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Mary Atkinson

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# THE IMPACT OF THE TOBACCO BUYOUT ON THE COMMONWEALTH'S OPEN SPACES: PROTECTING OPEN LAND BY EXPANDING THE SCOPE OF USE VALUE ASSESSMENT

MARY ATKINSON\*

## INTRODUCTION

From the earliest days of the Commonwealth of Virginia's founding, tobacco farming served as a backbone of rural economies.<sup>1</sup> Tobacco production defined rural culture, farms shaped communities, and the parcels of land that comprised these farms became a centerpiece of families.<sup>2</sup> For sixty-five years, these parcels of land on which families produced tobacco carried with them government-implemented quota restraints to control prices of American tobacco.<sup>3</sup> Quota limits strictly controlled a farmer's right to produce tobacco.<sup>4</sup> With these production rights came economic value for the land and incentives to own land that carried quota with it.<sup>5</sup> When the government eliminated the Quota System that had

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\* JD Candidate, William & Mary Law School, 2018; BA, Government and History, University of Virginia, 2013. The author would like to thank the staff of the William & Mary Environmental Law and Policy Review for their dedication and efforts on this Note.

<sup>1</sup> Emily Jones Salmon & John Salmon, *Tobacco in Colonial Virginia*, ENCYCLOPEDIA VA, [http://www.encyclopediavirginia.org/Tobacco\\_in\\_Colonial\\_Virginia](http://www.encyclopediavirginia.org/Tobacco_in_Colonial_Virginia) [https://perma.cc/V4Y4-P9NB] (last visited Oct. 23, 2017); Su Clauson-Wicker, *Farmers Face Fork in Tobacco Road*, VA. TECH MAGAZINE, <http://www.vtmag.vt.edu/sum00/feature2.html> [https://perma.cc/E84P-W8CB] (last visited Oct. 23, 2017).

<sup>2</sup> See Emily McCord, *Tobacco Farmers Lose Longtime Safety Net*, NPR (Oct. 24, 2014), <http://www.npr.org/2014/10/24/357947259/tobacco-farmers-lose-longtime-safety-net> [https://web.archive.org/web/\*/http://www.npr.org/2014/10/24/357947259/tobacco-farmers-lose-longtime-safety-net]; Anita Wadhvani, *Family tobacco farmers are dying breed*, THE TENNESSEAN (Sep. 7, 2014), <http://www.tennessean.com/story/news/local/2014/09/07/family-tobacco-farmers-dying-breed/15155119/> [https://perma.cc/KA84-85ME].

<sup>3</sup> E.C. Pasour, Jr., *The Tobacco-Quota Buyout: More Legal Plunder*, FOUND. FOR ECON. EDUC. (Feb. 1, 2005), <https://fee.org/articles/the-tobacco-quota-buyout-more-legal-plunder/> [https://perma.cc/6BET-3AMA].

<sup>4</sup> *Id.*

<sup>5</sup> See Gilbert L. Mathis & William M. Snell, *Tobacco in Transition: An Overview of Sixty-Six Years of Partnership Between Producers, Processors and Politicians*, 25 *ESSAYS IN ECON. & BUS. HIST.* 79, 88 (2007), <http://www.ebhsoc.org/journal/index.php/journal/article/view/219/221> [https://perma.cc/KNP4-CMG3].

dominated tobacco production for decades, however, many farmland owners' incentives to own a small family tobacco farm eroded.<sup>6</sup>

Over the past few decades, the tobacco market that once defined rural Virginia has faced a steady decline amidst many obstacles.<sup>7</sup> From globalization, increased government regulations, and rising sales taxes, to the decline of the family farm and growing health concerns, demand for American tobacco declined.<sup>8</sup> As a result, the government had to cut each grower's quota to maintain prices.<sup>9</sup> These obstacles ultimately led Congress to end the price control system that once defined American tobacco farming by buying out each farm's quota.<sup>10</sup> With the elimination of the quota controls, the buyout transitioned tobacco production into the free market.<sup>11</sup> This transition encouraged smaller farmers to stop tobacco production altogether and, as a result, eliminated many smaller tobacco operations.<sup>12</sup>

This Note will discuss land incentives in rural Virginia under the Quota System and since the Tobacco Buyout. It will then argue that these changes in the nature of the tobacco market have altered land incentives, leaving Virginia's rural spaces more vulnerable to rapid development. This Note will recommend that the Virginia legislature expand the scope of its use value assessment laws to allow localities to "grandfather in" land that qualified for use value assessment under the tobacco Quota System, so that as long as the land remains open, the land can qualify for the real estate tax break it would have received if it were in tobacco use. Such an expansion will reduce the real estate tax burden on former tobacco farmers who intend to preserve their farms as open land, rather than convert the farm to another agricultural use. Such an expansion will help (1) insulate rural Virginia from the harmful effects of rapid development; (2) promote the ecological, environmental, and scenic beauty benefits of preserving open land; and (3) preserve the cultural heritage aspects of rural Virginia that emanate from open land and

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<sup>6</sup> Ken Little, *Tobacco farms a withering tradition*, KNOXVILLE NEWS SENTINEL (Oct. 10, 2010), <http://archive.knoxnews.com/business/tobacco-farms-a-withering-tradition-ep-407455683-358440541.html> [https://perma.cc/2YAR-AF8K].

<sup>7</sup> Clauson-Wicker, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Fair and Equitable Tobacco Reform Act of 2004, H.R. 4520-105, 108th Cong., *available at* [https://www.fsa.usda.gov/Internet/FSA\\_File/hr4520.pdf](https://www.fsa.usda.gov/Internet/FSA_File/hr4520.pdf) [https://perma.cc/2LB2-JF66].

