

Preserving Minnesota's Agricultural Land: Proposed Policy Solutions

June 30, 2012

A Publication of
Farmers' Legal Action Group, Inc. (FLAG)

Funding for this project was provided by the Minnesota Environment and Natural Resources Trust Fund as recommended by the Legislative-Citizen Commission on Minnesota Resources (LCCMR)

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Acknowledgments

Farmers' Legal Action Group, Inc. (FLAG), is proud to be publishing this timely report, *Preserving Minnesota's Agricultural Land: Proposed Policy Solutions*, which sets forth ways that Minnesota can take a more comprehensive approach to preserving its valuable farmland.

The guide was developed and written by Senior Staff Attorney Jennifer Jambor-Delgado, with input from Susan E. Stokes, Executive Director and Attorney at Law. In addition to writing most of the chapters of the book, Jennifer defined its scope, coordinated the efforts of contributors and expert reviewers, and skillfully oversaw the project from beginning to end. Senior Staff Attorney Karen Krub drafted one of the appendices, and Susan Stokes drafted one of the chapters; the report was edited by Susan Stokes and Lynn Hayes, Senior Staff Attorney and Program Director. Rita Gorman Capes copyedited and formatted the manuscript. Debby Erickson designed the cover and provided publishing support. Thanks to generous funding from the University of Minnesota's Center for Urban and Regional Affairs, Colin Cureton provided research assistance and drafted the case study focusing on Minnesota's Scott and Dakota counties. Legal research was provided by FLAG law clerks Rachael Dettman, Meghan Marrinan Feliciano, Erin Gaines, Brian Jacobson, Maggie Kaiser, Jennifer Kalyuzhny, Alison Volk, and Grace Zaiman. FLAG law clerk Kellian Blazek cite-checked the entire report. We are grateful to each and every one of these contributors.

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- The McKnight Foundation

We hope this publication will provide a useful framework for policymakers, advocates, and planning staff in considering how to ensure that Minnesota preserves the finite resource of our farmland, and supports the farmers who are its stewards, for generations to come.

Susan E. Stokes
Executive Director and Attorney at Law
Farmers' Legal Action Group, Inc.

June 30, 2012

***Preserving Minnesota's Agricultural Land:
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Preserving Minnesota’s Agricultural Land: Proposed Policy Solutions

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Preserving Minnesota's Agricultural Land: Proposed Policy Solutions

SUMMARY OF RECOMMENDATIONS

The State Agricultural Land Preservation and Conservation Policy should be amended to include better enforcement mechanisms and specific notice requirements.

- The Policy should be amended to make all agency actions affecting ten or more acres of agricultural land subject to review by the Minnesota Department of Agriculture (MDA).
- Section 17.84 of the Minnesota Statutes should be amended to make the MDA Commissioner's recommendations binding unless the proposing agency develops alternatives that are acceptable to MDA.
- The statute should be amended to specify the type of information that the agency must provide to MDA.
- The state may wish to develop and use a Land Evaluation Site Assessment (LESA) tool to determine the impact of agency actions on agricultural land.

Establish additional state farmland preservation goals and integrate them into the state's overall land use planning framework.

- The state should consider adding additional goals to the State Agricultural Land Preservation and Conservation Policy.
- Once state farmland preservation goals are established, regional and local governments' land use planning decisions, comprehensive plans, and zoning ordinances should be consistent with those goals.
- The statutory comprehensive plan definitions should be amended to include a farmland preservation plan component.
- Local governments should be allowed to opt out of the farmland preservation plan requirements under certain limited circumstances.
- The planning requirements should be phased in, with counties and local governments with the highest rates of population growth developing their plans first.
- With assistance from MDA and/or the Department of Natural Resources (DNR), local governments should be required to develop LESA scoring systems to help determine which agricultural lands should be targeted for preservation.

- Additional resources, including funding and staff, should be allocated to MDA and/or DNR to develop educational materials and provide technical assistance to the local governments.

Develop policy tools that encourage long-term farmland preservation in important areas and discourage growth in those areas.

- Develop a state Purchase of Agricultural Conservation Easement (PACE) program and offer it in the counties that have farmland preservation plans.
- Allow farmers to form voluntary agricultural enterprise areas.
- Make farmland preservation a policy and budget priority.
- Add fees and/or mitigation requirements to discourage development of prime farmland.
- Add weighted incentives to promote conservation.

Merge the existing Metro and Greater Minnesota programs into one comprehensive program covering the entire state.

- Preservation of farmland located within the metropolitan area and throughout Greater Minnesota can and should be accomplished through one streamlined statewide program.
- The program should be available in all counties that are required to create farmland preservation plans.
- Oversight of the streamlined program should be performed by MDA.

The surplus from the Mortgage Registration and Deed Transfer (MDRT) fee should be used to enhance program benefits and to fund education and outreach efforts.

- Increase the property tax credit offered by the program.
- Add a longer-term protection option to the new agricultural preserve program.
- Require more education, outreach, and technical assistance.

Strengthen the existing program protections against eminent domain and annexation and add uniform criteria to guide the termination of agricultural preserves.

- Require mitigation for farmland acquired through eminent domain or annexed.
- Require strengthened procedural protections for land acquired through eminent domain or annexed, and consider incorporating substantive protections to protect landowners in the condemnation process.
- Add uniform criteria to guide the decision to terminate an agricultural preserve.

Restructure the Metro Program eligibility criteria and program requirements to accommodate a broader diversity of farming operations in the new agricultural preserve program.

- The minimum acreage requirements should be changed to reduce barriers to enrolling in the Metro Program.
- Amend the Metro Program requirements to clarify that enrollment in an agricultural preserve does not affect a farmer's right to use the land for agriculturally compatible purposes.

All working farms should be eligible for Green Acres Program benefits and the agricultural classification used for property tax purposes.

- Make small-acreage farms eligible for Green Acres Program benefits and the agricultural land property tax classification designation.
- An optional proof requirement should be added to the Green Acres Program statute.
- Formally incorporate a presumption of inclusion for farms that are on the borderline of eligibility.
- Clarify the "primarily devoted to" Green Acres Program eligibility requirement.
- Change the property tax classification statute to ensure that the agricultural land definition includes all land that is part of a working farm.
- Consider incorporating a long-term commitment into the Green Acres Program.

The state must create and implement policies to support farmers, and remove regulatory obstacles and barriers that impede successful farming operations.

- If policymakers wish to have a vibrant farming sector and economy, they need to develop policies that will help to facilitate the transfer of land from one generation of farmers to the next and allow for affordable access to good quality farmland.
- Funding should be allocated to MDA for it to convene a task force to review and recommend changes to streamline its administrative rules governing food handling and licensing.
- Policymakers can help to create markets for Minnesota's farms and promote economic development by creating policies that assist farmers to better market their products and use their assets for related income-producing activities.

Chapter 1

Introduction: Why Should Minnesota Care About Preserving Its Farmland? Why Now?

Situated in the middle of the nation's Corn Belt, Minnesota has always been an agricultural state. Minnesota ranked sixth in the nation in overall agricultural production in 2009,¹ and, in 2008, its agricultural production contributed \$15.84 billion to the state's economy.²

Yet Minnesota has no cohesive statewide plan or vision for preserving the land that we need in order to continue to produce the food, fiber, and feed that sustain people and livestock around the world, and that support farmers and their communities. Minnesota currently has a patchwork of programs that are not centrally coordinated, are not guided by a common set of principles, are not overseen by a single agency, and have not been particularly effective.

The decisions facing Minnesota's policymakers at this juncture include: whether to make farmland preservation a priority, how high a priority it should be, what level of resources to invest in farmland preservation, and what approach(es) the state should take. States across the country have similarly faced the loss of their farmland, with varying approaches and degrees of success,³ so there are experiences and models upon which the state can draw.

¹ Minnesota Department of Agriculture, *Minnesota Agricultural Profile*, available at <http://www.mda.state.mn.us/~media/Files/agprofile.ashx> (last visited June 15, 2012).

² Suzy Frisch, *Manufacturing Agriculture*, Enterprise Minnesota Magazine (April 2011), available at <http://www.enterpriseminnesota.org/resources/magazine-enewsletter/enterprise-minnesota-magazine/2011-april/manufacturing-agriculture.html> (last visited June 15, 2012).

³ See Appendix C of this report describing the approaches other states have taken with respect to farmland preservation. The website for the American Farmland Trust (AFT) is a good resource for learning about farmland preservation efforts throughout the country. AFT is an organization devoted to protecting farm and ranch land, promoting environmentally sound farming practices, and ensuring an economically sustainable future for farmers and ranchers. Its website address is <http://www.farmland.org/default.asp>.

I. MINNESOTA IS STEADILY LOSING BOTH FARMLAND AND FARMS

The problem of disappearing farmland and farmers in Minnesota has been with us for some time. When a farming operation goes out of business, it does not necessarily result in all of that operation's land being taken out of agricultural production. However, the loss of farmland in a community often causes economic challenges for farmers and may contribute to both the loss and consolidation of farming operations. Therefore, both the number of acres available for agricultural production and the number and size of farming operations engaged in that production are relevant factors to consider when setting goals and developing policies to ensure that Minnesota preserves the resources necessary for agricultural production in the future. The trend since 1950 has been an ever-decreasing number of farmland acres and farms.

- In 1950, Minnesota had 179,101 farms on approximately 51,205,760 acres of farmland.⁴
- By the early 1980s, that number was reduced by half: Minnesota was home to 94,382 farms on approximately 27,708,456 acres.⁵
- Between 1982 and 2010, the state lost at least another 808,456 acres of farmland and 13,382 farms.⁶

The loss of farmland and farms has been especially pronounced in the seven-county metropolitan region.

- According to the Office of the Legislative Auditor, farmland within the metropolitan area counties decreased by approximately 18 percent during

⁴ United States Department of Agriculture, National Agricultural Statistics Service, *1950 Census of Agriculture, Minnesota*, available at http://www.agcensus.usda.gov/Publications/Historical_Publications/1950/vol1%20Minnesota/41644745v1p8ch1.pdf (last visited June 15, 2012).

⁵ United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Minnesota*, Table 1: Historical Highlights, available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Minnesota/st27_1_001_001.pdf (last visited June 15, 2012).

⁶ United States Department of Agriculture, National Agricultural Statistics Service, *Farms, Land in Farms, and Livestock Operations 2010 Summary*, at 10 (February 2011), available at http://www.nass.usda.gov/Publications/Todays_Reports/reports/fnlo0211.pdf (last visited June 15, 2012); United States Department of Agriculture, National Agricultural Statistics Service, *1997 Census of Agriculture, Minnesota*, Table 1: Historical Highlights, available at http://www.agcensus.usda.gov/Publications/1997/Vol_1_National_State_and_County_Tables/Minnesota/mn-23/mn1_01.pdf (last visited June 15, 2012).

the time period from 1982 through 1997; the loss in Greater Minnesota was one percent.⁷

- During the five-year period from 2002 to 2007, the number of farms located in the seven-county metro region decreased in all counties (except for Dakota County), for a total loss of 369 farming operations in this area.⁸
- Four of the nine surrounding collar counties in Minnesota—Chisago, Isanti, Sherburne, and Wright—also lost farms from 2002 to 2007. The number of farms in Sherburne County decreased from 677 to 549 farms, or 19 percent. Chisago, Wright and Isanti counties lost eight, seven, and four percent of their farms, respectively, during this time period.

