

# C&G

Most states provide forest landowners with a property tax incentive to protect open space and/or encourage forest management. For example, Pennsylvania's Farmland and Forest Land Assessment Act (Act 319, 12/19/74; 1974 Pa. Laws 973, codified at 72 Pa. Stat. Ann. §§ 5490.1 to 5490.13), commonly called "Clean and Green" (C&G), seeks to preserve farmland, forestland, and open space by allowing these types of land to be taxed according to their use value rather than their prevailing ad valorem or market value. Most research on forest property taxation incentives has taken a theoretical perspective on the effects of the different types of property taxes on forest management decisions.<sup>1</sup> Studies of preferential property tax programs have looked at whether they actually

preserve open space, and have concluded that the programs do not deter conversion to developed uses.<sup>2</sup>

## Pennsylvania's 'Clean and Green' Program

The C&G program defines three types of land eligible for preferential assessment<sup>3</sup>:

- **Agricultural use:** Land that is used for the purpose of producing an agricultural commodity or is devoted to and meets requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. The term includes (1) any farmstead land on the tract, and (2) a woodlot and land

that is rented to another person and used for the purpose of producing an agricultural commodity.

- **Agricultural reserve:** Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis.
- **Forest reserve:** Land, ten acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes farmstead land on the tract.

While recommended assessed values for properties in the program are published by the state, the program is managed at the county level, and counties are allowed to use any assessed values, as long as they are not higher than the state's published values. According to the Pennsylvania Department of Agriculture,<sup>4</sup> in 2002 2.2 million acres (about 17% of all private forestland in the state) were enrolled in the program under the "forest reserve" category in 27 of the 52 counties that participate in the C&G program. Fifteen counties have no prop-

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erties enrolled in C&G because their market-assessed values are lower than the C&G values, and 25 counties with properties enrolled in C&G did not report the number of acres to the state. Additionally, some of the 27 counties that reported their C&G acreages do not differentiate forest reserve from the other two categories. Furthermore, not all of the acres reported as enrolled in the forest reserve category are necessarily forestland, and conversely, some of the "agriculture use" or "agricultural reserve" categories are forested. Thus, obtaining an accurate estimate of actual acres of forestland or even the number of forest landowners enrolled in C&G is difficult.

**Preferential assessment.** The preferential assessment of forestland in the C&G program is based on current use valuation of the land's ability to produce revenue as a result of growing and harvesting timber and wood fiber. Forestland is eligible for preferential assessment if it is at least ten contiguous acres stocked by forest trees of any size and capable of producing timber or other wood products. Forest reserve land, unlike agricultural reserve land,

does not have to be open to the public for noncommercial recreational use. Landowners who enroll their property in the program (and those who acquire land already enrolled) are obligated to continue the use that qualifies the land for the program.

The landowner is not allowed to withdraw from the C&G program unless the land use is changed to one that does not qualify. Generally, if the land use is changed to a nonqualifying use, the owner is liable for a rollback penalty on the entire property. Certain exceptions to this rule may apply, depending on how the land is transferred and what entity receives the land. (See "Practice Note: Exceptions to Rollback Penalties," accompanying this article.) The rollback penalty is the difference between the preferential taxes paid and the taxes that would have been paid had the land been assessed at fair market value. The rollback penalty applies for up to seven tax years, i.e., the current tax year (the year of change) and the immediately preceding tax years, up to six, for which the property has been in the program. In addition, 6% compound interest is imposed on each year's rollback penalty.

### A Survey of the Program

Most of Pennsylvania's 67 counties are governed by elected boards consisting of three county commissioners. Each Board of Commissioners oversees the entire operation of the county, including real estate tax assessment. County tax assessors are professionals who are responsible for determining fair market values for every property in their respective counties and for collecting property taxes.