<sup>11</sup> *Id.*

<sup>12</sup> John Fraser Hart, *The Initial Impact of the Tobacco Buyout Program*, 101(3) THE GEO. REV. 447, 477, 456 (2011), <http://www.jstor.org/stable/41303645>.

the history underlying tobacco production in the Commonwealth. Although this one reform will not completely prevent the rapid development of the Commonwealth's rural areas, it will provide one incentive for landowners who hope to preserve their farms as open land.

I. CHANGING LAND INCENTIVES: FROM THE QUOTA SYSTEM THROUGH THE TOBACCO BUYOUT

The Tobacco Buyout's elimination of the Quota System reduced farmers' incentives to own small family farms. With lessened incentives to own farms, rural Virginia's farmland is more vulnerable to being sold for rapid development, as converting to other agricultural uses may not yield the same profits as tobacco production once did. Nevertheless, localities can reduce the impact the Buyout may have on Virginia's open spaces by expanding local use value assessment programs to incentivize rural land ownership by reducing holding costs of maintaining open, yet unfarmed land.

A. *How the Quota System Worked*

In the wake of the Great Depression, Congress enacted the Agricultural Adjustment Act in the 1930s to establish quotas for tobacco production ("the Quota System").<sup>13</sup> Under the Quota System, the U.S. Department of Agriculture raised tobacco prices above the market level to provide price supports for farmers.<sup>14</sup> To compensate for the raised prices, the government restricted tobacco production by imposing acreage allotments and poundage quotas that restricted the amount of tobacco a given farm could produce.<sup>15</sup> The Quota System continued for sixty-five years, until Congress enacted the Fair and Equitable Tobacco Reform Act of 2004 ("the Tobacco Buyout").<sup>16</sup> The Tobacco Buyout abolished the Quota System and bought out each farm's quota, transitioning American tobacco production to the free market at a cost of \$10 billion.<sup>17</sup>

Under the Quota System, the USDA imposed a nationwide limit on the amount of tobacco that American farmers could produce each year.<sup>18</sup>

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<sup>13</sup> Mathis & Snell, *supra* note 5, at 80.

<sup>14</sup> Pasour, *supra* note 3.

<sup>15</sup> *Id.*

<sup>16</sup> Mathis & Snell, *supra* note 5, at 79–80.

<sup>17</sup> *Id.* at 79–80, 90.

<sup>18</sup> *Id.* at 83.

The government implemented this control by allocating quota based on a farm's historic production.<sup>19</sup> To evenly distribute the impact of the production limit among tobacco growers, the government allocated quota proportionally among individual farms.<sup>20</sup> In other words, quota allocation was based on acreage grown on a particular piece of *land*, rather than based on a specific *farmer's* production history.<sup>21</sup> Because the USDA based the quota allocation on the farm, rather than the farmer, production rights generally ran with the land itself.<sup>22</sup> Even if a farmer did not grow the tobacco himself, he maintained the production rights by virtue of his land ownership.<sup>23</sup> A landowner could, therefore, lease his production rights to another tobacco producer, resulting in an economic incentive to maintain the land with quota production rights, even if the land owner did not produce tobacco himself.<sup>24</sup>

Nevertheless, the Quota System placed mobility restrictions on locations in which leased tobacco quota could be grown.<sup>25</sup> For example, the tobacco had to be grown within the county in which the quota was assigned.<sup>26</sup> The government prohibited selling and leasing quota across state or county lines.<sup>27</sup> As a result, the particular allocation of quota may not necessarily correlate with the most productive land or the land most suited to tobacco farming.<sup>28</sup> If a farmer wanted to commence or expand his tobacco operation, the Quota System limited him to purchasing or leasing quota production rights from a quota holder, and the government did not create new quota.<sup>29</sup> Because of the mobility restrictions, the producer who intended to expand his tobacco operation would be limited to the areas where tobacco quota already existed.<sup>30</sup>

### B. *Land Incentives Under the Quota System*

Because it was necessary for a farmer to own or lease quota in order to produce tobacco, quota was a basic guarantee that a given amount of

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<sup>19</sup> *Id.*

<sup>20</sup> Pasour, *supra* note 3.

<sup>21</sup> *See id.*

<sup>22</sup> Mathis & Snell, *supra* note 5, at 88.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 85.

<sup>26</sup> Pasour, *supra* note 3.

<sup>27</sup> *Id.*

<sup>28</sup> Mathis & Snell, *supra* note 5, at 85.

<sup>29</sup> *Id.* at 88.

<sup>30</sup> *See* Pasour, *supra* note 3, at 35.

tobacco could be grown.<sup>31</sup> As a result, quota provided landowners economic incentives to own land that had quota assigned to it.<sup>32</sup> Quota holders could produce tobacco on the land themselves, rent their quota to other tobacco growers, or sell the land to someone who would utilize the quota himself or lease it to another tobacco producer.<sup>33</sup> Accordingly, quota holders who were not tobacco growers still maintained economic incentives to continue owning land with quota assigned to it, given the value of the production rights.<sup>34</sup> Even if producing tobacco on the land for himself was no longer feasible or desirable, the farmland owner could still reap the economic benefits of renting out his quota.<sup>35</sup> If, for example, a farmer passed away, but his wife continued living on the farm, she could rent out the tobacco quota to another farmer. In fact, because of these landowning incentives, quota holders outnumbered tobacco growers four to one toward the end of the Quota System's reign.<sup>36</sup> The elimination of the Quota System would reduce this landowning incentive such that owning land with tobacco quota on it had no added economic value other than owning any other piece of farmland (unless the land had some specifically productive characteristic to it).