This loss of farmland and farms was associated with population growth spreading outward from the urban core of Minneapolis and St. Paul.⁹ During the time period from 1970 to approximately 1990, the metropolitan region's urban land cover increased by 42 percent, while agricultural and undeveloped land decreased by approximately 150,000 acres.¹⁰ During the 1990s, approximately 68,000 acres of residential development were added in the seven-county metro region, while 141,000 acres of agricultural and undeveloped land were converted to other uses.¹¹

Scott County, for example, lost more than 50,000 acres or one-third of its agricultural land base between 1990 and 2000, while simultaneously increasing its

⁷ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 4 (February 2008).

⁸ United States Department of Agriculture, National Agricultural Statistics Service, 2007 Census of Agriculture, County Profiles, available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/County_Profiles/Minnesota/ (last visited June 15, 2012).

⁹ See Metropolitan Council, *MetroStats: “Trends in Land Use in the Twin Cities Region”* (August 2011), available at http://stats.metroc.state.mn.us/stats/pdf/MetroStats_LandUse2010.pdf (last visited June 15, 2012). The metro region has historically been cited as one of the most sprawled urban areas in the country. See, e.g., Metropolitan Council, *Twin Cities Metropolitan Area Geographic Definitions* (discussing density rankings for the urbanized area of the Twin Cities), available at <http://www.metrocouncil.org/census/KeyFacts/MetropolitanAreaDefinitions.pdf> (last visited June 15, 2012).

¹⁰ American Farmland Trust, *Farmland and the Tax Bill: The Cost of Community Services in Three Minnesota Cities*, at 3 (1994), available at http://www.farmlandinfo.org/documents/30664/FARMLAND_AND_THE_TAX_BILL_1994.pdf (last visited June 14, 2012).

¹¹ See Metropolitan Council, *MetroStats: “Trends in Land Use in the Twin Cities Region”* (August 2011), available at http://stats.metroc.state.mn.us/stats/pdf/MetroStats_LandUse2010.pdf (last visited June 15, 2012).

urban/suburban land cover by 70 percent.¹² It has continued to lose agricultural land: between 2005 and 2010, Scott County lost five percent of land classified as agricultural.¹³ Between 2002 and 2007, it lost 209 farms, amounting to a 21 percent reduction in the number of farms in that county.¹⁴

II. MINNESOTA'S LOSS OF FARMS IS ESPECIALLY HIGH IN THE MID-SIZED FAMILY FARM CATEGORY AND IN THE METROPOLITAN REGION

The general trend in Minnesota, as elsewhere in the country, is that the number of mid-sized farms (180-999 acres) is shrinking, while the number of small farms (fewer than 180 acres) and the number of large farms (more than 1,000 acres) is increasing.¹⁵ In the seven-country metropolitan area, that trend is far more pronounced, with a nearly 80 percent spike in farms of less than 10 acres and a gain of just under 50 percent of farms larger than 1,000 acres between 1997 and 2007.¹⁶

Table 1, shown below, illustrates these trends.¹⁷

¹² Colin Cureton, *Farmland Preservation in Scott and Dakota Counties*, at 6 (March 1, 2011).

¹³ Colin Cureton, *Farmland Preservation in Scott and Dakota Counties*, at 8 (March 1, 2011).

¹⁴ United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, County Profiles, Scott County* (showing number of farms in 2002 and 2007), available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/County_Profiles/Minnesota/cp27139.pdf (last visited June 15, 2012).

¹⁵ See Table 1.

¹⁶ See Table 1.

¹⁷ See United States Department of Agriculture, National Agricultural Statistics Service, *1997 Census of Agriculture, Minnesota*, Table 1: Historical Highlights, available at http://www.agcensus.usda.gov/Publications/1997/Vol_1_National_State_and_County_Tables/Minnesota/mn-23/mn1_01.pdf (last visited June 15, 2012); United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Minnesota*, Table 1: Historical Highlights, available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1_Chapter_1_State_Level/Minnesota/st27_1_001_001.pdf (last visited June 15, 2012).

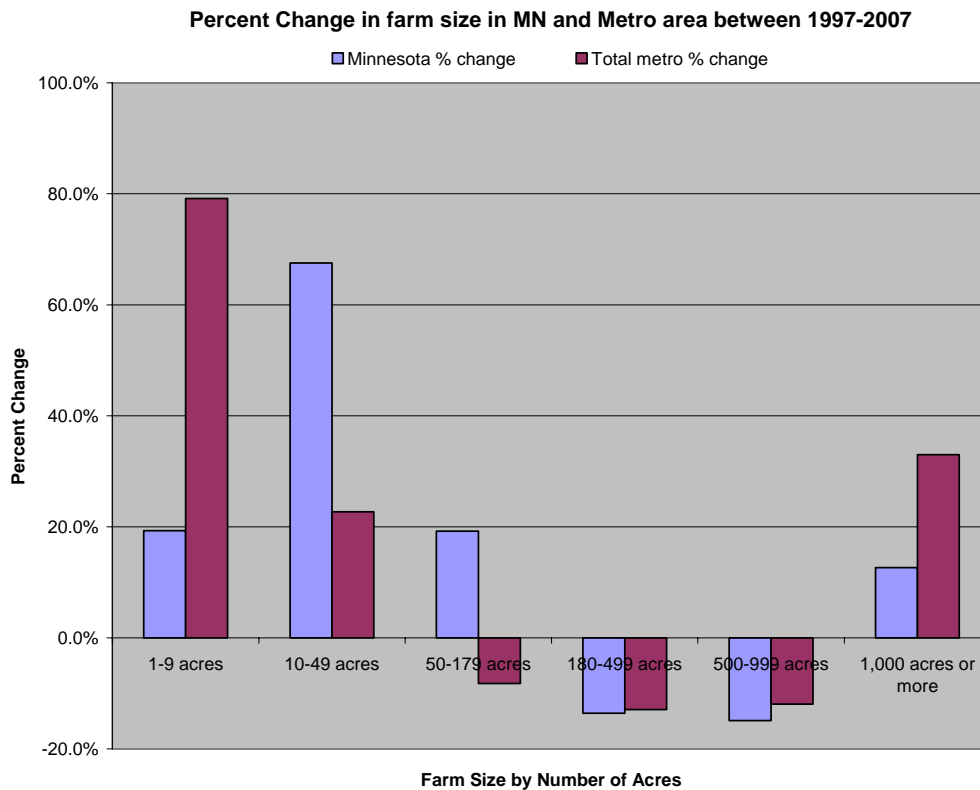


Table 1

This trend of large farms getting larger, and an increase in the number of very small farms, has resulted in the disappearance of “agriculture of the middle,” which generally refers to diversified, mid-sized farms. The consequences of this trend have been much-discussed by some of the leading thinkers in the field of agriculture.¹⁸ One consequence is that there are fewer mid-sized farms near our urban centers, and the farms that are near urban centers are increasingly smaller. This has significant implications for land use planning, food production, and farmland preservation policy.

III. MINNESOTA’S POLICYMAKERS SHOULD TAKE ACTION NOW TO PRESERVE THE STATE’S AGRICULTURAL LAND BASE AND ECONOMY

A. There Will Always Be Many Competing Demands for Land Use

There will always be many competing demands for the use of land. Historically, residential, commercial, and industrial development pressures have contributed greatly to the decline in the number of acres dedicated to farming, especially near

¹⁸ See, e.g., *Agriculture of the Middle*, available at www.agofthemiddle.org (last visited June 15, 2012).

urban areas. In the last few years, the demand for land for such development uses has decreased, in part due to a weak economy. In the future, however, Minnesota can expect renewed demand for residential, commercial, and industrial development, possibly in patterns not yet experienced, that may again threaten to overtake significant areas of existing farmland.

At the same time, within the agricultural sector itself, there are competing demands for the use of land for different types of agricultural uses—some new, some not. These uses include commodity farming for food production, such as corn, soybeans, or grains; commodity farming not related to food production—for example, growing corn for livestock feed or ethanol; other biofuel production; raising livestock; organic and sustainable food production; and growing food crops and livestock for local food systems near urban areas. Of these broad categories, two are relatively new and have strongly affected both the need for agricultural land and where it must be located: (1) ethanol production, which requires large amounts of farmland; and (2) local food production, which requires farmland located in close proximity to population centers. Thus, even in the absence of strong residential, commercial, or industrial development pressure, there are competing demands for farmland within the agricultural sector, and these demands affect the availability of this finite resource. In the long run, climate change and increasing demands on water resources may exacerbate these problems if they result in changing growing conditions that impact the type and amount of crops that can be produced.

Given the many competing demands for land, state policymakers should take a proactive role in planning for farmland preservation to ensure that future generations have access to adequate high-quality productive land to grow the food, fuel, and fiber necessary to meet their needs.

B. Shifts in Demographics and Trends Provide an Opportune Time for Planning

The issue of the loss of Minnesota's valuable farmland is not a new issue to Minnesota policymakers; indeed, the authors of this report found at least five reports addressing the issue of farmland preservation in Minnesota or the metropolitan region written between 1979 and 2008.¹⁹ These reports have analyzed existing programs and made suggestions for improvement. However, little has been done in response to these suggestions.

So why should this report or this time be any different? Have circumstances changed enough to inspire decision-makers to act on any of the recommendations that have been made regarding farmland preservation in Minnesota? In fact, a unique confluence of many social and economic factors—a slowdown in the housing market; rising energy costs; a growing demand among baby boomers for

¹⁹ Because some of the reports are not readily available, we have attached them to Appendix A of this report, which describes the prior reports.

housing located near urban amenities instead of in suburban areas and exurbs; a steadily increasing demand for locally grown food; real and pressing food security needs; a generation of farmers nearing retirement age, coupled with the rise of a new generation of farmers who want to grow food to sell to metropolitan area residents, but cannot access land to do so—combine to present policymakers with an important opportunity for proactive and intentional policy change that will influence Minnesota’s future.

These shifts and trends in demographics and agricultural uses provide the state with an opportune moment to address farmland preservation in a forward-looking manner that integrates farmland preservation with economic development opportunities and smart land use policies that will ensure the prosperity and security of Minnesota’s future generations. There are many very good reasons for the state to act, and to act now.