As part of a review of Pennsylvania's forest property tax program, landowners, assessors, and commissioners were asked about the program. The public officials were asked about their views on the extent to which the program helps to limit open space development in their counties, the impact of the program on county budgets, the administrative burden of the program, and changes they would like to see in the program. The following discussion examines the public officials' responses.<sup>5</sup>

**Survey methodology.** Survey questionnaires (using the Dillman Total Design Method<sup>6</sup>) were mailed to county assessors and county commissioners



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in 2001. The questions were essentially the same for each survey, but the county assessor survey had more questions about assessment procedures and valuation. A survey questionnaire was sent to every county assessor and at least one county commissioner in each county; some randomly selected counties received two commissioner surveys. Fifty-two (77%) of the 67 county assessors responded. Of the 52, the results reported here reflect the responses from the 37 (71%) assessors with properties enrolled in C&G in their counties. The sample of 119 commissioners produced 57 useable surveys (48%), of which 89% had properties enrolled in the C&G program in their counties.

### Survey Results

Questions were posed to both sets of public officials with regard to their views on (1) how this preferential assessment tax incentive affects (a) open space and development, (b) county tax revenues, and (c) administrative time, and (2) what changes they would like to see to the program.

**Impact on open space protection and development.** More than 70% of the commissioners and assessors said development was being carried on to “some” or a “very great” extent in their counties (see Exhibit 1). About half of all respondents felt that the forest reserve program does conserve forests, compared with only one-third who said the agricultural use program maintains farmland. This result may reflect the fact that development is more of an issue with farmland, which is more likely to be targeted by developers because it is flatter and more accessible. In contrast, much of the forestland is of marginal quality and on steeper slopes.

Interestingly, however, a slight majority of commissioners thought the C&G program is more effective at protecting farms, while most assessors thought the program is better at forestland protection. Many felt that the C&G program slows development pressures in communities and is an essential program for keeping farmers in business. Some assessors, however, suggested that in the long term, only permanent preservation programs, such as con-

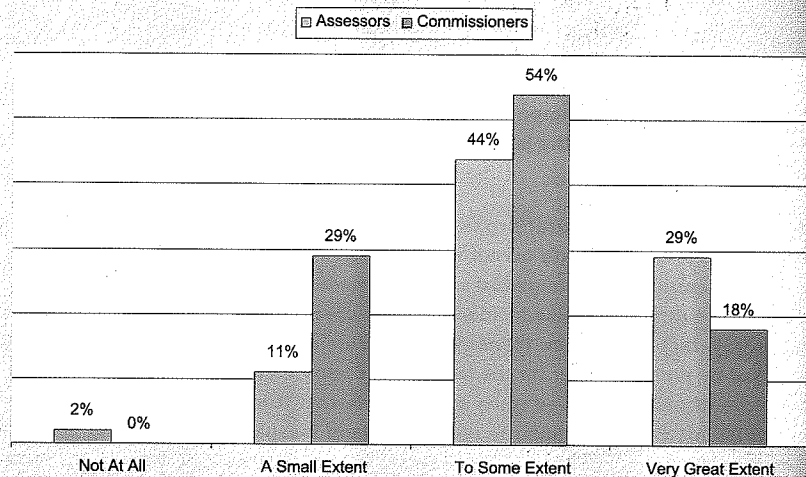
servation easements, could save farmland. A major concern involved rollback penalties. Many assessors expressed the belief that these penalties are not severe enough to deter developers from changing the land use.

**Impact on county revenues.** Nearly half the assessors, but only one-quarter of the commissioners, stated that they think the C&G program reduces their counties’ tax bases by more than 10%. The most common approach used by counties to make up for the lost revenue is to increase millage rates (see Exhibit 2). The next most common methods for offsetting the losses are through increases in the tax base as a result of the development of other properties and through reductions in the county budget.