C. *The Tobacco Buyout and Changing Land Ownership Incentives*

Congress enacted the Fair and Equitable Tobacco Reform Act in 2004 in order to shift American tobacco production to a free market model.<sup>37</sup> In order to achieve this objective, the Fair and Equitable Tobacco Reform Act eliminated the acreage allotments and poundage quotas for tobacco production that had been established under the Agricultural Adjustment Act.<sup>38</sup> As such, there are no longer any government-implemented quota restrictions on who can grow tobacco or how much a producer can grow.<sup>39</sup> Additionally, the geographic mobility restrictions that existed under the Quota System no longer apply, and farmers can shift their operations to

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<sup>31</sup> Mathis & Snell, *supra* note 5, at 88.

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See id.*

<sup>36</sup> *Id.* at 87.

<sup>37</sup> Mathis & Snell, *supra* note 5, at 79.

<sup>38</sup> JASPER WOMACH, CONG. RESEARCH SERV., RS22046, TOBACCO QUOTA BUYOUT 1 (2005), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS22046.pdf> [<https://perma.cc/L5Y5-8V5Y>].

<sup>39</sup> *Id.*

any location—usually to the lowest-cost or most productive areas.<sup>40</sup> Growers now contract directly with tobacco manufacturers or leaf dealers in order to determine how much tobacco a farmer will produce in a given season.<sup>41</sup> Rather than government-controlled production levels, the market for contracts with tobacco companies controls production levels.<sup>42</sup>

In the market for tobacco production contracts, many smaller tobacco producers face obstacles to accessing the market.<sup>43</sup> Accordingly, smaller producers who are forced out of the tobacco market face a choice between transitioning to another type of farming or quitting agriculture altogether.<sup>44</sup> Many farmers were within ten years of retirement age when the Tobacco Buyout occurred, and therefore, many have and continue to leave tobacco production.<sup>45</sup> In fact, currently, the average Virginia farmer is fifty-nine years old.<sup>46</sup> Thirty-six percent of farmers are over age sixty-five.<sup>47</sup> Many tobacco farmers nearing retirement have no one to transition their farms to, as the family farm ideal has declined.<sup>48</sup> In fact, one report noted that because tobacco farming is no longer family centered, only eight or ten tobacco farmers in one county are under the age of thirty-five.<sup>49</sup>

Landowners, especially those with small family farms, who are nearing retirement age face a choice of whether to keep their farm or sell it. Because particular parcels of land no longer carry quota, these landowners no longer have the added quota production rights incentive to continue owning and leasing out their property. Tobacco farmers who want to rent land are no longer limited to land with tobacco quota, and instead, can rent land closer to their home and be more selective about the quality of land.<sup>50</sup> Obviously, these obstacles limit a landowner's ability to rent specific parcels of land, as the quota incentive no longer applies.

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<sup>40</sup> Mathis & Snell, *supra* note 5, at 85.

<sup>41</sup> *Tobacco remains a top Virginia crop*, VA. FARM BUREAU (July 9, 2015), <https://www.vaf.com/membership-at-work/news-resources/articleid/439> [<https://perma.cc/VZ3E-RVGQ>].

<sup>42</sup> Mathis & Snell, *supra* note 5, at 85.

<sup>43</sup> *Id.* at 91.

<sup>44</sup> Little, *supra* note 6; *see also The Tobacco Buyout*, S. LEGIS. CONF., [https://www.slcatlanta.org/Publications/AgRD/tobacco\\_buyout.pdf](https://www.slcatlanta.org/Publications/AgRD/tobacco_buyout.pdf) [<https://perma.cc/UU9H-8NSE>].

<sup>45</sup> *The Tobacco Buyout*, *supra* note 44.

<sup>46</sup> *VAgriculture: Facts and Figures*, VA. DEPT. OF AGRIC. & CONSUMER SERVS., 2016–2017, <http://www.vdacs.virginia.gov/pdf/agfacts.pdf> [<https://perma.cc/8U95-ZC6P>].

<sup>47</sup> *Id.*

<sup>48</sup> *Virginia's oldest cash crop holding on in a new age*, PROGRESS INDEX (Feb. 8, 2016), <http://www.progress-index.com/news/20160208/virginias-oldest-cash-crop-holding-on-in-new-age> [<https://perma.cc/WKU5-MP2K>].

<sup>49</sup> Randalph Walker, *Barn Raising*, VA. LIVING (Oct. 2012), <http://www.virginialiving.com/travel/pittsylvania-county-tobacco-barns/> [<https://perma.cc/9ZM5-4PAL>].

<sup>50</sup> Womach, *supra* note 38, at 1.

Although some former tobacco producers have simply switched to another type of agriculture production,<sup>51</sup> mooted the concern about declining farmland ownership, not all farmers have been able to invest in another agricultural business, and therefore, they retire.<sup>52</sup> Especially in the Southside and Southwest Virginia regions, no agricultural commodity has the economic impact to fully replace tobacco's historical profitability.<sup>53</sup> As a result some tobacco farmers stopped actively farming after the Buyout, but still continue owning their farmland for its sentimental value.<sup>54</sup>

Although some smaller farmers may sell their land to larger tobacco farmers who are expanding and consolidating their businesses,<sup>55</sup> overall declines in tobacco demand have also affected the market, reducing overall American tobacco production.<sup>56</sup> Because of a general decline in the demand for tobacco products, as well as competition with foreign markets, worldwide demand for American tobacco has and continues to decline.<sup>57</sup> Even though some farmers have been able to expand their tobacco operations after the Buyout under the free market system, both total pound productions, as well as the number of acres of land in the United States devoted to tobacco production have still declined.<sup>58</sup> Even though tobacco production still plays a prominent role in Virginia's economy,<sup>59</sup> from 2014 to 2015, tobacco acreage planted in Virginia dropped thirteen percent.<sup>60</sup> As a result, smaller farmers retiring after the buyout may not necessarily be able to sell their farms for tobacco or agricultural production, as the production declines may limit the market for tobacco farmland. Nevertheless, at least some of these farmers hope to continue owning their farms as open land, rather than sell them for either tobacco or non-agricultural purposes.<sup>61</sup>

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<sup>51</sup> Zack Harold, *Fewer raise tobacco after federal buyout*, CHARLESTON GAZETTE-MAIL (May 3, 2012), <http://www.wvgazette.com/News/201205020218> [<https://perma.cc/GD5F-229M>].

