational people who own agricultural land near an urban centre would subdivide and develop the land to make more profit off the land. But we as a society do not want agricultural land to be changed to residential or commercial in order to adhere to the market model. We do think that farmers near to urban areas who continue to farm are not rational. Alberta and other jurisdiction's using agricultural use value as a valuation standard for farm land is a recognition of the misfit of the market value model for farm lands. We see that it is in a sense wrong that the valuation standard for farm lands necessarily takes into account development potential.

  Similarly, people who maintain land in a natural state, for example to provide habitat, forego making a profit from their land. Some even intentionally lower market value by placing conservation easements or other restrictions on development. Yet, just like farmers who maintain land as farm land, those who maintain habitat are not irrational because they do not seek to realize the largest profit, or highest assessment of their land.

- For two, we recognize that using land for farming has a key feature that is different from using land for residential, industrial and purely commercial purposes. There is a public good to retaining farmland as farmland rather than developing it for residential, industrial or commerce. We, the public, have to have farmland. If every farmer decided to make a fast buck by changing land use we'd eventually starve and die. Our taxation system recognizes that and encourages leaving farmland as farmland by allowing a more preferential tax treatment.

  Similarly, using land for conservation purposes is a different kind of use from using land for residential, industrial, purely commercial or even agricultural purposes. For example maintaining land for habitat purposes, to maintain and increase biodiversity, to provide a carbon sink, or to enhance pollution assimilation, provides public goods even more selfless than using land for agricultural purposes. The latter at least

provides an income; the former does not. Some of our legislation recognizes this. Our federal government offers tax credits or deductions for those who put permanent development restrictions on natural land to preserve natural features such as habitat and biodiversity.[10] Nearly every Canadian province and U.S. state has legislation to make it easier for people to permanently restrict development on land to preserve natural qualities.

B. The second reason deals with the fact that in the past Alberta, and at present, other jurisdictions recognize that natural areas form a part of the rural landscape and that it just makes sense to consider them as farm land for assessment and taxation purposes. As mentioned earlier, the *Municipal Taxation Act* deemed conservation lands to be farm lands for assessment and tax purposes. As well, both Saskatchewan[11] and Manitoba[12] property tax legislation requires lands that are not being farmed, but would otherwise count as agricultural lands to be assessed and taxed as agricultural lands. So, by recognizing natural areas as farm lands for assessment purposes, Alberta would not be taking a radical step. It simply would be re-instating a former policy and keeping in line with the other prairie provinces.

C. We understand that one reason why the reference to "conservation lands" was not carried forward into the *Municipal Government Act* is that the old Act did not define "conservation lands". This does not have to be a problem. The lack could be remedied in a revised *Municipal Government* Act. Perhaps revised legislation could define similar to the way Manitoba's *Municipal Assessment Act* defines "conservation land" , that is that conservation land:

   (a) is Farm Property;
   (b) is not used for an agricultural purpose; and
   (c) is, during the applicable reference year and the two years preceding the applicable reference year left in an undeveloped and natural state by the registered owner or occupier of the land for the purpose of preserving or restoring the quality of the land as a natural environment or habitat.

D. We understand that there is a concern at the municipal level that allowing non-farmed parcels to be assessed and taxed as farm land could open a "loophole" so that developers and speculators who hold land solely for development purposes would wrongfully enjoy the special tax treatment. If this is so, then legislation could provide a "claw back" so that a change of use from agricultural to residential or industrial would trigger a penalty to enable the municipality to recoup any losses

---

[10] The *Federal Income Tax Act* allows ecological gifts of capital property. Ecological gifts may be an entire fee interest or a partial interest such as a conservation easement. When made to a qualifying organization, such as a level of government or non-governmental agencies such as Ducks Unlimited Canada, Nature Conservancy, and similar organizations, a donor is given tax benefits over and above ordinary gifts of capital property.

[11] Under the *Rural Municipality Act*, 1989, S.S. 1989-90. c.R-26.1, *The Assessment Management Agency Act*, S.S. 1986, c. A-28.1, and the *The Rural Municipality Assessment and Taxation Regulations*, Sask. Reg. Chapter R-26.1, Reg 10, O.C. 686/96, s.3.

[12] Under the *The Municipal Assessment Act*, S.M. 1966, c. M226 and the *Classification of Property* Regulation, Man. Reg. 28/90 as am.

owing to assessing the land in question as farm land. We understand (though have not obtained copies of policy or legislation) that Ontario has such provision regarding wood lot assessment, and that some U.S. states have such provision regarding conservation lands assessment.