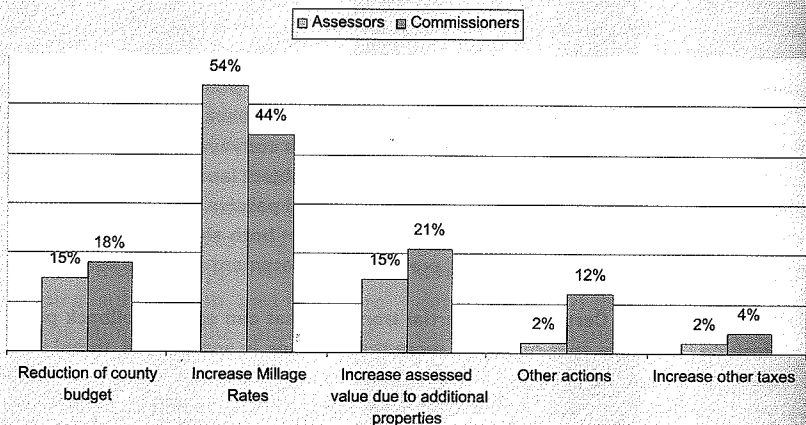
Many of the public officials, especially assessors, felt that the tax break provided by the program is too large. Nearly half the assessors said that forest reserve values are too low, while only one-quarter felt that way about agricultural use values. A smaller percentage of commissioners were concerned that values were too low, with only one-quarter feeling that way with regard to forest reserve val-



**EXHIBIT 1**  
Extent of Open Space Development



**EXHIBIT 2**  
Actions to Offset Reduced Revenues Due to Clean & Green Program

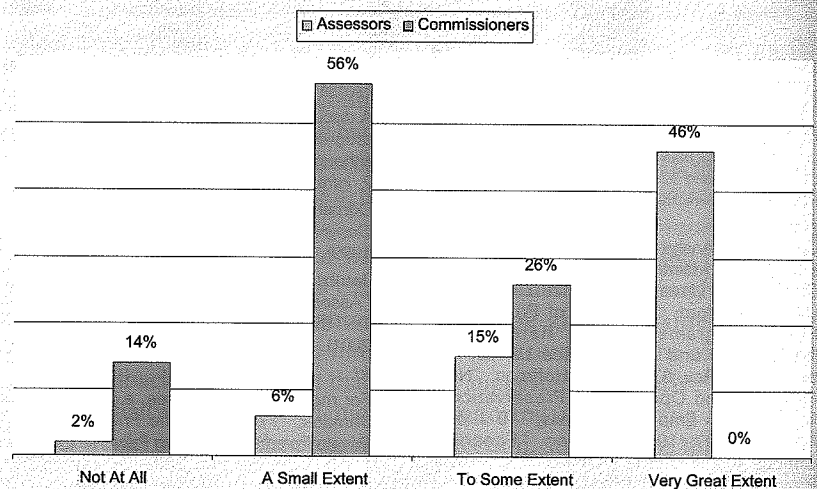


ues and just 11% finding agricultural use values too low.

**Increased administrative time.** The majority of assessors said that C&G added to their regular duties “to a great extent” (see Exhibit 3). Many assessors noted that they have at least one staffer assigned full-time to C&G-related duties. Commissioners, however, are not affected by the program to the same extent as the assessors’ offices. About a quarter of the commissioners indicated that the program adds a fair amount of time to their regular workload, but most (56%) said it affects their duties only to a small extent, and 14% reported that the program does not add to their regular duties at all. Only 28% of commissioners, however, said they were very familiar with the program. The commissioners conceded they had less knowledge regarding aspects of the forest reserve program as compared to the agricultural use program.

Most of the commissioners’ involvement with the program was related to penalties on unsuspecting landowners, leading to complaints and appeals. For assessors, application and valuation activities required the most time. One asses-