C. Agriculture is a Primary Economic Driver for Our State

There are significant economic reasons for preserving the land that sustains Minnesota’s agricultural economy. Agriculture strengthens Minnesota’s economy; indeed, while every other sector of the economy has lagged since the economy started to decline in 2008, agriculture has been the single bright spot, which has helped to feed a recovery in other sectors, such as manufacturing.²⁰ For instance, Minnesota’s agricultural exports grew 22 percent between 2009 and 2010, compared to a national rate of 13 percent.²¹ That, in turn, has spurred economic recovery in many parts of the state. As noted by Commissioner of Agriculture Dave Frederickson:

Each dollar of agricultural exports generates an additional \$1.36 in economic and business activities. Every \$1 billion of agricultural exports supports 8,000 jobs throughout the state economy—in both rural communities and urban centers. That means Minnesota’s 2010 agricultural exports supported more than 40,000 jobs.²²

²⁰ See, e.g., Mark Steil, *Strong Farm Economy Rolls Along*, Minnesota Public Radio News (December 22, 2011), available at <http://minnesota.publicradio.org/display/web/2011/12/22/agricultural-sector-properous/?refid=0> (last visited June 15, 2012); Mokoto Rich, *Numbers Pointing to Recovery in Minnesota May Be Misleading*, New York Times (May 13, 2011), available at <http://www.nytimes.com/2011/05/14/business/economy/14unemployed.html?pagewanted=all> (last visited June 15, 2012).

²¹ Dave Frederickson, *Minnesota Agriculture Pumps New Life Into Minnesota Economy*, Commissioner’s Column (July 19, 2011), available at <http://www.mda.state.mn.us/about/commissionersoffice/columns/july.aspx> (last visited June 15, 2012).

²² Dave Frederickson, *Minnesota Agriculture Pumps New Life Into Minnesota Economy*, Commissioner’s Column (July 19, 2011), available at <http://www.mda.state.mn.us/about/commissionersoffice/columns/july.aspx> (last visited June 15, 2012).

D. The Growing Demand for Locally Produced Food Provides an Opportunity for Economic Growth and Development

Despite the fact that Minnesota farmers sold \$18.6 billion of commodities in 2011, Minnesota consumers annually purchase an average of about \$12 billion of our food from sources outside the state. This causes substantial losses of income that otherwise could stay in our communities. For example, studies conducted in Southeastern, Northwestern, and West Central Minnesota have uniformly shown that these regions lose millions of dollars each year, in part because they import food from far away.²³

Addressing these lost economic opportunities can provide great opportunity for growth. Food production in and around Minnesota's populations centers, particularly the Twin Cities metro region, is part of a growing "local" or "regional" food movement²⁴—where farmers are selling directly to consumers via farmers' markets, community supported agriculture, or other methods. This is a small but rapidly growing segment of agriculture.

- Nationally, the number of farmers' markets rose from 2,756 in 1998 to 5,274 in 2009—a 92 percent increase.²⁵
- In Minnesota, the number of farmers' markets grew 60 percent in two years—from 81 in 2008 to 128 in 2010.²⁶ Currently, there are approximately 158 farmers' markets in the state. Eighty-seven of the markets or 55 percent are located within fifty miles of downtown St. Paul.²⁷

²³ Ken Meter, *Finding Food in Farm Country Studies (2001-2008)*, Crossroads Food Center, available at www.crcworks.org/ff.pdf and www.crcworks.org/locales.html (last visited June 15, 2012).

²⁴ There is no one accepted definition of local foods, but one of its key components is that the place where the food is sold is in geographical proximity to where the food is produced.

²⁵ Steve Martinez, Michael Hand, Michelle Da Pra, *et al.*, *Local Food Systems: Concepts, Impacts, and Issues*, USDA, Economic Research Service, at 7 (May 2010), available at <http://www.ers.usda.gov/publications/err97/> (last visited June 15, 2012).

²⁶ MPRNews, *Growing Pains: Scaling Up Local Food* (November 15, 2010), available at <http://minnesota.publicradio.org/display/web/2010/11/15/ground-level-local-food-white-paper/> (last visited June 15, 2012).

²⁷ See Minnesota Department of Agriculture, Minnesota Grown Program website at <http://www3.mda.state.mn.us/mngrown/home.aspx> (last visited June 15, 2012). The figures cited in the text were arrived at by searching for the farmers' markets located within 50 miles of downtown St. Paul zip codes.

- As of 2007, approximately \$1.2 billion of farm products were sold directly to consumers across the country;²⁸ if you add sales to local supermarkets, restaurants, and institutional buyers, that number increases to \$5 billion.²⁹
- In Minnesota, farmers sold \$23 million of food directly to consumers in 2007, and that amount is expected to grow by ten percent each year.³⁰
- The number of Minnesota school districts participating in the Farm to School program, where schools purchase produce from local producers either directly or through a distributor, rose from about 20 school districts in 2006 to more than 145 in 2011, approximating \$1.3 million in sales.³¹

Growing and producing food locally or regionally also creates jobs.

- Fruit, vegetable, and nut growers who sell into a regional food system employ 13 full-time workers for every \$1 million in revenue earned.³²
- A 2008 Iowa State University study showed that, if consumers in one eight-county area of Iowa ate five locally grown fruits and vegetables each day for only the three months when those items are in season, it would create \$6.3 million of labor income and 475 new jobs within the locale.³³
- Another study in Iowa found that each full-time job created at a farmers' market supported almost half of a full-time job in another sector.³⁴

²⁸ Steve Martinez, Michael Hand, Michelle Da Pra, *et al.*, *Local Food Systems: Concepts, Impacts, and Issues*, USDA, Economic Research Service, at 5 (May 2010), available at <http://www.ers.usda.gov/publications/err97/> (last visited June 15, 2012).

²⁹ Sarah A. Low and Stephen Vogel, *Direct and Intermediated Marketing of Local Foods in the United States*, USDA Economic Research Service (November 2011), <http://www.ers.usda.gov/publications/err128/> (last visited June 15, 2012).

³⁰ MPRNews, *Growing Pains: Scaling Up Local Food* (November 15, 2010), available at <http://minnesota.publicradio.org/display/web/2010/11/15/ground-level-local-food-white-paper/> (last visited June 15, 2012).

³¹ Institute for Agriculture and Trade Policy, *Farm to School in Minnesota: Fourth Annual Survey of School Food Service Leaders*, at 3 (March 2012), available at <http://www.iatp.org/documents/farm-to-school-in-minnesota> (last visited June 15, 2012).

³² Kathleen Merrigan, USDA Assistant Secretary, *The Business of Local Foods*, Huffington Post (February 3, 2012), available at http://www.huffingtonpost.com/kathleen-merrigan/local-food-economy-b_1253052.html (last visited June 15, 2012).

³³ Ken Meter, *Local Food as Economic Development*, Crossroads Research Center (October 2008), available at <http://www.crcworks.org/lfced.pdf> (last visited June 15, 2012).

³⁴ D. Otto and T. Varner, *Consumers, Vendors, and the Economic Importance of Iowa Farmers' Markets: An Economic Impact Survey Analysis*, Leopold Center for Sustainable

Protecting our state’s farmland, especially near population centers, should be viewed as a vehicle for job creation and a long-term investment in the state’s continued economic prosperity.

E. Preserving Land Near Population Centers Allows for Reduced Reliance on Imported and Costly Energy Sources

Consumer demand for locally produced food is rising for many reasons, including an increasing awareness of the consequences of our reliance on fossil fuels obtained from other parts of the world. As energy prices continue to rise, our current food system becomes increasingly vulnerable because the entire system is based on the outmoded idea that energy is cheap. Because energy has been relatively inexpensive, food is routinely shipped hundreds or thousands of miles. Most food items in our grocery stores travel an average of 1,500 miles. Seventeen percent of all of the energy the U.S. uses is devoted to feeding ourselves, at a cost of \$139 billion per year. As oil prices continue to rise, it is in our state’s best economic and security interests to maintain a land base that allows food to be grown within a short distance of population centers.

F. Changing Demographics Highlight the Need for a More Coordinated Approach to Farmland Preservation in Minnesota

Demographic trends also present another important reason to be more intentional about preserving Minnesota’s farmland now. The face of agriculture is changing—in Minnesota and elsewhere. The average age of farmers nationally is 57; in Minnesota, the average age is 55.³⁵ Even with the housing market crash, agricultural land values have continued to rise,³⁶ making it nearly impossible for beginning farmers who do not inherit land to start farming. There are very few new farmers who can come up with the money necessary to purchase a 500-acre corn or soybean farm to get started.

Agriculture, at 14-15 (March 2005), available at <http://www.leopold.iastate.edu/sites/default/files/pubs-and-papers/2005-05-consumers-vendors-and-economic-importance-iowa-farmers-markets-economic-impact-survey-analysis.pdf> (last visited June 15, 2012).

³⁵ United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Minnesota*, Table 1: Historical Highlights, available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Minnesota/st27_1_001_001.pdf (last visited June 15, 2012).

³⁶ Farmland in greater Minnesota was selling for anywhere from \$6,000 to \$12,000 per acre in 2011—an increase of as much as 30 to 40 percent from a year earlier in some areas. Janet Kubat Willette, *Land Values, Rental Rates Rising Across State*, AgriNews (February 2, 2012), available at <http://agrinews.com/land/values/rental/rates/rising/across/state/story-4289.html> (last visited June 15, 2012); see also, Jennifer Bjorhus and Mike Hughlett, *High Cropland Prices Sow Fortune and Worry*, Minneapolis Star Tribune (June 17, 2012), available at <http://www.startribune.com/business/159091565.html> (last visited June 18, 2012).

Many of the state's newest farmers are farming very differently than their predecessors: they are raising vegetables, fruits, poultry, or flowers on a much smaller scale. They are selling their farm goods directly to urban consumers who are eager for fresh, healthy food. By and large, they are direct marketers—selling through CSAs (Community Supported Agriculture), farmers' markets, or directly to restaurants and other institutions. Many of these farmers are immigrants and refugees with long agrarian traditions from their native countries. Farming is a skill many of them bring with them, and it allows them to work and earn income soon after their arrival. Especially prominent are Hmong American farmers, who make up more than half of the vendors at St. Paul farmers' market. As St. Paul Farmers' Market manager Jack Gerten noted: "If you didn't have the Hmong, you couldn't have these markets."³⁷

These newer farmers tend to—and need to—farm relatively close to their urban markets. The vast majority of Hmong American farmers who sell at Twin Cities farmers' markets live in neighborhoods like Frogtown or North Minneapolis and commute to the land they rent. This puts pressure on the land that, until 2008, developers keenly wanted to develop. Finding that land, however, is quite challenging even in the absence of rapid development. Even without the extreme development pressures caused by the housing bubble, farmland purchase and rental prices in the metro region remain quite expensive. Because the amount of land a specialty crop grower needs is small—two, five, or ten acres—it may be land that is either not zoned for farming or is too small to qualify for the Green Acres Program, meaning the parcel may be taxed at a rate too high to justify using the land for farming. Without access to farmland near the urban and suburban core, the foods that urban residents are increasingly dependent upon are threatened. Each year, the East metro-based Association for the Advancement of Hmong Women in Minnesota maintains a list of Hmong American and other immigrant farmers seeking land, and the list of farmers tops 100 every year.

