

November 5, 1999

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Brad Pickering  
Assistant Deputy Minister  
Alberta Municipal Affairs  
Director, Legislative Projects Unit  
Municipal Services Branch  
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Dear Mr. Pickering:

**Re: Consolidation of Assessment and Taxation Regulations and Proposed Amendments**

On behalf of the Environmental Law Centre, I thank the Department of Municipal Affairs for giving us the opportunity to comment on the consolidation and suggested amendments to the *Municipal Government Act* ("MGA") assessment and taxation regulations. We provide our comments on the attached schedule instead of on the form provided since we focus only on the agriculture provisions, pp 5-15 of the *Consultation Document and Questionnaire*. However, we wish to commend the Department for the excellent Internet access to consultation documents, background materials and for enabling electronic response. We find this service to be efficient, economical and environmentally friendly.

If you have any questions regarding our submission, please do not hesitate to contact me.

Yours truly,

Arlene J. Kwasniak  
Executive Director

**Proposed Consolidation of Assessment and Taxation Regulations and Proposed Amendments  
Stakeholder Comments -- Agricultural Topics  
(page 15 of Consultation Document and Questionnaire)**

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**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. Unfortunately, certain aspects of current municipal property assessment and taxation pose disincentives to conservation and provides incentives to needless development of natural aspects of Alberta's rural landscape. 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*<sup>1</sup>. 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<sup>2</sup>. For farm land "fair actual value" means productive value, or agricultural use value, as set out in the *Assessments Standards Regulation*<sup>3</sup>.

Section 2 of the *Farm Land Regulation*<sup>4</sup> provided 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* set forth 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.

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.

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<sup>1</sup> *Municipal Taxation Act*, R.S.A. 1980, c. M-31, R & S 1994, c. M-26.1, eff. Jan. 1, 1995.

<sup>2</sup> *Fair Actual Value Regulation*, Alta. Reg. 397/85, s.3.

<sup>3</sup> *Assessments Standards Regulation*, Alta. Reg. 394/75.

<sup>4</sup> *Farmland Regulation*, Alta. Reg. 166/89.

Regulations under the *Municipal Taxation Act* also required regulated assessment for conservation lands for parcels that were not actively farmed. Section 5 of the *Fair Actual Value Regulation* stated 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. Thus, the previous 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.

### **Assessment of Farm land under the Municipal Government Act**

On January 1, 1995 the property taxation provisions of the *Municipal Government Act*<sup>5</sup> repealed and replaced the *Municipal Taxation Act*. The *Standards of Assessment Regulation*<sup>6</sup> under the *Municipal Government Act* directs the assessor to assess property that is “used for farming operations” at agricultural use value, and all other land at market value.<sup>7</sup> There is no exception for conservation lands, or lands that simply are not used for any purpose. Accordingly, under the new regime a taxable parcel over three acres that is not being farmed must be assessed at market value, and taxed in a non-farm category. It is important to note that this requirement applies to all such parcels and not just land specifically held for conservation purposes, for example, land held by Ducks Unlimited or Nature Conservancy. It also applies, for example, to a farmer owns, say, a section of land, farms three and leaves one in bush. Our law requires that the unfarmed parcel be assessed at market value and taxed in a non-farm category.

### **Unfortunate effect of post 1995 rules**

Although it has taken a while for assessors to comply with the post 1995 rules, they have started. Strathcona County, for example, has sent out a letter to landowners advising them of proposed increases in property taxation if their land is not used for agricultural purposes. We understand that proposed increases were quite substantial, some being three or four times the assessed amount for land used for farming<sup>8</sup>. Ironically, much of this land has been identified by the County policy as serving as important wildlife habitat or as serving other providing other key environmental services, while the land remains undeveloped, in a natural state. The County thus is put into an untenable position of having a policy to maintain these important natural values as is possible, while being compelled by Provincial law to tax them at a rate that gives landowners every reason to eliminate natural values! And, unfortunately, much of the land in question is land is at best marginal, and should not be farmed.

### **Praise not Penalty**

Landowners who choose not to farm their land for personal profit and instead leave it unfarmed should be, at the very least be praised<sup>9</sup>, and certainly not penalized. These landowners bestow public

<sup>5</sup> *Municipal Government Act*, S.A. 1994, c. M-26.1.

<sup>6</sup> *Ibid.*, s.292(2). *Standards of Assessment Regulation*, Alta. Reg. 365/94.

<sup>7</sup> *Standards of Assessment Regulation*, Alta. Reg. 365/94, s.2(1).

<sup>8</sup> The *MLA Farm Property Assessment Review Committee 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.<sup>8</sup>

<sup>9</sup> Some stakeholders contend that because of the public benefits provided, conservation lands should not be taxed at all.

benefits including providing habitat for Alberta wildlife, maintaining and enhancing Alberta's biodiversity and helping to ecologically sustain the surrounding farm landscape.