**EXHIBIT 3**  
Extent to Which Clean & Green Program Adds to Regular Administrative Duties



## Practice Note: Exceptions to Rollback Penalties

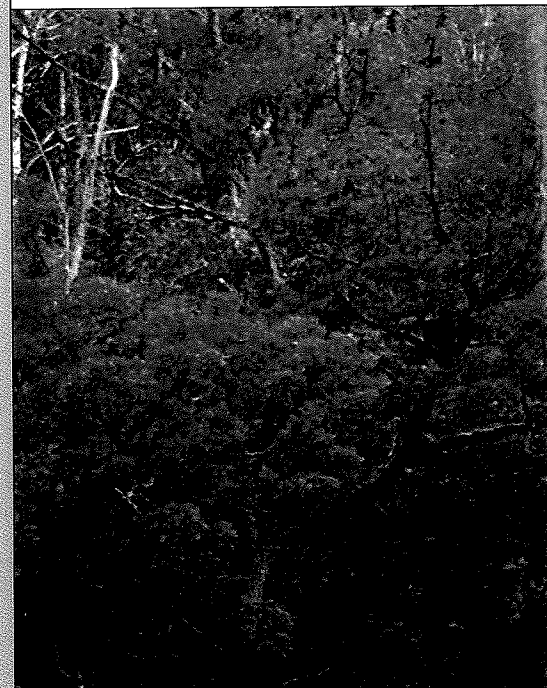
Under Pennsylvania's "Clean and Green" program, if the land use is changed to a nonqualifying use, the owner is liable for a rollback penalty on the entire property. The penalty is the difference between the preferential taxes paid and the taxes that would have been paid had the land been assessed at fair market value. The rollback penalty applies for the year of the change and up to six prior tax years, and 6% compound interest is imposed. Certain exceptions to this rule may apply, however, depending on how the land is transferred and what entity receives the land. For example:

**Limited use of agricultural property for commercial sales.** Under 72 Pa. Stat. Ann. § 5490.8(d), a property owner may use up to two acres of land granted preferential assessment for commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit without subjecting the entire tract to rollback taxes. The commercial activity must be owned and operated by the landowner (or the landowner's beneficiaries), an assessment of the inventory of goods involved must substantiate that it is so owned, and the rural enterprise may not permanently render the land incapable of producing an agricultural commodity. Rollback taxes are imposed on the portion of the tract where the commercial activity occurs, and the fair market value of that tract will be adjusted accordingly.

**Transfers to specified transferees.** Under 72 Pa. Stat. Ann. § 5490.8(b), local taxing districts are not required to impose the rollback taxes if the land is donated to a school district; municipality; county; volunteer fire company or ambulance service; a nonprofit corporation tax-exempt under IRC Section 501(c)(3) that will use the land exclusively for recreational purposes available to the general public free of charge; or a religious organization for the construction of or use as a place of worship or other facility that furthers the organization's religious purpose.

In addition, under 72 Pa. Stat. Ann. § 5490.8(e), no rollback taxes are imposed if the land transferred from a preferential assessment is conveyed to a nonprofit corporation and (1) it is used as a cemetery; or (2) the subject land (a) does not exceed 20 feet in width, (b) is used as a trail for nonmotorized passive recreational use, and (c) is available to the public for use without charge. In both situations, however, at least ten acres of land must remain in preferential assessment after the conveyance.

**Other exceptions.** Certain other partial transfers that can escape rollback penalties include (1) certain spilt-offs of no more than two (or, in some cases, three) acres annually, provided the split parcel also continues in a qualifying use or is used for certain residential purposes (72 Pa. Stat. Ann. § 5490.6(a.1)(1)); and (2) certain leases of up to one-half acre to be used for wireless or cellular telecommunications (72 Pa. Stat. Ann. § 5490.8(b.1)). While rollback taxes will be imposed on the leased portion (the fair market value of which will be adjusted accordingly), the lease will not invalidate the preferential assessment with respect to the rest of the property (72 Pa. Stat. Ann. § 5490.8(b.2)).



sor noted that while approximately 10% of county parcels are involved in the program, these parcels create 50% or more of the workload in the assessor's office. Although updated forest values are provided annually to the assessors, only 38% actually update their forest reserve assessed values. Three-quarters of the respondents did not think it was appropriate to update C&G forest reserve values annually. The sentiment among assessors was to establish a base year or choose a year's values and use those values until the next countywide reassessment. They argue that if they had to revalue C&G every year, the county would incur the costs of mailing assessment notices, processing the changes, handling appeals, etc., for what perhaps will amount to a few dollars difference in assessed value. The law requires that the C&G assessed value be no more than the state-published values, so counties occasionally may be required to update the values if the state-published values decline.