G. Health and Food Security

The issue of food insecurity has been much discussed in recent years.³⁸ The definition and measurement of food insecurity appeared in the 1996 Community Population Survey³⁹ and generally refers to whether all members of a household

³⁷ Laurie Blake and Kevin Giles, *Minneapolis Among Nation's Farmers Market Hot Spots*, *Minneapolis Star Tribune* (July 23, 2009), available at <http://www.startribune.com/lifestyle/taste/51064172.html> (last visited June 15, 2012).

³⁸ Steve Martinez, Michael Hand, Michelle Da Pra, *et al.*, *Local Food Systems: Concepts, Impacts, and Issues*, USDA, Economic Research Service, at 46-47 (May 2010), available at <http://www.ers.usda.gov/publications/err97/> (last visited June 15, 2012).

³⁹ Craig Gunderson, Brent Kreider, and John Pepper, *The Economics of Food Security in the United States*, *Applied Economic Perspectives and Policy*, Vol. 33, No. 3, at 282 (2011), available at <http://aepp.oxfordjournals.org/content/33/3/281.full> (last visited June 15, 2012).

have access to enough nutritious food for an active, healthy life.⁴⁰ Food insecurity has increased dramatically over the past few years, since the beginning of the recession in 2008.⁴¹ Food insecurity has been associated with many wide-ranging health effects including birth defects, anemia, cognitive problems, depression, chronic disease, and poorer general health.⁴² Farmers’ markets have been associated with addressing food security because they are increasingly able to accept WIC and SNAP benefits.⁴³

Many studies have been conducted as to the factors contributing to the growing epidemic of obesity and diabetes.⁴⁴ More than one-third of U.S. adults (35.7 percent) are obese.

Approximately 17 percent (or 12.5 million) of children and adolescents aged 2-19 years are obese.⁴⁵ The dramatic increase in obesity and diabetes is now widely considered a public health crisis with serious economic consequences. As of 2008, the medical care costs associated with obesity were a staggering \$147 billion.⁴⁶ The Centers for Disease Control and Prevention have collected many of

⁴⁰ Craig Gunderson, Brent Kreider, and John Pepper, *The Economics of Food Security in the United States*, Applied Economic Perspectives and Policy, Vol. 33, No. 3, at 283 (2011), available at <http://aepp.oxfordjournals.org/content/33/3/281.full> (last visited June 15, 2012).

⁴¹ Craig Gunderson, Brent Kreider, and John Pepper, *The Economics of Food Security in the United States*, Applied Economic Perspectives and Policy, Vol. 33, No. 3, at 285-6 (2011), available at <http://aepp.oxfordjournals.org/content/33/3/281.full> (last visited June 15, 2012).

⁴² Craig Gunderson, Brent Kreider, and John Pepper, *The Economics of Food Security in the United States*, Applied Economic Perspectives and Policy, Vol. 33, No. 3, at 289 (2011), available at <http://aepp.oxfordjournals.org/content/33/3/281.full> (last visited June 15, 2012); see also resources listed at: *Designed for Disease: The Link Between Local Food Environments and Obesity and Diabetes*, California Center for Public Health Advocacy, PolicyLink, and the UCLA Center for Health Policy Research, at 8-9 (April 2008).

⁴³ D. Thilmany and P. Watson, *The Increasing Role of Direct Marketing and Farmers’ Markets for Western U.S. Producers*, Western Economics Forum, Vol. 3, at 19-25 (2004).

⁴⁴ The Centers for Disease Control and Prevention has created a Division of Nutrition, Physical Activity and Obesity that collects resources and is working to address obesity as a public health epidemic. See <http://www.cdc.gov/nccdphp/DNPAO/aboutus/index.html> (last visited June 15, 2012).

⁴⁵ Cynthia L. Ogden, Margaret D. Carroll, Brian K. Kit, and Katherine M. Flegal, *Prevalence of Obesity in the United States, 2009-2010*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (January 2012), available at <http://www.cdc.gov/nchs/data/databriefs/db82.htm> (last visited June 15, 2012).

⁴⁶ Centers for Disease Control and Prevention, *Overweight and Obesity*, available at <http://www.cdc.gov/obesity/causes/economics.html> (last visited June 15, 2012).

the studies that discuss the effect of the “food environment” on obesity and diabetes. Not surprisingly, lack of access to healthy, nutritious food, and overexposure to fast food establishments are significant contributors to obesity and diabetes in a community.⁴⁷ Food produced locally—particularly fresh produce—will tend to taste better, and be more fresh and nutritious.⁴⁸ Ninety-one percent of fruits and 78 percent of vegetables are grown in the urban fringes.⁴⁹ In order for our communities to have access to healthy food, we must have farmland in and around our population centers.

Food security is an even larger issue on an international level. The numbers alone are staggering. The world population recently hit seven billion and is projected to reach nine billion by 2050. The Food and Agriculture Organization of the United Nations estimated that 925 million people were hungry in 2010.⁵⁰ By 2030, the world will need 50 percent more food than we have now.⁵¹ At the same time, countries around the globe are losing their ability to grow food due, among other reasons, to unchecked soil erosion.⁵² The regions that now produce food will need to produce more, and we must have farmland on which to raise and produce that food.

⁴⁷ Centers for Disease Control and Prevention, <http://www.cdc.gov/obesity/causes/economics.html> (last visited June 15, 2012); see also resources collected by the Centers for Disease Control and Prevention at <http://www.cdc.gov/healthyplaces/healthtopics/healthyfood/general.htm> (last visited June 15, 2012).

⁴⁸ Steve Martinez, Michael Hand, Michelle Da Pra, *et al.*, *Local Food Systems: Concepts, Impacts, and Issues*, USDA, Economic Research Service, at 45-46 (May 2010), available at <http://www.ers.usda.gov/publications/err97/> (last visited June 15, 2012).

⁴⁹ See American Farmland Trust, *Fresh Food Grown on the Urban Fringe* (based on 2007 USDA Census data), available at <http://www.farmland.org/programs/localfood/fresh-food-grown-on-the-urban-fringe.asp> (last visited June 15, 2012). Scott County ranks fifth in the state for production of fruits, nuts, and tree berries, bringing \$911,000 of market value to the farmers who raise them and to the county. Kate Atchison, *The Future of our Farmland: An Agricultural Inventory for Scott County, Minnesota*, at 9 (February 2009), available at <http://www.co.scott.mn.us/PropertyGISLand/2030CompPlan/NaturalAreaFarmland/Documents/The%20Future%20of%20Our%20Farmland.pdf> (last visited June 15, 2012).

⁵⁰ Justin Gillis, *A Warming Planet Struggles to Feed Itself*, *New York Times* (June 4, 2011), available at <http://www.nytimes.com/2011/06/05/science/earth/05harvest.html?pagewanted=all> (last visited June 15, 2012).

⁵¹ Nina Chestney, *World Lacks Enough Food, Fuel as Population Soars: U.N.*, *Reuters* (January 30, 2012), available at <http://www.reuters.com/article/2012/01/30/us-un-development-idUSTRE80T10520120130> (last visited June 15, 2012).

⁵² See David R. Montgomery, *Dirt: The Erosion of Civilizations*, University of California Press, 2007.

H. Changes in the Housing Market Present a Unique Opportunity for Policymakers to Address Farmland Preservation Issues

With the housing market crash that began in 2008, there is less demand for new housing and new development, lessening the pressure on landowners to develop farmland. This reprieve has been serendipitous, giving policymakers and communities time to reflect on their priorities and to plan in a more comprehensive and intentional way for both development and food production.

In some parts of the state, planners and elected officials still cling to the notion that residential and industrial development are almost always good, because they increase the tax base of the community. The recent downturn in the housing market and in the economy in general shows that this assumption is not always true,⁵³ and unchecked development can leave communities much worse off when those developments fail or cannot be sustained.⁵⁴ Moreover, it has long been the case that the cost of services to agricultural land is substantially less than it is to developed areas. Those savings can significantly outweigh the additional tax revenues that residential development generates. As a Minnesota Department of Agriculture study funded by the Legislative-Citizen Commission on Minnesota Resources concluded:

Where agriculture is a large part of the tax base, it usually produces a significant fiscal surplus, because agricultural land pays more in taxes than it requires in services. For most counties, townships and school districts, the agricultural sector provides a significant share of local taxes. As the agricultural sector shrinks, a greater burden of local service costs are shifted to non-agricultural uses. This is because the cost of providing services to residences is subsidized in large part by the agricultural sector.⁵⁵

I. In Order for Agriculture to Thrive in Minnesota, We Must Also Support Our Farmers

It is important to remember that preserving Minnesota’s farmland, by itself, will not ensure the continued success of agriculture. Farming is a challenging profession under any circumstances. Farming requires education, training, technical support, community support, access to resources, access to credit, access

⁵³ The Minneapolis Star Tribune reported in 2008 that Minnesota’s state and local tax base dropped \$2.3 billion due to property value declines and foreclosures. Chris Serres, Jim Buchta, *From Boom to Bust: Last of a Three-Part Series/Stuck with the Bill*, Minneapolis Star Tribune, April 22, 2008.

⁵⁴ Chris Serres, Jim Buchta, *From Boom to Bust: Last of a Three-Part Series/Stuck with the Bill*, Minneapolis Star Tribune, April 22, 2008.

⁵⁵ Minnesota Department of Agriculture, *Cost of Public Services Study*, at 10 (1999), available at <http://www.mda.state.mn.us/news/publications/aboutmda/pubservcosts.pdf> (last visited June 15, 2012).

to markets, and access to land. Farmers in today's changing world of agriculture are resilient and dedicated. They need and deserve our ongoing support.

IV. CONCLUSION

Minnesota's rich soil is the envy of many nations across the globe. On this soil, we are able to grow enough food and feed to sustain ourselves and countless others. But soil is a finite resource; once we pave over it, it is gone forever. We must change the mindset that farmland that is in an agricultural protection program is there just temporarily, as a holding place, until it can be developed.

Al Singer, Dakota County's Land Conservation Manager, has ten years of experience with Minnesota's most developed farmland preservation program, and has this to say:

... we need to ask: what's going to happen with conventional agriculture as fossil fuel becomes more expensive? How do we deal with that transition, aging farmers and the costs of transporting food? Can we position ourselves to take advantage of our rich, protected farmland in proximity to millions of people? We need to protect our land options for the future because we don't know what the future holds.⁵⁶

In order for Minnesota to continue to take advantage of the economic and health benefits that farming brings to our state, state and regional and local policymakers must ensure that we preserve the farmland on which our food is grown, particularly land in proximity to population centers. The state must work with local and county and regional planning bodies, and establish farmland preservation as an extremely high statewide priority.