<sup>52</sup> McCord, *supra* note 2 (noting how some former tobacco farmers have invested in chicken or grain farming, while others have had to retire).

<sup>53</sup> Clauson-Wicker, *supra* note 1.

<sup>54</sup> See Greg Kocher, *Kentucky sees decrease in farms; experts point to a variety of contributing factors*, LEXINGTON HERALD LEADER (June 28, 2014), <http://www.kentucky.com/news/business/article44495472.html> [<https://perma.cc/585A-MVSK>].

<sup>55</sup> See Womach, *supra* note 38, at 1.

<sup>56</sup> Hart, *supra* note 12, at 453.

<sup>57</sup> *Id.*

<sup>58</sup> See *id.* at 449–50, 453.

<sup>59</sup> *Virginia's oldest cash crop holding on in a new age*, *supra* note 48.

<sup>60</sup> *Tobacco remains a top Virginia crop*, *supra* note 41.

<sup>61</sup> See, e.g., Kocher, *supra* note 54.



D. *Relationship of Post-Buyout Land Incentives to Use Value Assessment Programs*

The landowners who retired from both tobacco farming and agriculture altogether who are unable to lease their land for agricultural purposes face a financial burden of continuing to own land; absent an agricultural use for the land, the landowner loses his qualification for agricultural use value assessment taxation.<sup>62</sup> Generally, the loss of the use value assessment qualification results in a substantially higher real estate tax burden for a landowner.<sup>63</sup> Absent this preferential tax treatment, Virginia's open spaces become more vulnerable to being sold for rapid development.<sup>64</sup> Consequently, farmland owners who hope to maintain their farms without utilizing the land for an agricultural purpose may be doing so at the cost of a much higher real estate rate.<sup>65</sup> Having a higher holding costs through a real estate tax rate may result in pressure to sell these farms for rapid development.<sup>66</sup>

Without Quota System production as one incentive to own rural land in Virginia, localities must find another means of reducing the impact the Quota System and reduced tobacco production have had on farmland ownership. Localities can expand the scope of use value assessment taxation programs to provide at least one incentive to maintain open land by easing the real estate tax burden associated with farmland ownership.

II. USE VALUE ASSESSMENT AS AN INCENTIVE TO PRESERVE OPEN LAND

By reducing the real estate tax burden of owning open farmland, localities in Virginia can incentivize preservation of open land, reducing land's vulnerability to rapid development; promote ecological, environmental, and scenic beauty benefits; and preserve tobacco's cultural and historical significance in the rural regions of the Commonwealth.

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<sup>62</sup> See Dave Lamie & Gordon Groover, *A Citizens' Guide to the Use Value Taxation Program in Virginia*, VA. COOP. EXTENSION (May 1, 2009), <https://pubs.ext.vt.edu/448/448-037/448-037.html> [<https://perma.cc/WK95-S2UG>] (last visited Oct. 23, 2017).

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

<sup>66</sup> See Jesse J. Richardson, Jr., *Beyond Fairness: What Really Works to Protect Farmland*, 12 DRAKE J. AGRIC. L. 163, 169 (2007).

A. *How Use Value Assessment Works*

Use value land taxation reduces the real estate taxation burden on land owners who preserve land for particular non-development uses.<sup>67</sup> In Virginia, the legislature has granted localities authority to adopt use value assessment programs for various agrarian uses.<sup>68</sup> Current categories of use value assessment in Virginia include agricultural, horticultural, forestry, and open space uses.<sup>69</sup> Use value taxation calculates real estate taxes for land based on the land's value in a particular use, rather than at the full fair market value.<sup>70</sup> For example, the real estate taxation value for land used for tobacco farming in a use value locality is the value of the land if its use were restricted entirely to tobacco production and not economically valuable for any other purpose.<sup>71</sup>

In localities where the fair market value of land is higher because the land could be put to non-agricultural uses, such as development, use value taxation provides substantial real estate tax savings for agrarian landowners.<sup>72</sup> Accordingly, land ownership is generally less financially burdensome when the land's use falls under the scope of a given locality's use value assessment program<sup>73</sup> as use value taxation generally results in a lower tax rate.<sup>74</sup> Use value assessment programs indirectly concentrate on localities with land that is more vulnerable to development, such as land near interstate highways.<sup>75</sup> Localities with land that is less vulnerable to development, and less likely to have a non-agricultural use generally do not have use value assessment programs.<sup>76</sup> Because the difference between the fair market value of land and the value of the land limited to its agricultural use is minimal, landowners would not benefit substantially from use value taxation in areas that are not vulnerable to development in the first place.<sup>77</sup> Nevertheless, many localities in Southside and

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<sup>67</sup> *Virginia's Use-Value Assessment Program*, VA. TECH: DEPT. OF AGRICULTURAL & APPLIED ECON., <http://aaec.vt.edu/extension/use-value/about.html> [<https://perma.cc/727A-QXD3>] (last visited Oct. 23, 2017).

<sup>68</sup> VA. CODE ANN. § 58.1-3231 (West 2017).

<sup>69</sup> *Virginia's Use-Value Assessment Program*, *supra* note 67.