In 1998, the C&G law was amended (Act 156, 12/21/98; 1998 Pa. Laws 1225) to clarify some ambiguities in the original act. One key change was to require assessors to include in the C&G valuation the base acre (i.e., the land—assumed to be one acre—under the house or farm buildings). The response by one assessor regarding this statutory change was that the assessor's office now spends at least four times as much

1 See, e.g., Amacher, Brazee, and Thomson, "The Effect of Forest Productivity Taxes on Timber Stand Investment and Rotation Length," 37 *Forest Science* 1099 (1991); Chang, "An Economic Analysis of Forest Taxation's Impact on Optimal Rotation Age," 58 *Land Economics* 310 (1982); and Klemperer, "Forests and the Property Tax—A Re-Examination," 27 *Nat'l Tax J.* 645 (1974).

2 Currier, "An Analysis of Differential Taxation as a Method of Maintaining Agricultural and Open Space Land Uses," 30 *U. Fla. L. Rev.* 821 (1978); Dunford, "A Survey of Property Tax Relief Programs for the Retention of Agricultural and Open Space Lands," 15 *Gonzaga L. Rev.* 675 (1980); Hoffman, "Note: Farmland and Open Space Preservation in Michigan: An Empirical Analysis," 19 *J. of L. Reform* 1107 (1986); Nelson, "Economic Critique of U.S. Prime Farmland Preservation Policies," 6 *J. of Rural Studies* 119 (1990).

3 72 Pa. Stat. Ann. § 5490.2.

4 2002 *Clean and Green, Act 319 Summary of Participation* (Pa. Dept. of Agriculture, Bureau of Farmland Preservation, Harrisburg, PA, 2003).

5 A discussion of the landowners' views about the program are beyond the scope of this article, although they are briefly noted below. See note 7, *infra*, and accompanying text.

6 Dillman, *Mail and Internet Surveys: The Tailored Design Method* (2d ed., John Wiley & Sons, Inc., 1999).

7 Jacobson, McDill, Fournier, Seyler, and Northrup, "Assessment of Pennsylvania's Forest Property Tax" (final report submitted to U.S. Forest Service, 2001).

8 *Id.*

9 For more on this area, see, e.g., Mortimer and Jenkins, "Forests at the Fringe: Sustaining Private Forests by Avoiding Perverse Incentives," 12 *JMT* 28 (February 2003); Lindstrom, "State Tax Incentives for Conservation Easements Can Benefit Everyone," 12 *JMT* 20 (Nov/Dec 2002).



AS FOR C&G ELIGIBILITY REQUIREMENTS, THE MOST COMMON SUGGESTIONS WERE TO INCREASE THE MINIMUM ACREAGE AND TO REQUIRE EVIDENCE OF LAND USE.

time on C&G as it did before the amendment. All the officials wanted to see the administrative process made simpler. A few assessors suggested that other agencies involved in land resources do some of the paperwork to relieve some of the burden from their offices.

**Changes to the program.** The changes proposed by assessors related mainly to unintended beneficiaries and eliminating the current-use assessment of the base acre. More than three-quarters of all respondents said that the C&G law was not intended to benefit some properties that, nevertheless, are enrolled in the program, such as ten-acre to 20-acre lots with houses, often referred to as “mini-estates,” where no active farming or forest management is conducted. One assessor noted the following two adjoining tracts. One is eight acres, which is below the minimum qualifying acreage. It sells for \$160,000 and is taxed at \$7,200 annually. The adjacent ten-acre tract qualifies for C&G, sells for \$200,000, and is taxed at \$180 annually. Although the commissioners were concerned about unintended beneficiaries, they did not seem to support changes that would be needed to address this problem. Perhaps they believe that a solution could be accomplished through better enforcement of the current rules.