There was a time in our history when planners and developers saw wetlands as useless swamps, and looked for ways to fill them in and build on top of them. We learned, however, that filling in and paving over wetlands causes permanent, long-term damage to the ecosystem upon which we depend. Over time, our collective view of wetlands has changed so that we see them as a valuable, finite resource worth preserving. Based on that view, we have developed a set of laws that govern how, when, and why a wetland can be developed. Policymakers intentionally created a rigorous process in order to ensure that wetlands are not developed out of mere expediency or short-term local goals, without a view toward the regional and long-term effects of that development. We must now do the same with farmland, and watch over and protect it with the same vigilance that we do our wetlands, our waterways, and our parks. They are all finite natural resources upon which our collective well-being rests.

⁵⁶ American Farmland, *The Changing Landscape for Farmland Protection*, at 9 (Spring 2011), available at http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf (last visited June 15, 2012).

Chapter 2

Executive Summary

I. DEVELOPMENT OF THE INSTANT REPORT

This report was developed to assess the effectiveness of current state farmland preservation laws and to develop recommendations for a more comprehensive and systematic approach to farmland preservation in Minnesota.

In developing this report, we researched and analyzed the following topics:

- Trends in the conversion of Minnesota's farmland to other uses.
- Existing state laws regarding land use and farmland preservation, as well as court decisions interpreting and applying those laws.
- Data illustrating how widely the programs are used and their fiscal impact on the state.
- Land use planning tools commonly used to preserve farmland.
- Farmland preservation policies and tools used in other states, and how those models might be useful for Minnesota.
- How comprehensive plans in Minnesota address the issue of farmland preservation, if at all.
- Other local-level efforts to preserve farmland.

In addition to the legal research and analysis described above, the conclusions and recommendations in the instant reports are based on stakeholder input from farmers, land use planners with farmland preservation expertise, and people who are involved in administering or overseeing Minnesota's existing farmland preservation programs. In developing the report, we interviewed stakeholders about their experiences with Minnesota's existing farmland preservation programs. We also interviewed stakeholders outside of Minnesota regarding the efficacy of the farmland preservation policies and tools used in other states. Finally, we brought two groups of stakeholders together for facilitated discussions regarding Minnesota's existing farmland preservation programs and other possible approaches to farmland preservation. The stakeholders who participated in the project were from metropolitan-area counties and counties in Greater Minnesota, and the farmer stakeholders represented a diversity of types and sizes of farming operations.

We are grateful to the staff from the Minnesota Department of Agriculture and Dakota County and representatives from Minnesota Farmers Union and Minnesota Farm Bureau who agreed to be peer reviewers of this report. The peer reviewers' comments were all considered and extremely helpful; the conclusions and recommendations contained in this report, however, are the authors' entirely.

II. OVERVIEW OF FARMLAND PRESERVATION EFFORTS IN MINNESOTA

Minnesota policymakers have long recognized the importance of agriculture and farmland to the overall well-being of our state, as evidenced by various farmland preservation efforts and programs enacted over the years. In 1967, lawmakers enacted the Minnesota Agricultural Property Tax Act, commonly referred to as the Green Acres Program. The program was intended to help farmers continue their operations in the face of rising property taxes. At that time, “development appeared to be swallowing up agricultural property in the seven-county metropolitan area, driving up the market values used to calculate property taxes.”¹ The Legislature thus “recognized that urban sprawl was causing valuation and tax increases that had the potential of forcing farmers off their land in certain situations.”² Consequently, the Legislature enacted the Green Acres Program to equalize taxes on agricultural land.³

In 1980, the Legislature passed the Metropolitan Agricultural Preserves Act (“Metro Program”). The stated purpose of this voluntary program was to “encourage the use and improvement of [the state’s] agricultural lands for the production of food and other agricultural products” and ensure they are “given

¹ Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, at 1 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 15, 2012).

² Minnesota Department of Revenue, *Property Tax Fact Sheet Five, Green Acres* (Minnesota Agricultural Property Tax Law), at 1 (Revised June 2010), available at <http://www.co.olmsted.mn.us/prl/propertyrecords/AssessingProperty/Documents/Green%20Acres%20Fact%20Sheet%20610.pdf> (last visited June 15, 2012).

³ Minn. Stat. § 273.111, subd. 2 (2011), contains a statement of public policy from the 1967 law emphasizing the program’s intent to equalize taxes on agricultural land. It reads:

“The present general system of ad valorem property taxation in the state of Minnesota does not provide an equitable basis for the taxation of certain agricultural real property and has resulted in inadequate taxes on some lands and excessive taxes on others. Therefore, it is hereby declared to be the public policy of this state that the public interest would best be served by equalizing tax burdens upon agricultural property within this state through appropriate taxing measures.”

such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.”⁴

Minnesota’s state agricultural land preservation and conservation policy, enacted in 1982, affirms Minnesota’s policy of preserving farmland. It states:

“[i]t is the policy of the state to preserve agricultural land and conserve its long-term use for the production of food and agricultural products by: (a) Protection of agricultural land and certain parcels of open space land from conversion to other uses; (b) Conservation and enhancement of soil and water resources to ensure their long-term quality and productivity; (c) Encouragement of planned growth and development of urban and rural areas to ensure the most effective use of agricultural land, resources and capital; and (d) Fostering of ownership and operation of agricultural land by resident farmers.”⁵

The Agricultural Land Preservation Policy Act of 1984 (“Greater Minnesota Program”) is another voluntary program which applies to counties located outside of the seven-county metro area and reaffirmed the importance of preserving farmland. Its stated purpose is to “preserve and conserve agricultural land, including forest land, for long-term agricultural use in order to protect the productive natural resource of the state, maintain the farm and farm-related economy of the state, and assure continued production of food and timber and agricultural uses.”⁶ As recently as April 2011, the Legislature reaffirmed the state’s overall intent to preserve farmland by adding this language to the “Green Acres” statute: “The legislature finds that it is in the interest of the state to encourage and preserve farms by mitigating the property tax impact of increasing land values due to nonagricultural economic forces.”⁷

Yet, other than the two voluntary agricultural preservation programs—which have very low participation rates—and the Green Acres tax equalization program, Minnesota does not have a comprehensive or statewide framework for ensuring that this valuable and finite resource is protected or cared for. Consequently, the

⁴ Minn. Stat. § 473H.01, subd. 2 (2011). The Minnesota Court of Appeals recently confirmed this reading of the legislative purpose behind the statute. In *Fischer Sand & Aggregate, Inc. v. County of Dakota*, the court looked to the statutory purposes of the Metro Program in interpreting when the eight-year agricultural preserve expiration period commenced. While the appellant landowner argued that the purpose of Metro Program was to protect and benefit landowners who enroll in the program, the court disagreed. Instead, the court indicated that “[t]he legislature enacted [the Metro Program] to encourage the long-term use and improvement of agricultural lands in the metropolitan area.” 771 N.W.2d 890, 893 (Minn. Ct. App. 2009).

⁵ Minn. Stat. § 17.80, subd. 1 (2011).

⁶ Minn. Stat. § 40A.01, subd. 1 (2011).

⁷ Laws of Minnesota 2011, chapter 13, sec. 1A.

laws that affect farmland preservation in Minnesota are currently a patchwork of local, county, and state laws. Moreover, these laws are not coordinated to promote an effective, well-targeted approach to farmland preservation. In some cases, existing laws or ordinances ignore or even deter the preservation of farmland and other important natural resources.

In addition to the state’s voluntary agricultural preservation programs and the Green Acres programs, state land use planning policies can also help to preserve farmland in Minnesota. However, currently there are no state land use planning policies that seek to preserve this important resource. Arguably, the Metropolitan Urban Service Area (“MUSA”) boundary⁸ can help to preserve farmland in the seven-county metropolitan region, but that tool has not been an effective method of preserving farmland. The MUSA boundary has at times been expanded into agricultural areas and generally has not been sufficient to effectively assist in farmland preservation. An analysis of the state’s current land use planning structure and how it might be modified to better promote a more comprehensive and structured approach to farmland preservation is included in Chapter 4 of this report.

Some counties have also initiated local efforts to preserve farmland. We are aware of five counties—Blue Earth, Chisago, Rice, Stearns, and Waseca—that have developed Transfer of Development Rights programs which include a farmland preservation component. Dakota County funded a Purchase of Development Rights (also referred to as a Purchase of Agricultural Conservation Easement) program in 2002 with funding from a bond referendum. Since the program started, it has been the sole recipient of federal farmland preservation funding in Minnesota. The program has been hailed as an exemplar for successful farmland and natural resource protection. The county-level farmland protection programs are described in Appendix G of this report.

III. PRIOR REPORTS AND RECOMMENDATIONS REGARDING MINNEOTA’S FARMLAND PRESERVATION PROGRAMS

Since Minnesota’s farmland preservation programs were enacted, five reports have been written regarding the programs’ effectiveness and the state of farmland preservation in Minnesota. These reports were completed or commissioned by the Minnesota Department of Agriculture, the Metropolitan Council, and the Office of the Legislative Auditor.

The reports uniformly concluded that the existing tools—the MUSA boundary, the agricultural preserve programs, use-value assessments for agricultural land, and agricultural zoning—failed to provide long-term protection for farmland. All of the reports made specific recommendations for enhancing the existing

⁸ The MUSA is the area in which the Metropolitan Council ensures that regional wastewater services are provided.

programs and recommended supplementing them with additional policies and tools. Generally speaking, the recommendations focused on the need to identify important agricultural lands; better promote the programs; increase program incentives in order to encourage more program participation; better focus the programs so that they are targeted to preserving land that is worthy of preservation; and supplement the existing programs with tools that provide for long-term or permanent protection. The reports commissioned by the Minnesota Department of Agriculture and the Metropolitan Council also made consistent recommendations to use a greater proportion of the money from the fees that fund the Metro and Greater Minnesota programs for farmland preservation efforts.⁹ For the most part, very few of the report recommendations have been adopted or implemented. The prior reports are described in Appendix A of this report, and copies of them are appended as attachments to that appendix.

Prior reports, and our independent analysis of the data, show that existing program fees result in a net profit to the state, only a portion of which is actually used to fund farmland preservation. Thus, to the extent our recommendations correlate with additional costs, there is funding available, provided policymakers wish to use it for farmland preservation. If needed, funding could also be drawn from the Environment and Natural Resources Trust Fund or the Outdoor Heritage Fund. Moreover, many of the changes we recommend here have no direct cost, but would help to strengthen the non-monetary program benefits, thereby making the programs more attractive to farmers and increasing the longevity of farmers' commitments to keep their land in agricultural production.