<sup>70</sup> Lamie & Groover, *supra* note 62.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Land Use Program*, PITTSYLVANIA CTY., VA., <https://www.pittsylvaniacountyva.gov/186/Land-Use-Program> [<https://perma.cc/JF9E-7ZKU>] (last visited Oct. 23, 2017).

<sup>75</sup> Lamie & Groover, *supra* note 62.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

Southwest Virginia's tobacco growing regions utilize use value assessment, as these areas are more vulnerable to rapid development.<sup>78</sup>

*B. Recommended Use Value Assessment Program Expansion*

The Virginia legislature should expand the scope of its current Use Value Assessment taxation statutes to allow localities to “grandfather in” land that once held tobacco quota so long as the landowner preserves the land as an open space. The legislature should allow localities to enable these landowners to continue to receive use value taxation benefits that they would receive if the land were in tobacco use, even though the land is not being utilized for an agricultural, horticultural, or forestry purpose.

This recommendation will allow a land owner to continue owning open land at the same real estate tax rate that he would have received while farming tobacco, or owning land leased to another tobacco farmer. For example, if a tobacco farmer retires, but wants to continue owning his farm, he would not be subjected to the increased real estate tax burden his land would suffer because it is no longer in agricultural use. Because use value assessment reduces land holding costs, it reduces pressure on the landowner to convert parcels of land for development purposes.<sup>79</sup> Just as one underlying purpose of use value assessment is to insulate farmland from the harmful effects of rapid development,<sup>80</sup> this recommendation helps ensure that real estate property taxes do not force land to be sold for development when it would not otherwise have been sold.<sup>81</sup>

By expanding the scope of use value assessment, Virginia localities can help insulate against the harmful effects of rapid and sprawl development; promote the ecological and environmental benefits of open land; and preserve the cultural and historical aspects of rural life in the Commonwealth. Although this one reform will not completely prevent the rapid development of the Commonwealth's rural areas, it will reduce one financial burden for retired farmers who hope to preserve their farms as open land.

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<sup>78</sup> *Id.*

<sup>79</sup> Richardson, Jr., *supra* note 66, at 169.

<sup>80</sup> *Land Use Tax Assessment in Virginia*, CTR. VA. FARMS, <http://centralvafarms.com/blog/2016/07/land-use-tax-assessment-in-virginia/> [<https://perma.cc/M5TA-YS2G>] (last visited Oct. 23, 2017).

<sup>81</sup> See James M. McElfish, Jr., *Taxation Effects on Land Development and Conservation*, 22 TEMP. ENVTL. L. & TECH. J. 139, 148 (2003).

C. *Consistency with the Legislative Purpose of Use Value Assessment Programs*

The use value assessment expansion recommendation is consistent with legislative purpose underlying use value assessment programs because it fosters the benefits of open land preservation and planned, as opposed to rapid development.<sup>82</sup> Legislative provisions for use value assessment outline the purpose of use value assessment programs as fostering “preservation of real estate for agricultural, horticultural, forest, and *open space use* in the public interest” by classifying and taxing land “in a manner that promotes its preservation to help foster long term public benefits.”<sup>83</sup> When the Virginia legislature first enacted the use value assessment program, it outlined the legislative purposes of the program as follows: ensuring availability of agricultural land; conserving natural resources; protecting water supplies; preserving scenic beauty; promoting economic balance; and promoting land-use planning and orderly development.<sup>84</sup> In fact, many folks understand the purpose of land use value assessment to be allowing for land development at a *planned* pace rather than at a *rapid* and *haphazard* pace.<sup>85</sup>

Incentivizing preservation of open land by expanding the scope of use value assessment programs continues to promote the values underlying use value legislation.<sup>86</sup> In terms of the availability of farmland, the stakes of development are high: once farmland succumbs to development, it is likely lost forever.<sup>87</sup> Paving and concrete are difficult to remove and can destroy farm soil quality,<sup>88</sup> making it likely that farmland that is developed will never again be available for agrarian purposes. By reducing pressure to sell land for development, especially for the retired farmer who hopes to maintain his farm as open land, Virginia can reduce land’s vulnerability to rapid or poorly managed development.<sup>89</sup> Accordingly, Virginia can continue to reap the economic benefits of having open and available land.

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<sup>82</sup> See Lamie & Groover, *supra* note 62, for a discussion of the principles underlying use value assessment.

<sup>83</sup> *Id.* (emphasis added).

<sup>84</sup> *Virginia’s Use-Value Assessment Program*, *supra* note 67.

<sup>85</sup> *Land Use Tax Assessment in Virginia*, *supra* note 80 (emphasis added).

<sup>86</sup> *Id.*

<sup>87</sup> *Farmland preservation*, W. RES. LAND CONSERVANCY, <http://www.wrlandconservancy.org/whatwedo/workingfarms/> [<https://perma.cc/NQ8J-VM98>] (last visited Oct. 23, 2017).

<sup>88</sup> *Id.*

<sup>89</sup> See Richardson, Jr., *supra* note 66, at 169.

D. *Why Not Encompass Unutilized Farmland Under an Open Space Use Value Assessment?*

The current scope of use value assessment open space qualifications does not cover all open land owned by former tobacco producers who stop farming altogether.<sup>90</sup> In some localities, use value assessment for open spaces explicitly excludes land that is merely open but unused for agrarian purposes.<sup>91</sup> In other localities, in order to obtain an open space use value assessment, a parcel must be subject to a recorded historic or conservation easement.<sup>92</sup> With a conservation easement, a landowner receives federal tax breaks for removing development rights to his property, often in perpetuity.<sup>93</sup>

Although some landowners may hope to benefit from the income tax breaks provided by conservation easements, some landowners are deterred by *perpetually* shielding their land from development.<sup>94</sup> If a landowner does not want to indefinitely forgo his right to sell the property for non-conservation purposes, he may be deterred from obtaining a conservation easement.<sup>95</sup> By grandfathering in *agricultural* use value assessment, however, the recommended use value assessment reform removes the conservation easement requirement that some localities have for *open space* use value assessment. Therefore, a landowner would not have to perpetually forgo his rights to sell property for development as required by a conservation easement.<sup>96</sup> Instead, the landowner would simply benefit from the real estate tax break provided by the agricultural use value assessment without any perpetual restrictions on his right to sell his property, and could plan to sell his property for development when he is ready and no longer wants to maintain it.