Another important concern among assessors was the assessment of the base

acre (i.e., homestead or farmstead). Almost 80% of the assessors and two-thirds of the commissioners thought it inappropriate to assess land associated with the homestead at C&G values. The common argument was that this acre supports the buildings and requires the same township services (e.g., police, fire, etc.) as the acre supporting a house in a typical subdivision, and therefore should be subject to the same tax liability. Forty-two percent of the assessors indicated that assessing the base acre at C&G rates reduced county revenues by more than 5%.

Another change recommended by some assessors and commissioners was to require public access to C&G properties. Their argument was that non-enrolled taxpayers do not benefit from paying additional taxes to make up for the lower taxes paid by property owners enrolled in the program. The county officials felt that in exchange for the higher taxes, the general public should receive at least some benefit, such as access to the enrolled properties for recreation.

Changes also were mentioned with regard to the penalties under the C&G program. Both assessors and commissioners suggested increasing the interest rate on rollback taxes, and felt that if a stronger penalty were imposed, more properties would remain in the program.

As for changes to the C&G eligibility requirements, the most common sug-

gestions were to increase the minimum acreage and to require evidence of land use—for example, demonstrating compliance with a forest management plan. Of those calling for an increase in minimum acreage requirements, most thought that 20 or 25 acres would be adequate to deal with the problem of unintended beneficiaries. A few respondents suggested that only farmers who can prove farm income should be eligible for C&G and that the forest reserve category should be eliminated. A common response from commissioners was that the state should reimburse the county for lost revenues resulting from the program. Overall, however, more commissioners, as compared to assessors, felt the program is fine the way it is.

Finally, the officials were asked whether an alternative tax involving a low, flat annual property tax payment combined with a “yield tax” at harvest should be considered for forestland. A “yield tax” is based on a percentage of the value of the timber sold, or a fixed amount per unit of volume sold. Only 11% of the assessors and one-third of the commissioners thought such a tax should be given consideration. The main concerns were the complexity of the suggested alternative in terms of monitoring and policing harvest and collection, and the fear that landowners would never harvest and thus avoid paying taxes. Other suggestions were to



## IT IS TIME TO CONSIDER WHETHER MODIFIED TAX ASSESSMENT PROGRAMS ARE THE BEST TOOLS FOR PRESERVING OPEN SPACE.

let each county independently determine how to tax local properties, and to overhaul the entire Pennsylvania tax system before dealing with C&G.

### Analysis and Conclusions

County officials are mandated to carry out the state-legislated C&G property tax incentive program for farm and forest landowners. In return, they receive no compensation from the state for lost tax revenues or for the additional costs of administering the program. The program has a significant impact on the counties' revenue bases, especially in the state's more heavily forested areas. In those counties, landowners who are not eligible for C&G often pay notably higher property taxes because of the need to offset the reduced county, school district, and township revenues generated by properties enrolled in the program. The cost of preferential assessment programs is therefore borne primarily by the residents of rural counties who do not own farm or forest land, while the benefits of these programs accrue to the enrolled landowners and to everyone in the state who values the preservation of open space.

Most officials believe the C&G program is important and worthwhile and that it helps to conserve open space. In comparing responses between assess-

sors and commissioners, however, clearly the commissioners were less familiar with the details of the C&G programs. Fewer commissioners were aware of the particulars of the forest reserve program, and some felt the C&G program should apply only to working farms. Assessors felt the forest reserve program was doing a better job than the agricultural use program at preserving open space, while the commissioners felt otherwise. The assessors' opinions seem to make more sense since, in most counties, the forest reserve values are lower than the agricultural use values, thus perhaps providing less of an incentive to farmers than forest landowners to keep property from development. Also, farms generally are located in more "developable" areas. The differences in the assessors' and commissioners' opinions about C&G in many ways reflect their job responsibilities, elected officials vs. professionals. Farming receives the political spotlight compared to forestry, although forests represent the largest land use in Pennsylvania (covering 60% of land area).

