

## Tax break for open space could protect New Mexico's farm land

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Louis Romero has been through two knee replacements, a heart attack and a bout with cancer. At 73, he's not up for farm chores anymore.

Romero and his wife, Emily, live on 5 acres just north of Taos that were once part of a larger family farm. Emily and her three sisters inherited the land from their dad, who worked as a school bus driver mornings and afternoons and dedicated the rest of his time to the farm.

"I have such an emotional tie to this land," Emily Romero says, tears welling up behind her wireframe glasses as she recalls endless hours spent shucking peas and churning butter.

The Romeros continued to run cattle on their property until they were forced to sell the herd during a drought a decade ago. Their kids have shown no interest in working the land. Some can't even stand the smell of fresh manure. As a result, the land has sat idle for years.

For the Romeros and other families, state tax law makes idling land an expensive proposition. Because the family's property was once used for agriculture, it was one of about 6,000 parcels that enjoyed a longtime property tax break. But in 2013, the county began cracking down. The assessor's office hired a team to inspect fields and irrigation ditches, property by property, for signs of farming activity. By the end of 2015, they found that more than half of the 1,000 parcels inspected were not in production.

When an old family loses ag status, the county adjusts their property value and corresponding tax to the market rate, which has been inflated by a wave of affluent retirees and second homeowners. The result for many landowners has been a sudden and often astronomical spike in taxes. For example, in the desirable Des Montes area — which is now home to notable property owners like actress Julia Roberts and former Secretary of Defense Donald Rumsfeld—one parcel that lost ag status saw its yearly tax go from \$576 a year to more than \$3,000. On average, properties that lost ag status in 2014 saw their tax bills go up 143-fold.

As the reassessment continues, many locals fear that jacking up taxes on arable land will force longtime owners off their land. If that land, once sold, is subsequently developed rather than farmed, it could spell the end of a centuries-old farming tradition that's at the center of the region's cultural identity.

"We are, with one tax policy, fragmenting Northern New Mexico's traditional communities," says Lesli Allison, executive director of the Western Landowners Alliance, a Santa Fe-based conservation group.

The trend isn't unique to New Mexico. Across the West, old farm and ranch owners have been pushed out as development overtakes rural areas. But some states have taken steps to protect farmland — even unproductive properties — from development. Whether New Mexico can learn from other Western states and adopt a similar strategy may determine the fate of families like the Romeros—and the future of agriculture in Taos County.

## **Room to breathe**

It's undeniable that agriculture in Taos County is nowhere as vibrant as it once was. But for those who hope to see a widespread resurgence, the protection of agricultural land for future use is a top priority.

In 2015, Allison co-authored a report with Colorado State University that compared tax law across the Intermountain West. The report concluded that offering tax incentives for preserving open space— not just active farms — could lead to more sustainable agriculture and prevent the kind of tax crisis facing Taos.

“The greatest threat to agriculture right now is the loss of land to development,” Allison says, noting that it's not only the real estate but the water rights that are being sold off piecemeal. “By creating an open space option, we hold some of that land in reserve for future generations of farmers.”

For inspiration, some in Northern New Mexico are looking to states like Idaho, Montana, Oregon, Texas and Washington, which all have some kind of open space protection written into their tax laws.

Allison points to Washington, which passed a law in 1970 that gave a tax break not just to active farms, but to parcels of open space as well.

Under the Open Space Taxation Act, an owner makes a formal application with their county commission or town council asking for an open space classification. Inspectors grade a property using 25 separate categories that include attributes like aquifer protection, wildlife habitat and allowing public access.

If approved, the land can be valued as low as land that meets the standards of active agricultural land — sometimes just \$1 an acre. The owner must agree to keep the land undeveloped for at least 10 years, or face back taxes and an additional penalty.

Bill Bernstein oversees the open space program for Washington's King County, which includes Seattle and more rural areas to the east. Bernstein says he's seeing a wave of aging farmers looking to the open space program as a way to hang on to their land in the face of mounting pressure to develop or sell out.

“It's a fallback that gives some flexibility for these multigenerational owners,” says Bernstein. He adds that it's not uncommon for a farm to go out of production and enter the open space program, then resume operations when another family member steps in or a new owner takes over.

Farm advocates and conservationists in Taos think that model would work well in New Mexico.

“It would give people some breathing room,” says Kristina Ortez de Jones, executive director of the Taos Land Trust and member of a local group that's trying to revive the county's agriculture. “We need that tool in a community like ours, which is so poor but has really high property values.”

## **Shifting the burden**

To protect local agricultural acres, Allison is proposing the “New Mexico Land and Resource Reserve” that would create a new tax category for open space around the state. Although they haven't decided on firm numbers yet, she says taxes for open space properties would be higher than taxes for active farms, but significantly lower than market rate. Qualifying

properties must also have agricultural water rights, or have been designated as agricultural within the last three years. Owners would be required to maintain existing irrigation infrastructure and keep the land free of noxious weeds. If a property were pulled out of the program for development, the owner would pay a penalty.

If and when such a bill is introduced, it's likely to be controversial. Allison says the most common critique is that giving fallow farmland a tax break is akin to offering complacent landowners a free ride. There are also worries that developers could find loopholes to shelter themselves from higher taxes.

One thing the bill would not do is directly impact county revenues. There's a misconception that giving a tax break to ag land means less money for local governments. If open space parcels are given a lower value, it will cause a drop in the county's tax base. But that loss is balanced by an increase in tax rates for non-residential properties. Tax rates go up only enough to keep the county coffers full.

"Government is always going to get its money," says former Taos County Assessor Darlene Vigil, who was in office when the reassessment began. "All it's doing is shifting the burden around."

The logic of the existing agricultural discount is that the community recognizes the importance of working farms, and is willing to pay a little more in taxes to support farmers, Vigil says. The same logic would apply to an open space provision: In addition to its long-term agricultural benefits, we value undeveloped land because it preserves clear views, wildlife habitat and natural resources.

Vigil has been sympathetic to elderly property owners who've lost ag status. And since leaving office, she's been part of an effort to revitalize local agriculture.

Vigil says the proposed bill is similar to existing provisions. Assessors already lower the value of raw land, though not nearly to the extent the proposed legislation would. She thinks any legislation should be specifically focused on elderly owners.

Allison says her organization is still building support for the land reserve idea. It's not yet certain if a bill will be introduced in the 2017 legislative session.

Sen. Carlos Cisneros, D-Questa, says it will be an uphill battle. Local governments are normally opposed to any tax proposal that changes the status quo. Property tax is the primary revenue source for New Mexico counties. Any change creates uncertainty.

The real uncertainty, however, may be what will happen to Taos County's proud farming and ranching traditions if families like the Romeros can't afford to hang on to their land.



**Louis Romero is among the hundreds of Taos County residents who face a big spike in property taxes because their agricultural land is no longer in productive use. Some advocates want to give landowners like the Romeros a tax break to preserve open space for future generations of farmers.**

**Katharine Egli**

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