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<sup>90</sup> See VA. CODE ANN. § 58.1-3231 (West 2017); *Land Use Tax Assessment in Virginia*, *supra* note 80.

<sup>91</sup> See, e.g., *Land Use Program*, FRANKLIN CTY., <http://www.franklincountyva.gov/cor-land-use-taxation> [<https://perma.cc/QJ9C-PXBP>] (last visited Oct. 23, 2017).

<sup>92</sup> See, e.g., *Land Use Tax Assessment in Virginia*, *supra* note 80; *Standards & Requirements for the Special Land Use Assessment*, FAUQUIER CTY., VA., <http://www.fauquiercounty.gov/government/departments-a-g/commissioner-of-the-revenue/real-estate/land-use> [<https://perma.cc/SGK5-3929>] (last visited Oct. 23, 2017).

<sup>93</sup> Dana Joel Gattuso, *Conservation Easements: The Good, the Bad, and the Ugly*, NAT'L CTR. FOR PUB. POL'Y RES.: NAT'L POL'Y ANALYSIS (May 2008), <http://www.nationalcenter.org/NPA569.html> [<https://perma.cc/3C7Z-W6KX>].

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

### III. BENEFITS OF REDUCING RAPID DEVELOPMENT

It is important for localities to incentivize planned, rather than rapid and haphazard development to reduce urban sprawl and infrastructure costs,<sup>97</sup> foster a healthier environment,<sup>98</sup> sustain ecosystems and reduce pollution,<sup>99</sup> and preserve the cultural and historical significance of Virginia's rural regions.<sup>100</sup>

#### A. *Benefits of Fostering Planned Development*

By incentivizing land conservation through use value assessment, localities can insulate from rapid, haphazard development.<sup>101</sup> Instead, localities can foster planned development in accordance with local land use projections.<sup>102</sup> By insulating from haphazard development, localities can reduce infrastructure costs<sup>103</sup> and avoid the long-term economic detriment that comes with sprawl development.<sup>104</sup>

Planned development aims to expand growth around existing development.<sup>105</sup> As a result, land use planning reduces sprawl development that is not land-contiguous and leaves haphazard undeveloped patches of land between developments.<sup>106</sup> Planned development aims to reduce construction and infrastructure costs, preserve prime agriculture land, and protect open water and natural habitats.<sup>107</sup> Effectively, planned land use development channels locational forces of market growth to areas that are more efficient to service.<sup>108</sup>

One benefit of planned, rather than haphazard, development is reduced infrastructure costs.<sup>109</sup> For example, one study found that planned

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<sup>97</sup> Robert W. Burchell, *Economic and Fiscal Costs (and Benefits) of Sprawl*, 29(2) THE URBAN LAW. 159, 159 (1997), <http://www.jstor.org/stable/27895055>.

<sup>98</sup> See *Why Preserve Land?*, D&R GREENWAY LAND TRUST, [http://www.drgreenway.org/why\\_preserve.html](http://www.drgreenway.org/why_preserve.html) [<https://perma.cc/Y2R2-WHJG>] (last visited Oct. 23, 2017).

<sup>99</sup> See Burchell, *supra* note 97, at 168.

<sup>100</sup> Walker, *supra* note 49.

<sup>101</sup> *Land Use Tax Assessment in Virginia*, *supra* note 80.

<sup>102</sup> *Id.*

<sup>103</sup> Burchell, *supra* note 97, at 163.

<sup>104</sup> JunJie Wu, *Land Use Changes: Economic, Social, and Environmental Impacts*, 23(4) CHOICES 6, 8 (2008), <http://www.farmdoc.illinois.edu/policy/choices/20084/theme1/2008-4-02.pdf> [<https://perma.cc/GB4F-J86A>].

<sup>105</sup> Burchell, *supra* note 97, at 160.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 163–64.

<sup>109</sup> *Id.* at 163.

development only requires, on average, forty percent of the cost of sprawl development for roads and bridges.<sup>110</sup> The same study found that planned development only requires sixty percent of the cost of utility development in a sprawl area.<sup>111</sup> For school development, however, planned development still required ninety-three percent of the cost of school development in planned areas.<sup>112</sup> Three major studies all concluded that planned development had major savings with road and utility extensions, as opposed to haphazard development.<sup>113</sup>

These reduced infrastructure costs obviously provide significant savings for government funds required to service developed areas. Additionally, consolidating and streamlining infrastructure through planned, rather than sprawl, development promotes healthier environments.<sup>114</sup> For example, the more asphalt required for building roads (or other materials required for building structures), the more likely pollution to water, soil, and air will occur.<sup>115</sup>

Even though sprawl development may have economic benefits, such as sales tax revenues, for a locality in the short run,<sup>116</sup> planned growth tends to provide more long-term economic benefits.<sup>117</sup> Uncontrolled development not in accordance with a land use program can actually destroy long-term economic growth.<sup>118</sup> Because localities in Southside and Southwest Virginia have endured the economic impact of tobacco farming and textile production going overseas,<sup>119</sup> they will be better off to utilize and incentivize planned development solutions that foster long-term economic benefits. Further, one article notes that there is no evidence that having planned development, as opposed to haphazard development, has a negative effect on overall economic development or regional economic competitiveness.<sup>120</sup>

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<sup>110</sup> *Id.* at 171.