E. Finally, a number of municipalities in their land use plans and by-laws identify environmentally sensitive areas and important wildlife areas on private lands. These municipalities often have policies to influence landowners, as appropriate, to retain the natural values of these areas. Although municipalities have some tools to use to realize these policies when an owner applies for subdivision, there is not much they can do to otherwise carry out these pollicies. Giving landowners non-market value based tax treatment for natural areas would assist and be consistent with these municipal policies by giving owners incentive to carry out public policies.

(Ii) Assess natural conservation areas at market value and provide special treatment at the taxation level

Although not as simple and conceptually compelling as the first alternative this second alternative has merit. Here are some good features and suggestions on how it could work:

- Assessing conservation lands at market value would conform to legislative trends to move all assessment to a market value standard.
- With such a system, municipal taxation legislation could add a new class of properties for conservation lands. Conservation lands could be defined in a way to exclude commercial recreational lands, but not to exclude simply undeveloped farm land. In our view, Government should give all landowners, including developers and speculators, incentive to keep land in a natural state. If municipalities need to recoup loss revenue where land is held in speculation and later converted, a claw back system could be implemented.
- Legislation could require this class to be taxed at an appropriate low rate to, at minimum, remove any penalty for keeping lands natural, and where appropriate even to provide incentive to landowners to maintain habitat.
- Under these suggested processes, a landowner who places a conservation easement on property should benefit in two ways: first by way of lower market value assessment (if development restrictions lower market value) and second by the land being classified in a low tax category.
- Legislation could offer special tax relief to non-governmental organizations that hold land in accordance with their registered mandates to protect habitat or other natural qualities. Even if market value would be lowered by permanent restrictions, it is not reasonable to require organizations such as Ducks Unlimited Canada, Nature Conservancy and so on, to place all of their Alberta holdings under conservation easement. The fact that a group like Ducks Unlimited hold the land to maintain habitat in accordance with its mandate should be sufficient

(iii) Assess natural conservation areas on a new conservation use valuation standard

This alternative would require a new valuation standard designed for conservation lands. These comments will not attempt to spell out how the assessment would be carried out, except to suggest the following. The assessment process might require the assessment of the value to society of the land and require a reduction of monetary property assessment accordingly. So, there might be greater potential for lower assessment for critical habitat of endangered species than for lands with less conservation value. As well, where it is clear to an assessor that lands are held to maintain habitat and not for other purposes, the assessment might not take into any development potential. Additionally, such assessment system might render lower assessments depending on the degree to which a landowner foregoes profit in order to maintain habitat. For example permanent restrictions should lower assessment. Permanent restrictions on critical habitat in an area where there is great development pressures might further lower assessment.

Choosing between alternatives

The third alternative (conservation land valuation standard) is the most radical of the three presented and it, no doubt would take a very long time to develop. We would suggest that if the Committee considers this alternative, it consider it as a long term solution. The second alternative (market value assessment and tax concessions) also would take time to develop. As well, it might be seen interference with municipal discretion on setting tax rates for classes of property.

We recommend the first alternative as a straightforward, simple and proven accepted way to fairly deal with conservation lands.

Final note regarding "commitment"

We have heard the view that only those who have demonstrated long term commitment by registering conservation easements to preserve natural aspects of land should benefit from regulated assessment and taxation as farm land. With due respect we do not agree with this view.

First, public benefits are provided by land being left in a natural state no matter what the intention of the landowner.

Second, conservation easements are sophisticated, expensive tools that are not always available or feasible. Placing a conservation easement requires a land assessment, sometimes a land survey, finding a qualifying organization interested in being granted the interest, and often prohibitive consultant and legal fees. We have seen conservation easements that have cost upwards to $15,000 to place. It just isn't fair to the farmer who simply wants to keep a parcel in bush to be denied an agricultural use assessment just because he or she does not want to get involved with a conservation easement.

Third, some land is conservation land just by virtue of who owns it. Many organizations such as Nature Conservancy, Ducks Unlimited Canada, the A.C.A., Alberta Fish and

Game Association and the Land Stewardship Centre of Canada, will hold land according to registered mandates that require that land holdings be held as conservation lands. It is unnecessary for these organizations to have to negotiate and register expensive conservation easements against all of their Alberta parcels just to qualify their lands as conservation lands.

Finally, if it felt that there should be some safe guard so that those who hold land simply as speculation do not unfairly benefit from a regulated assessment, a legislated claw back could be used to compensate municipalities for lost tax revenue.

December 9th, 1998
Arlene J. Kwasniak
Staff Counsel
Environmental Law Centre