IV. KEY CONCLUSIONS

If policymakers wish to preserve Minnesota's farmland, there are things they can and should do to both strengthen the existing farmland preservation mechanisms and create a more effective and systemic approach to protecting Minnesota's farmland. This report recommends streamlining and strengthening existing programs; integrating farmland preservation goals into the state land use planning framework; creating new tools for farmland preservation; supporting and promoting the economic viability of Minnesota's farming operations; and implementing a more coordinated approach with a unified goal of preserving the invaluable resource of Minnesota's farmland.

There are many reasons for state and local policymakers to take advantage of the opportunity created by the recent downturn of the housing market and focus on farmland preservation. Demographics are changing: farmers are aging, and new farmers are needed to replace them. Getting into farming, however, is a daunting

⁹ Currently one-half of the fee is allocated to the counties that participate in the programs to pay for the property tax credits. The other one-half of the fee is divided between the Minnesota Conservation Fund and the State General Fund. As described in Chapter 4 of this report, only a portion of the county and Minnesota Conservation Fund revenues is used for farmland preservation.

task. Fewer and fewer farmers are in a position to pass their farms on to their children, as had often been done in the past. Many of our new farmers did not grow up on a farm and are not in a position to inherit land. At the same time, many of our new farmers are immigrants who bring with them long agrarian traditions and have hands-on farming experience. These new farmers—both immigrant and other beginning farmers—are generally farming smaller acreages, growing specialty as opposed to commodity crops, and are directly marketing their products to consumers. Few can afford to become land owners immediately, due to high land prices and the growth of farm size. Not able to afford, nor necessarily wanting to farm, large blocs of farmland, they are effectively closed out of the market for land. Because of the scarcity of farmland around the metropolitan region, renting or buying that land is difficult and can be cost-prohibitive. Preserving land in this area would provide a more stable supply of farmland for area farmers; ensure farm support businesses remain here; and, depending on the type of preservation tools used, help to lower the land's purchase or rental price, therefore making it more affordable for new farmers.

But it is critical to the health of our economy, our environment, our communities, and our citizens that we act now to address these systemic challenges in agriculture and preserve our farmland. Creating and maintaining a coordinated approach to farmland protection—with a statewide commitment—can help us grow our economy, create jobs, lift families out of poverty, ensure food security for our communities, reduce obesity and its attendant medical complications and costs, and protect a vital resource that can help to nourish communities in our state and around the world for decades to come.



Chapter 3

Summary of Existing Minnesota Farmland Protection Tools

This chapter provides an overview of Minnesota’s existing farmland preservation tools, including a summary of the state land use planning framework and existing farmland preservation programs. Detailed descriptions of the statutory framework for land use planning in Minnesota and the existing farmland preservation programs are included in Appendix C through Appendix F of this report.

Minnesota’s formal farmland preservation programs and policies are embodied in the Metropolitan Agricultural Preserves Program; Minnesota Agricultural Land Preservation Program; State Agricultural Land Preservation and Conservation Policy; and the Minnesota Agricultural Property Tax Act, commonly referred to as the Green Acres Program. Other laws that might help to supplement farmland preservation—the Rural Preserve Property Tax Program, statutes authorizing conservation easements and transfer of development rights programs, and the state right-to-farm law—are also summarized in this chapter.

I. OVERVIEW OF TOOLS COMMONLY USED TO PRESERVE FARMLAND

States concerned about protecting their agricultural land base have a variety of tools they may use to address these concerns. [See Appendix B, describing the tools commonly used to preserve farmland.] The most prominent of these tools is the purchase of development rights on farmland (PDR), also referred to as PACE, the purchase of an agricultural conservation easement.¹ In this process, an entity such as a town or state government, or a nonprofit conservation organization, purchases a deed restriction from a willing landowner that restricts residential and non-farm commercial development of the property in perpetuity while still allowing continued use of the land for farming. While the landowner retains ownership and may sell or pass the land on to heirs, all future owners must also

¹ American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 26, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

abide by the terms of the easement.² The entity holding the easement is responsible for ensuring that the terms are upheld.

Another tool that state and local governments may use to preserve agricultural lands for agricultural use is property tax relief for qualifying land uses. Farmers often face considerable property tax burdens as a result of their dependence on large amounts of land, buildings, and equipment.³ Tax reduction programs thus become very important tools for local governments looking to protect farms and farmland by creating a supportive business environment for local farms.⁴

State and local governments can use a variety of zoning provisions to protect farmland. Agricultural zones and overlay zones can “help mitigate problems between farms and non-farming neighbors, reduce the footprint or impact of new development on farmland, and identify priority farming areas in which certain zoning provisions are waived or instituted.”⁵ Overlay zones can be used, for example, to require cluster development, restrictions on what soils may be developed, or special permits for subdivisions.

Communities can also protect farmland by implementing transfer of development right (TDR) programs under which the private sector pays for land conservation by shifting development from agricultural areas to designated growth zones closer to municipal services.⁶ “Sending” areas are the focus of land conservation, while “receiving” areas concentrate development. TDR programs are most effective when they help facilitate transactions between private landowners and developers, in places where residential or commercial districts have the capacity to accommodate additional density, and in communities where large blocks of land

² American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 26, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

³ American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 24, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

⁴ American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 24, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

⁵ American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 20, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

⁶ American Farmland Trust, *Fact Sheet: Transfer of Development Rights*, at 1 (2001), available at http://www.farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf (last visited June 12, 2012).

remain in farm use.⁷ By concentrating development in areas with adequate public services, TDR promotes orderly growth and allows landowners in agricultural protection zones to retain equity without developing their land.

The above-described tools and others commonly used to preserve farmland are described in Appendix B of this report. Minnesota's existing farmland preservation policies and tools are described below.

II. MINNESOTA'S AGRICULTURAL LAND PRESERVATION AND CONSERVATION POLICY (MINNESOTA STATUTES, SECTIONS 17.80–17.84)

Enacted in 1982, this law sets forth Minnesota's policy on agricultural land preservation and conservation. It states:

“[I]t is the policy of the state to preserve agricultural land and conserve its long-term use for the production of food and agricultural products by: (a) Protection of agricultural land and certain parcels of open space land from conversion to other uses; (b) Conservation and enhancement of soil and water resources to ensure their long-term quality and productivity; (c) Encouragement of planned growth and development of urban and rural areas to ensure the most effective use of agricultural land, resources and capital; and (d) Fostering of ownership and operation of agricultural land by resident farmers.”⁸

The law also describes a variety of methods for achieving the policy's farmland preservation goals. It does not, however, specify a timeline or designate responsibility for implementing and enforcing those methods. To our knowledge, none have been implemented.

The sole enforcement authority for the state's policy is through the Minnesota Department of Agriculture's (MDA) review of state agency actions that could adversely affect ten or more acres of agricultural land.⁹ However, agency action is not subject to review by MDA pursuant to this policy if the action is already subject to the state environmental review process under Chapter 116D of the Minnesota Statutes, or if a political subdivision is required by law to review and approve the action.¹⁰ Outside of these instances, the Commissioner of Agriculture

⁷ American Farmland Trust & Connecticut Conference of Municipalities, *Planning for Agriculture: A Guide for Connecticut Municipalities*, at 20, available at http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf (last visited June 12, 2012).

⁸ Minn. Stat. § 17.80, subd. 1 (2011).

⁹ Minn. Stat. §§ 17.81; 17.82; 17.84 (2011).

¹⁰ Minn. Stat. § 17.82 (2012). The Minnesota Environmental Policy Act (MEPA) states:

is authorized to review the agency actions adversely affecting ten or more acres of agricultural land and recommend alternatives to reduce any adverse impact. The statute defines the actions which adversely affect agricultural land to include: actions which would “have the effect of substantially restricting the agricultural use of the land” in the following circumstances:

“(1) acquisition for a nonagricultural use except acquisition for any unit of the outdoor recreation system described in section 86A.05, other than a trail described in subdivision 4 of that section; (2) granting of a permit, license, franchise or other official authorization for nonagricultural use; (3) lease of state-owned land for nonagricultural use except for mineral exploration or mining; or (4) granting or loaning of state funds for purposes which are not consistent with agricultural use.”¹¹

Where an agency determines an action will adversely affect ten or more acres of agricultural land, it must provide notice of the action to the Commissioner of the Department of Agriculture.¹² The Commissioner must review the action within 30 days of the Department’s receipt of the notice. The Commissioner is thereafter authorized to “negotiate with the agency” and to make written recommendations to the agency recommending the action be implemented or recommending alternatives.¹³ Nothing in the statute requires the agency to adopt the Commissioner’s recommendations. In those cases where the Commissioner does

“No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state’s paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.”

Minn. Stat. § 116D.04, subd. 6 (2011).

The Minnesota Environmental Quality Board (MEQB) has set forth four criteria that an RGU is required to analyze when determining whether a proposed project has the potential for significant environmental effects: (1) the type, extent, and reversibility of environmental effects; (2) the cumulative potential effects of related or anticipated future projects; (3) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and (4) the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs. Minn. R. 4410.1700, Subp. 7 (2011).

¹¹ Minn. Stat. § 17.81, subd. 2 (2011).

¹² Minn. Stat. § 17.82 (2011).

¹³ Minn. Stat. § 17.84 (2011).

not respond to the agency's notice within 30 days, the lack of a response is "deemed a recommendation that the agency take the action as proposed."¹⁴

We found no instances—either in case law or interviews with MDA staff—where this statute was actually used to protect agricultural land. MDA does, however, review and make recommendations on projects under the environmental review rules.

III. MINNESOTA'S LAND USE PLANNING FRAMEWORK (MINNESOTA STATUTES, CHAPTERS 473 AND 394)

Minnesota law currently guides land use planning differently depending on whether the land is in the seven-county metro region or is outside of that region. The Metropolitan Land Planning Act (MLPA), adopted in 1976, governs metropolitan county comprehensive planning, and gives the Metropolitan Council (Met Council) oversight authority over that planning.¹⁵ Generally speaking, the MLPA requires comprehensive planning by local governments in the seven-county Minneapolis-St. Paul area, defines what must be in a local comprehensive plan, and requires local plans to be consistent with regional policies developed by the Met Council. The Met Council reviews local comprehensive plans and ordinances for consistency with regional policy and has the authority to modify local plans if they conflict.

Land use planning for counties outside of the seven-county metropolitan area is governed by a separate statutory scheme, which allows the Board of County Commissioners in each county to adopt a comprehensive plan, although counties are not required to do so.¹⁶ If a county has adopted a comprehensive plan, the township official controls must not be "inconsistent with or less restrictive" than the county's official controls.¹⁷ The county's plan therefore provides the minimum standard that must be met.

¹⁴ Minn. Stat. § 17.84 (2011).