<sup>111</sup> Burchell, *supra* note 97, at 171.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Why Preserve Land?*, *supra* note 98.

<sup>115</sup> *Id.*

<sup>116</sup> Burchell, *supra* note 97, at 163.

<sup>117</sup> Wu, *supra* note 104, at 8.

<sup>118</sup> *Id.*

<sup>119</sup> Karl Rhodes, *Up in Smoke: Fifth District States Are Burning Through Tobacco Settlement Funds to Balance Their Books*, REGION FOCUS 21, 23 (2003), [https://www.richmondfed.org/~media/richmondfedorg/publications/research/region\\_focus/2003/spring/pdf/feature2.pdf](https://www.richmondfed.org/~media/richmondfedorg/publications/research/region_focus/2003/spring/pdf/feature2.pdf) [<https://perma.cc/4NUZ-7MWZ>].

<sup>120</sup> Burchell, *supra* note 97, at 179.

Although use value assessment may not reduce holding costs enough to entirely deter land sales for development, it does help insulate a landowner from market pressures to sell when the land otherwise would not be sold.<sup>121</sup> Because the recommended use value assessment mostly targets retiring farmers who *want* to continue owning their family farmland, the importance of reducing market pressure to sell is particularly important: this reduced market pressure helps the landowner sell the farm when he no longer wants to maintain it, rather than have the sale based on market and economic pressure alone.<sup>122</sup>

*B. Impact on Localities' Real Estate Tax Revenues*

Because the land at issue already qualified for use value assessment, expanding the scope of use value assessment by grandfathering in the land should not cause a drop in a locality's real estate tax revenue. Localities are significantly dependent on local real property taxes,<sup>123</sup> and therefore, may be concerned about how an expanded use value assessment scope will affect their real estate tax revenues. Especially in Southside and Southwest Virginia, where economies have been significantly hurt by decline in tobacco production, textile manufacturing, and coal mining,<sup>124</sup> localities will be careful to adopt any measure that could reduce their real estate tax revenue. Nevertheless, because the land at issue already qualified for the use value assessment when it was farmed, the effect of this expansion on real estate tax revenues for localities as they are now will be limited. The real estate tax burden under the recommended expansion would preserve the agricultural use value level as the measure of taxation for these open spaces at issue. In other words, the locality would receive more or less the same amount of tax revenue that it was already receiving when the land at issue qualified for agriculture use value assessment.

Additionally, because many localities implemented use value assessment programs,<sup>125</sup> localities have already recognized the public benefits of conserving open land and incentivizing planned, rather than haphazard,

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<sup>121</sup> John C. Keene, *Differential Assessment and the Preservation of Open Space*, 14 J. URBAN & CONTEMP. L. 11, 50 (1977), [http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1616&context=law\\_urbanlaw](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1616&context=law_urbanlaw) [[http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1616&context=law\\_urbanlaw](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1616&context=law_urbanlaw)].

<sup>122</sup> *Id.*

<sup>123</sup> See McElfish, Jr., *supra* note 81, at 140–41.

<sup>124</sup> Rhodes, *supra* note 119, at 23.

<sup>125</sup> Lamie & Groover, *supra* note 62.



development.<sup>126</sup> By implementing these programs in the first place, localities arguably have recognized that these benefits from use value assessment outweigh the differences in tax revenues they would receive by taxing land at its raw fair market value.

### C. *Ecological and Environmental Impact*

Preserving open land is critical to conserving natural resources, sustaining ecosystems, and reducing pollution. Development, especially sprawl development, entails destruction of natural resources.<sup>127</sup> Resources affected include both plant and animal habitats.<sup>128</sup> The sort of habitat destruction and habitat fragmentation associated with urban development is one of the leading causes of endangered and extinct species.<sup>129</sup> By preventing development, these ecosystems and habitats are less likely to be destroyed.

Additionally, land development results in both air pollution and water pollution.<sup>130</sup> Accordingly, preserving open land through public land use planning, partially enabled by use value assessment, is important to preventing the pollution and ecological and environmental destruction externalities associated with development.<sup>131</sup>

Because ecological and environmental protections are important to provide quality drinking water, timber supplies, preserve mineral deposits, and have land available when needed for crops and livestock,<sup>132</sup> localities should incentivize measures that deter such environmental and ecological destruction. Preserving land as an open space will further these ecological and environmental objectives even more than traditional value assessment for tobacco use because the environmental benefits will not be discounted by the environmental harms associated with farming.<sup>133</sup> For example, agricultural runoff and irrigation have significant effects on water pollution and wildlife habitats.<sup>134</sup> Additionally, tobacco

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<sup>126</sup> *Virginia's Use-Value Assessment Program*, *supra* note 67.

<sup>127</sup> Burchell, *supra* note 97, at 168.

<sup>128</sup> *Id.*

<sup>129</sup> Wu, *supra* note 104, at 8.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Aaron Paul, *The Economic Benefits of Natural Goods and Services: A Report for the Piedmont Environmental Council*, at 7 (Nov. 2011), <https://www.pecva.org/library/documents/Resources-Publications/Reports/Land-Conservation/2011-the-economic-benefit-of-natural-services-report.pdf> [<https://perma.cc/453V-2SX3>].

<sup>133</sup> Wu, *supra* note 104, at 8 (discussing the environmental impacts of farming).