Commissioners seemed less in touch with the major problems facing C&G. They were less concerned than assessors about the current-use valuation and its impact on county revenues. Commissioners agreed that the program does provide benefits to some properties that it

was not intended to benefit, although they were less clear about what changes they would like to see. Among the officials surveyed for this study, the most widely supported changes to the C&G program were to (1) increase the penalties for withdrawing from the program; (2) assess the base acre at fair market values; (3) require evidence of the land use, such as by requiring a forest management plan; and (4) increase the minimum acreage requirement for enrolling in the program. Assessors wanted to see more teeth in the law, along with clarifications of land uses.

The two most important problems with the program, according to assessors, are the unintended beneficiaries and that the penalties for changing land use are too low. The ten-acre minimum provision has resulted in "mini-estates" (i.e., large houses on lots just exceeding the minimum acreage) enrolling in the program and, in many instances, paying considerably less in property taxes than similar or lower-value residences situated on less acreage in the same county. At issue is the fact that many of these "mini-estates" are nonworking forests taking advantage of the tax break. Additionally, the penalties generally are not high enough to deter developers from enrolling in the program and using the land as a tax shelter until the time is right to develop the property. When the land is developed, the penalties for withdrawing from the program generally are



substantially smaller than the profits from development.

In a survey of landowners enrolled in the C&G program, major concerns were raised about the use of a single, weighted average value based on the forest-type make-up of the county.<sup>7</sup> This approach results in landowners with high-value forest types paying the same tax per acre as landowners with low-value forest types. Similarly, landowners with valuable mature timber pay the same tax as landowners with immature timber, because of the nature of the productivity tax formula. In contrast, especially near the edges of price-reporting regions, landowners with similar forestlands that happen to be located on different sides of a county boundary may have very different assessed values. Forest landowners also frequently complain about the deferred income problem. Landowners pay annual taxes but do not harvest timber every year. In fact, many owners may harvest timber only once or twice in their lives. In many cases—even with the preferential assessment—the compound value of the annual tax payments over an 80-year to 100-year rotation is far greater than the revenues received from the harvest. Nevertheless, the current-use assessment is a good deal for the landowners. Asked why eligible landowners may not be enrolling in C&G, the most common reasons given

by assessors were “misinformation about the program” (42%) and “not trusting government programs” (42%).<sup>8</sup>

The concerns expressed by the public officials and landowners surveyed in this study raise serious questions about whether the current tax program for forestland is effective in achieving its objectives and whether the inequities that it creates are offset by any substantial social benefits. Does the C&G program prevent the development of forestland or might it actually be encouraging it?

**Another approach.** One alternative to the current forest tax method is a yield tax, which is used in almost half the states. The primary advantage of a yield tax system is that it shifts the tax burden to the point at which the property generates income that may be used by the landowner to pay the tax. This approach could address some of the problems with fairness and equity, but officials are wary of drastic changes to the program. The primary disadvantages of yield taxes are: (1) the revenues from these taxes are more variable than revenues from property taxes; (2) many landowners may decide to not harvest in order to avoid the tax; (3) county assessment offices are not familiar with the procedures for collecting these taxes; and (4) determining the taxable value of some timber sales can be difficult. Nevertheless, these issues potentially could be addressed in Pennsylvania through careful design of

a new yield tax program, based on a careful examination of the severance and yield tax programs of other states.

Clearly, minor changes to the C&G program, such as those that occurred in 1998, often create as many problems as they solve and may make the program more complicated. Similar problems could occur with the minor changes suggested by the county officials, such as penalty or minimum acreage increases, or requiring a forest management plan. With all of these changes, one has to wonder whether tax incentives based on timber values are even appropriate today. The current-use valuation approach employed in the C&G program was designed for forests used primarily to produce timber income. Today, however, landowners seldom cite timber growing as a primary management objective. Protecting farm and forest land from conversion, with the ultimate goal of preserving open space, clearly is the primary goal of C&G. Perhaps a tax system is needed that focuses on the nontimber values that motivate most landowners today. It is time to consider whether modified tax assessment programs are the best tools for preserving open space. Perhaps other land-use tools, such as zoning, conservation easement programs, or other types of tax credits or financial incentives would be more effective in encouraging forest landowners to protect their land from development.<sup>9</sup> ■