¹⁵ Minn. Stat. §§ 473.851-473.871 (2011). The Metropolitan Council is comprised of 17 members appointed by the governor, 16 of whom represent geographic districts approximately equal in population. The Council chair is the 17th member and serves at large. Minn. Stat. § 473.853 (2011); Metropolitan Council, Pub. No. 14-11-009, *Metropolitan Council: What It Is and What It Does* (2011), available at <http://www.metrocouncil.org/about/facts/WhatIsMetCouncil.pdf> (last visited June 12, 2012). The Metropolitan Council was developed to "provide a regional perspective and work toward a regional consensus on issues facing the metropolitan area." *Ibid.* See also, Minn. Stat. § 473.851 (2011) (noting the need for a regional approach to planning to achieve orderly development between the seven counties).

¹⁶ Minn. Stat. §§ 394.21 – 394.23 (2011).

¹⁷ Minn. Stat. § 394.33 (2011).

The direction given to the counties regarding comprehensive plans differs based on whether the county is in the metropolitan region or in outstate Minnesota. Counties in the metropolitan region generally have more proscriptions (dictated to them by the Met Council by virtue of its authority granted in the enabling legislation) than counties in outstate Minnesota. In neither case are local governments generally required to address farmland preservation issues in their plans.¹⁸

The 1997 Legislature amended the county planning and zoning enabling law applicable to counties outside of the seven-county metropolitan area to require provision of notice of a permit to construct four or more residential units on land zoned for agriculture (or agricultural land in counties without zoning) to owners of all agricultural land within 5,000 feet of the perimeter of the proposed development. No enforcement mechanism is specified in the statute, and it is not clear whether this provision is generally monitored or enforced.

IV. METROPOLITAN AGRICULTURAL PRESERVES PROGRAM (MINNESOTA STATUTES, CHAPTER 473H)

The Metropolitan Agricultural Preserves Act of 1980 (Metro Program) established an agricultural land protection program that provides a package of benefits to farmers near urban areas. The program is intended to provide for the orderly preservation of farmland near the urban fringe, and is tied in to the larger land use planning system that applies in the seven-county metro area. The program recognizes farming as a long-term land use in the metropolitan area and is intended to help metropolitan-area farmers continue farming by counteracting pressures to sell or convert their land to other uses and providing them with the stability and assurances needed so that they can make longer-term investments in their operations. The Metro Program also seeks to encourage the use of farmland for food production.

The program applies to qualifying farmland located within the seven-county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and

¹⁸ Where a metropolitan county's land use plan is adopted or amended in relation to aggregate, it must state the local government's "goals, intentions, and priorities concerning aggregate and other natural resources, transportation infrastructure, land use compatibility, habitat, agricultural preservation, and other planning priorities." Minn. Stat. §§ 473.859, subd. 2(d); 473.859, subd. 2a (2011). Nothing else in the statutory section governing the content of comprehensive plans requires comprehensive plans in the metropolitan area to specifically address farmland preservation. Aggregate is "hard inert materials (such as sand, gravel, or crushed rock) used for mixing with cement to form concrete." Metropolitan Council, Pub. No. 780-05-059, *Local Planning Handbook*, Glossary, at 1 (2008), available at <http://www.metrocouncil.org/resources/Glossary.pdf> (last visited June 12, 2012).

Washington).¹⁹ To participate in the program, local governments (either a county, township, or municipality) must designate “agricultural preserve” areas within their boundaries for long-term agricultural use. These areas must generally correspond with areas the Metropolitan Council has designated for long-term agricultural use. The agricultural preserve areas must have a maximum zoning density of one dwelling for every 40 acres.

Farmers within the designated preserve area who wish to participate in the program must apply for the program. The application and enrollment process is done at the local level. To qualify for enrollment in the program, the parcel of property generally must be at least 40 acres in size. There are certain conditions under which the minimum acreage requirements can be reduced to 20 acres.²⁰

Enrolled farmers agree to restrict the use of their land to agricultural purposes. This restriction must be reflected on the land’s certificate of title and has a minimum duration of eight years. Once land is enrolled in an agricultural preserve, it must be “farmed and otherwise managed according to sound soil and water conservation management practices.”²¹

Farmers who own land enrolled in the program receive certain tax benefits and protections against interference with their farming operations. Enrolled farmers receive use value assessment for property tax purposes²²; a property tax credit of at least \$1.50 per acre²³; relief from assessments; protection from ordinances or

¹⁹ Ramsey County contains no land designated as agricultural, so although the Metro Program applies to it, the County has no agricultural preserves located within its boundaries.

²⁰ Minn. Stat. § 473H.03 (2011). 35-acre parcels are eligible for enrollment “provided the land is a single quarter/quarter parcel and the amount less than 40 acres is due to a public road right-of-way or a perturbation in the rectangular survey system resulting in a quarter/quarter of less than 40 acres.” Minn. Stat. § 473H.03, subd. 3 (2011). 20-acre parcels are eligible for enrollment provided there are: (1) 20 contiguous acres within the preserve area, (2) the parcel is “surrounded by eligible land on at least two sides,” and (3) the local government with zoning and planning authority over the parcel “by resolution determines that: (i) the land area predominantly comprises Class I, II, III, or irrigated Class IV land according to the Land Capability Classification Systems of the Soil Conservation Service and the county soil survey; (ii) the land area is considered by the authority to be an essential part of the agricultural region; and (iii) the parcel was a parcel of record prior to January 1, 1980, or the land was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.” Minn. Stat. § 473H.03, subd. 4 (2011).

²¹ Practices are not sound if they result in “wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota Technical Guide.” Minn. Stat. § 473H.16, subd. 1 (2011).

²² The residence and garage do not receive the use value assessment but are instead assessed based on their fair market value. Minn. Stat. § 473H.10 (2011).

regulations which unreasonably restrict normal agricultural practices; and some procedural protection from annexation and eminent domain.

For a local government to remove land from the agricultural preserve program, the government must amend its comprehensive plan, remove agricultural zoning for the long-term agricultural area, and notify affected landowners by letter. Landowners may also remove land from the program by notifying the local government of their intent to remove the land from the program. Removal of land from the program may not occur for at least eight years from the date that the government or the landowner announces the intent to remove land from the program. All benefits and restrictions associated with the preserve designation continue until expiration.

V. MINNESOTA AGRICULTURAL LAND PRESERVATION PROGRAM (MINNESOTA STATUTES, CHAPTER 40A)

Adopted in 1984, the Minnesota Agricultural Land Preservation Program (Greater Minnesota Program) is modeled after the Metro Program; it applies to counties located outside of the seven-county metropolitan area. Counties that wish to participate in the Greater Minnesota Program must develop an agricultural land preservation plan, which must be reviewed and approved by the Commissioner of the Minnesota Department of Agriculture. Generally speaking, the plan must designate areas of land suitable for long-term agricultural use, and these designations must be incorporated into the county's comprehensive plan and local zoning ordinances. Only three counties—Wright, Waseca, and Winona—participate in this program.

Farmers choosing to enroll in the program covenant to use their land only for agricultural uses. In exchange, they receive benefits similar to those provided under the Metro Program. Note, however, that the property tax credits provided through the Greater Minnesota Program are less beneficial than those provided under the Metro Program (the Metro Program provides a minimum tax credit of \$1.50 per acre, while the Greater Minnesota Program provides a flat, nonvariable credit of \$1.50 per acre). In addition, farmers in the Greater Minnesota Program do not receive the use value assessment that is offered through the Metro Program.

As with the Metro Program, either the local government or the farmer may terminate a parcel's designation as an agricultural preserve. Expiration occurs

²³ County assessors calculate taxes on enrolled land based on the lower of two assessments. In one computation, the auditor multiplies the tax rate and the taxable value of the land, then subtracts \$1.50 per acre from the total. In the second, the auditor multiplies 105 percent of the previous year's statewide average local tax rate for township properties by the enrolled land's taxable value. The lower rate is used to determine the amount of the property tax credit. Thus, the value of the tax credit amount may vary based upon local tax rates, but is at least \$1.50 per acre.

eight years from the date that notice of the intent to terminate the preserve is provided. Where the landowner initiates the expiration, all tax credit benefits cease immediately, even though the property remains designated as an agricultural preserve for eight years; all other benefits and restrictions related to the program continue until expiration.

Both the Metro Program and Greater Minnesota Program are funded by a \$5.00 mortgage registration and deed transfer fee (MRDT fee) that is collected in the seven metropolitan counties and the three counties that participate in the Greater Minnesota Program. The counties retain a \$2.50 share of the fee from each transaction to support local preservation efforts; these funds are deposited into a county conservation account.²⁴ The remaining balance is forwarded to the Minnesota Conservation Fund and to the state general fund, split equally.²⁵ Counties use their \$2.50 share to pay the conservation credits and the agricultural use valuation for agricultural preserves by reimbursing taxing jurisdictions for annual revenues lost due to these program benefits.²⁶

If necessary, counties may draw from the Minnesota Conservation Fund if the county share is not sufficient to pay the conservation credits.²⁷ In addition, if the amount available in the Minnesota Conservation Fund is insufficient to cover the costs of program benefits, metropolitan counties may be reimbursed from the state general fund.²⁸ Counties that participate in the Greater Minnesota Program are not entitled to draw from the general fund to cover any shortage. The Minnesota Conservation Fund has been “more than sufficient” to cover the cost of the conservation credit, and no general fund revenues have been used except for 1987, when the program was in its infancy, and a small amount of funding was appropriated from the general fund to the Minnesota Conservation Fund.²⁹

In cases where the county fund has money left after program benefits have been covered, unspent funds may be used by the counties for conservation planning

²⁴ Minn. Stat. § 40A.152 (2011).

²⁵ Minn. Stat. § 40A.151, subd. 1 (2011).

²⁶ Minn. Stat. §§ 40A.151, subd. 2; 273.119, subd. 2 (2011).

²⁷ Minn. Stat. § 473H.10, subd. 3(e) (2011).

²⁸ Minn. Stat. §§ 473H.10, subd. 3(e); 40A.152 (2011).

²⁹ Minnesota Department of Revenue, Auditor/Treasurer Manual, Property Tax Administration at 6.06-21 (revised November 2011) (stating the balance of the state conservation fund “has always been more than sufficient” to pay the Metro and Greater Minnesota Agricultural Preserves tax credits); but see, Office of the Legislative Auditor, Evaluation Report, “*Green Acres*” and Agricultural Land Preservation Programs, at 64 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 12, 2012) (noting that the State General Fund has not been used since the fund was established in 1987).

and implementation.³⁰ Funds not spent within the year must be returned to the state for deposit into the state conservation and general funds, with the proceeds split equally between the two funds.³¹ According to Department of Revenue personnel, no county funds have been returned to the State General Fund since 2002.³²

VI. MINNESOTA AGRICULTURAL PROPERTY TAX LAW (THE “GREEN ACRES” PROGRAM, MINNESOTA STATUTES, SECTION 273.111)

Adopted in 1967, the Minnesota Agricultural Property Tax Law (Green Acres Program) provides for deferment of assessments and equalizes taxes payable on farmlands whose valuations have been increased due to their development potential. The Green Acres Program is implemented and administered at the county level, with oversight and guidance from the Minnesota Department of Revenue.