<sup>134</sup> *Id.* at 8.

farming involves significant pesticide and fertilizer use.<sup>135</sup> This chemical use can harm birds and small animals as well, and can also pollute bodies of water.<sup>136</sup> It also depletes key nutrients from soil.<sup>137</sup> Further, open land that is not cleared for crops provides even more animal cover to protect animal habitats.<sup>138</sup>

Because the land at issue will not be farmed but rather maintained as an open space, the negative ecosystem and environmental impacts associated with intensive agriculture will not apply.<sup>139</sup> In other words, the environmental and ecological benefits of maintaining open land will not be discounted by the environmental and ecological costs associated with tobacco farming. Therefore, the recommended use value assessment expansion is consistent with promoting ecological and environmental protection.

#### D. *Historical and Cultural Importance of Preserving Open Land*

Because development is more or less permanent, land lost to development is likely lost to development forever.<sup>140</sup> Because of this permanence, development frequently leads to the loss of historically significant areas<sup>141</sup> like the tobacco growing regions of the Commonwealth.

Nevertheless, use value assessment has been effective in delaying development decisions, especially for land on the fringe of urban areas.<sup>142</sup> By reducing the holding cost of unfarmed agricultural land, farmland owners are in a better position to make a conscious, planned decision to sell, rather than an economically forced decision to sell farmland for development purposes.<sup>143</sup> Community attachment to open land has proven important to the public for the land's uniqueness and scenic beauty.<sup>144</sup> In

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<sup>135</sup> *Environmental Harm*, THE TOBACCO ATLAS, <http://www.tobaccoatlas.org/topic/environmental-harm/> [https://perma.cc/GW28-K6XM] (last visited Oct. 23, 2017).

<sup>136</sup> *Fact Sheet: Environmental Impact of Tobacco*, MULTNOMAH CTY. HEALTH DEPT. (Mar. 2013), [https://www.pdx.edu/healthycampus/sites/www.pdx.edu/healthycampus/files/Environmental\\_Impacts.3.7.13.pdf](https://www.pdx.edu/healthycampus/sites/www.pdx.edu/healthycampus/files/Environmental_Impacts.3.7.13.pdf) [https://perma.cc/65QP-DB3Y].

<sup>137</sup> *Environmental Harm*, *supra* note 135.

<sup>138</sup> Burchell, *supra* note 97, at 169.

<sup>139</sup> Wu, *supra* note 104, at 8.

<sup>140</sup> See John E. Anderson, *Use-Value Property Tax Assessment: Effects on Land Development*, 69(3) LAND ECON. 263, 267 (1993), <http://www.jstor.org/stable/3146592>.

<sup>141</sup> *Why Preserve Land?*, *supra* note 98.

<sup>142</sup> Anderson, *supra* note 140, at 269.

<sup>143</sup> *Id.* at 267 (noting that the irreversible nature of development is often an important factor for landowners considering selling their land).

<sup>144</sup> *Open Space Helps to Create Urban Form*, USEFUL CMTY. DEV., <http://www.useful>

fact, the public has generally supported farmland preservation programs to the point of being willing to pay for environmental and rural amenities they provide,<sup>145</sup> suggesting that the value in preserving open land is important for more than just the dollar amount that rapid development may bring.

In Southside and Southwest Virginia, much of the culture is based around the rural and agricultural nature of the region.<sup>146</sup> Fields have shaped the rural landscapes, and tobacco production defined the cultural of the rural Commonwealth.<sup>147</sup> Although the family farm ideal and the cultural significance of tobacco that defined rural Virginia for generations is fading,<sup>148</sup> the historical and cultural significance of the farmland itself does not have to go with it.<sup>149</sup> In fact, because tourism is the second largest industry in Virginia, preserving tobacco history and culture may contribute to the Commonwealth's rural economies by incentivizing tourism and transforming the region into a historical attraction.<sup>150</sup> Preserving this history, though, entails the necessity of preserving some of the rural nature of the region and the land upon which tobacco was grown for so many generations. Because of development's permanence,<sup>151</sup> the history and culture of the region will be left to the dull pages of a textbook if localities fail to incentivize its preservation.

## CONCLUSION

Because farmland owners in rural Virginia no longer have the same landowning incentives that they did under the Quota System, Virginia can ameliorate the impact the changing tobacco market has on preservation of open spaces by expanding its use value assessment legislation. By allowing farmland that once held quota to be "grandfathered in" to agricultural use value assessment taxation, localities can help reduce real

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-community-development.org/open-space.html [https://perma.cc/VU9F-AT7K] (last visited Oct. 23, 2017).

<sup>145</sup> *Economic Benefits of Land Conservation*, CONSERV. TOOLS.ORG, <http://conservationtools.org/guides/94-economic-benefits-of-land-conservation> [https://perma.cc/2U2-K2VE] (last visited Oct. 23, 2017).

<sup>146</sup> See Walker, *supra* note 49.

<sup>147</sup> *Id.*

<sup>148</sup> Craig P. Raysor, *From the Sword to the Pen: A History and Current Analysis of U.S. Tobacco Marketing Regulations*, 13 DRAKE J. AGRIC. L. 497, 543 (2008).

<sup>149</sup> See, e.g., Walker, *supra* note 49.

<sup>150</sup> *Id.*

<sup>151</sup> See *Why Preserve Land?*, *supra* note 98.

estate holding costs that retiring farmers face when they want to maintain their farms as open land. Even though this reduced financial burden of owning land will not prevent development of all of Virginia's open spaces, it will ease the burden of open space ownership for farmland owners who want to maintain their farms.

By reducing Virginia farmland's vulnerability to haphazard development through expanded use value assessment, localities will reap the lowered infrastructure costs and long-term economic benefits from planned development. Additionally, localities will enjoy the ecological and environmental benefits associated with preserving open spaces, protecting animal habitats and bodies of water, fostering a clean environment, and promoting the scenic beauty that comes with preserving open land. Finally, by preserving farmland, rural Virginia can protect the historical and cultural significance associated with tobacco farming, the industry that defined the Commonwealth's economy, culture, landscape, and history for generations.