These views are strongly supported. The ELC coordinated two well-attended meetings regarding this concern. As a result of the first meeting, stakeholders' views were set forth in resolutions and recommendations made to the MLA Farm Assessment Review Committee on January 19, 1999. For ease of reference, we attach copies of this document. As a result of the second meeting, a steering committee was formed to further these concerns.

### **No Actual Municipal Revenue Loss -- only Municipal Gains**

Finally, we wish to note that taxing rural conservation lands no more than the lowest alternative land use will not affect actual municipal tax revenue. As mentioned earlier it is only very recently that assessors have been assessing conservation lands at market value. Accordingly, actual taxation based on market value for the most part would not occur until the 2000 year. Therefore, there would be no loss of actual revenue to municipalities if parcels not used in farming (or any other use) within a farm landscape were treated no different from parcels used for farming. Indeed, it would benefit municipalities. First it would directly benefit municipalities that have habitat and environmentally sensitive areas retention policies by landowners maintaining natural land values rather than impairing or destroying them to get better tax treatment. Second, municipalities would enjoy overall benefits by having within their boundaries land that provides habitat, enhances biodiversity and aesthetics, and helps to ecologically sustain the surrounding farm landscape.

## **RESPONSES TO PAGE 15 OF QUESTIONNAIRE**

### **1. Should the definitions for "agricultural use value" and "farm building" be maintained in their current form? If not, why?**

This response only concerns the definition of "agricultural use value". As stated in the attached resolutions, until any other method is legislatively established we recommend a simple amendment to the *Municipal Government Act* and the assessment and taxation regulation so that conservation lands will be assessed and taxed as farm lands, as was the case under the *Municipal Taxation Act*. This presumably would involve an amendment to the regulations stating that notwithstanding the definition of "agricultural use value" lands not used for any purpose or conservation lands shall be assessed under the agricultural use value standard.

### **2. Should the definition of "farming operations" be adopted as suggested? If not, why?**

(a) We agree with extending the definition of "farming operations" to include woodlots. However, we do not see the necessity of requiring that to qualify the land must have a approved management plan prepared by an Alberta registered forest practitioner. First, this requirement will make it so that only large commercial woodlot operations could afford to fall under the definition, thus leaving small operators with the incentive of clearing wooded land to get better tax treatment. Second, we note that management plans are not required for other agricultural operations to qualify. Why should they be required for woodlots?

(b) We do not agree that, as stated on page 7 "[p]roperty that does not qualify as a farming operations would be assessed on the basis of market value" if that means that taxable rural parcels that

are not being used for anything or are conservation lands would be assessed and taxed at a level higher than the lowest taxed land use alternative.

### **Questions 3, 4 & 5**

No comment.

## **ATTACHMENT: RECOMMENDATIONS**

### **Recommendations to the MLA Committee on Farm Property Assessment**

**We, the undersigned individuals or organizations make the following recommendations to the Committee regarding the assessment and taxation of conservation lands:**

1. We recommend that provincial legislation require that conservation lands be taxed no higher than the same level as the lowest taxed land use alternative.
2. Until any other method is legislatively established we recommend a simple amendment to the *Municipal Government Act* so that conservation lands will be assessed and taxed as farm lands, as was the case under the *Municipal Taxation Act*.
3. If considered necessary to address potential abuse by virtue of this amendment, we recommend that the Committee consider incorporating a "claw back" provision in the amendment. Under such provision a change of land use from conservation lands to subdivided residential development or industrial will trigger a penalty to compensate the affected municipality for previous special tax treatment.
4. Our final recommendation concerns a statement on page 9 of the Discussion Paper, which, if followed through into law would enable assessors to assess and tax parts of parcels not used as farm land on the basis of market value. We recommend that revised legislation specifically limit this power so that it cannot be used in respect of conservation areas within larger farm parcels.

### ***Recommended by:***

**Alberta Sport, Recreation, Parks and Wildlife Foundation.**

**(Tom Cameron)**

**Harvey Scott**

**Environmental Law Centre**

**(Arlene Kwasniak & Dolores Noga)**

**Ducks Unlimited Canada**

**North American Waterfowl Management Plan**

**(Les Wetter & Ken Bailey)**

**Gordon Kerr**

**Locke Girvan**

**Nature Conservancy of Canada**

**(Kim Good)**

Land Stewardship Centre of Canada

(Ernie Ewaschuk)

Preserve Agricultural Land

(Dean Chesser & George Friesen)

Rocky Mountain Elk Foundation \*

(Lyle Dorey. \* Please note that RMEF has reservations regarding  
recommendation #3, potential clawback)

Alberta Fish and Game Association

(Bruce Stubbs)

Woodlot Association of Alberta

(Ken Glover)