Generally speaking, land defined for property tax purposes as class 2a agricultural land is eligible for the program. During the 2007-2008 legislative session, the Minnesota Legislature created a distinction between class 2a agricultural land and class 2b rural vacant land. Land that is not used for agricultural purposes, is not improved with a structure, and is rural in character is typically defined as class 2b rural vacant land and is not generally eligible for the program.³³

³⁰ The Program statutes limit spending of the conservation account money to agricultural land preservation and conservation planning; soil conservation; incentives for landowners who create exclusive agricultural land zones; and payments to municipalities for any of these purposes. Minn. Stat. § 40A.152, subd. 2 (2011). As of 2008, no funds were used for the latter two purposes. Instead, counties have generally used the conservation account dollars to help fund their natural resource management entities, such as soil and water conservation districts. Office of the Legislative Auditor, Evaluation Report, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 64 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 12, 2012).

³¹ Minn. Stat. § 40A.152, subds. 2-3 (2011); Metropolitan Council, *2009 Metropolitan Agricultural Preserves Program Status Report*, at 2 (May 2010), available at <http://www.metrocouncil.org/planning/landuse/AgPreservesReport2009.pdf> (last visited June 12, 2012).

³² We were unable to obtain Minnesota Department of Revenue data regarding remitted funds for the years preceding 2002.

³³ Under certain circumstances, class 2b land can be defined as class 2a land and therefore be included in the Green Acres Program. Class 2a land “must also include any property that would otherwise be classified as 2b, but is interspersed with class 2a property, including but not limited to sloughs, wooded wind shelters, acreage abutting ditches, ravines, rock piles, land subject to a setback requirement, and other similar land that is impractical for the assessor to value separately from the rest of the property or that

Land is classified as class 2a agricultural land and is eligible for the program if it is:

- Ten or more contiguous acres,³⁴
- Used during the preceding year to produce agricultural products for sale,³⁵ or
- Enrolled in a conservation program such as the Conservation Reserve Program, the Reinvest in Minnesota Program, or “other similar programs.”³⁶

In addition, the property must be “primarily devoted to” agricultural use to qualify for the Green Acres Program.³⁷

Farmland enrolled in the program is valued at its agricultural use value, rather than its generally higher market value.

is unlikely to be able to be sold separately from the rest of the property.” Minn. Stat. § 273.13, subd. 23(b) (2011).

³⁴ Note that real estate of less than ten acres in size may qualify for the 2a agricultural classification under Minn. Stat. § 273.13, subd. 23(f) (2011), if it is used exclusively for agricultural purposes, or if it is improved with a residential structure and is used intensively for one of the following purposes:

- “(i) for drying or storage of grain or storage of machinery or equipment used to support agricultural activities on other parcels of property operated by the same farming entity;
- (ii) as a nursery, provided that only those acres used to produce nursery stock are considered agricultural land;
- (iii) for livestock or poultry confinement, provided that land that is used only for pasturing and grazing does not qualify; or
- (iv) for market farming; for purposes of this paragraph, “market farming” means the cultivation of one or more fruits or vegetables or production of animal or other agricultural products for sale to local markets by the farmer or an organization with which the farmer is affiliated.”

Although a property less than ten acres in size would qualify for the class 2a agricultural classification for property tax purposes under the above criteria, it would not qualify for Green Acres deferral. It would, however, be taxed at the class rate applicable to agricultural land, which is lower than the rate for residential or commercial properties.

³⁵ The term “agricultural products” is defined so as to include a broad array of products. Examples include: livestock; dairy; poultry; fur-bearing animals; horticultural and nursery stock; fruit; vegetables; bees; fish bred for sale and consumption; commercial horse boarding; game birds and water fowl; maple syrup; and trees grown for sale. See Minn. Stat. § 273.13, subd. 23(i) (2011).

³⁶ Minn. Stat. § 273.13, subd. 23(e) (2011).

³⁷ Minn. Stat. § 273.111, subd. 3(a) (2011).

When land is removed from the program, farmers are required to pay all deferred assessments and three years of back taxes (reflecting the difference between the taxes paid based on the agricultural use value and the tax amount based on the higher market value). No back taxes or deferred assessments are required upon removal from Green Acres if the land is immediately enrolled in the Metro or Greater Minnesota Programs or the Rural Preserve Property Tax Program.

The Green Acres Program has been especially beneficial within the seven-county metropolitan area, where consistent development pressure and an attendant rise in property taxes can make farming unaffordable. In its 2008 report, the Legislative Auditor found that, without the benefits provided by the Green Acres Program, many farmers in these areas would likely sell their farms to developers.³⁸

VII. THE RURAL PRESERVE PROPERTY TAX PROGRAM (MINNESOTA STATUTES, SECTION 273.114)

The Legislature created the Rural Preserve Program in 2009. The program was a response to criticism of the distinction the Legislature devised between class 2a and class 2b land during the 2007-2008 legislative session, which made class 2b land ineligible for the Green Acres Program.

In response to complaints about those changes, the Legislature developed the Rural Preserve Program. The Program was created primarily for larger tracts of class 2b land previously enrolled in the Green Acres Program, and was designed to provide owners of these types of land a tax benefit similar to that provided by the Green Acres Program. Lands enrolled in the Rural Preserve Program are taxed at a value consistent with their use as a rural preserve.³⁹

VIII. RIGHT-TO-FARM LAW (MINNESOTA STATUTES, SECTION 561.19, NUISANCE LIABILITY OF AGRICULTURAL OPERATIONS)

Under Minnesota’s right-to-farm law, an agricultural operation cannot be considered a nuisance if it has been in operation for two years. The right-to-farm law therefore seeks to protect from most public and private nuisance actions “agricultural operations” that have operated in substantially the same way for two

³⁸ Office of the Legislative Auditor, Evaluation Report, “*Green Acres*” and Agricultural Land Preservation Programs, at 7-8, 30-31 (2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 12, 2012). In recent years, however, agricultural land values have steadily increased, while other land values have not. As the difference between the agricultural and other land values lessens, so do the benefits of being enrolled in the program. Consequently, some farmers have recently opted to instead enroll in the Metropolitan Agricultural Preserves Program. See Pioneer Press, *Minnesota Farmers Wrestle With One Consequence of Rising Land Values: Higher Property Taxes*, October 4, 2011.

³⁹ Minn. Stat. § 273.114, subd. 3 (2011).

or more years and that continue to operate according to “generally accepted agricultural practices.”

Agricultural operations include facilities used for the production of crops, livestock, poultry, and dairy products. They do not include facilities primarily engaged in processing agricultural products. An agricultural operation is not a nuisance if it is operating according to “generally accepted agricultural practices,” located in an agriculturally zoned area, and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation. Some animal operations are not covered by the right-to-farm law protection, such as an animal feedlot facility with a swine capacity of 1,000 or more animal units or a cattle capacity of 2,500 animals or more.

The right-to-farm law does not prevent farmers from being sued. Nor does it eliminate the cost of defending their operations in court. Although the law might help to buttress farmland preservation efforts, it is not ultimately a direct means of preserving farmland.

IX. PURCHASE OF DEVELOPMENT RIGHTS AND TRANSFER OF DEVELOPMENT RIGHTS (MINNESOTA STATUTES, CHAPTERS 84C AND SECTIONS 394.25 AND 462.357)

During the 1997 legislative session, the Minnesota Legislature adopted amendments to the planning and zoning enabling laws for counties and municipalities authorizing local governments to adopt programs allowing for the purchase of conservation easements and the transfer of development rights.

Minnesota Statutes, Chapter 84C allows governmental agencies and charitable organizations to hold conservation easements and sets forth the process for creating and challenging easements.⁴⁰ Minnesota has no statewide purchase of conservation easement program for farmland, nor is there currently an agency or organization that holds conservation easements on agricultural lands throughout the state, with the exception of Dakota County. Dakota County has a program which uses conservation easements to protect important farmland. That program is described in Appendix G of this report.

Minnesota Statutes Sections 394.25 and 462.357 authorizes local governments to develop Transfer of Development Rights (TDR) programs as part of their zoning and planning authority. According to the Minnesota Association of County

⁴⁰ A conservation easement is a voluntary and permanent transfer of specified development rights from a landowner to a public or private organization. The easement is a restriction on a parcel of land, recorded as part of the land and deed records of the court. A conservation easement typically prevents development of land for residential, commercial, or industrial uses, while allowing farming to continue.

Planning and Zoning Administrators, twelve counties utilize TDR.⁴¹ We are aware of five Minnesota counties—Blue Earth, Chisago, Rice, Stearns, and Waseca—with TDR programs that include a farmland preservation component.

X. CONCLUSION

While Minnesota does have a number of farmland protection policies and tools available, they have generally failed to protect agricultural lands for the long-term. As described in Chapter 4 of this report, these policies and tools have not been used in a coordinated way that promotes a comprehensive approach to farmland preservation and are not well promoted or widely used.



(c) Farmers' Legal Action Group, Inc.

⁴¹ Minnesota Association of County Planning and Zoning Administrators, *Zoning Office Survey Summary*, Section 2 (2010), available at <http://www.macpza.org/2010%20MACPZA%20Zoning%20Survey%20Summary%20FINAL.pdf> (last visited June 12, 2012).

Chapter 4

Recommendations

The recommendations in this report are based on our analysis of the state's existing statutory framework for land use planning and farmland preservation; stakeholder input gathered for this report; our experiences assisting farmers with issues related to land use, farmland preservation, tax assessment, and state and local regulatory requirements; review of farmland policies and tools used in other states; analysis of data and other information maintained by the Minnesota Department of Revenue, the Metropolitan Council, and the Minnesota Department of Agriculture; and prior reports regarding Minnesota's experience with the existing farmland preservation programs.¹

Our recommendations fall into four general categories that address:

- (1) Integrating farmland preservation into the existing state land use planning framework;
- (2) Additional state farmland preservation tools the state should consider adopting to supplement existing programs;
- (3) Streamlining and strengthening the existing farmland preservation programs and policies to make them more effective; and
- (4) Steps the state can take to support and promote the economic viability of Minnesota's farming operations.

¹ The statutory frameworks for land use planning and farmland preservation are included in Appendices D, E, and F of this report; a summary of policies and tools used in other states is included in Appendix C of this report; and the prior reports are included in Appendix A of this report.

I. RECOMMENDED CHANGES TO THE STATE FARMLAND PRESERVATION AND CONSERVATION POLICY: ADD BETTER ENFORCEMENT MECHANISMS AND SPECIFIC NOTICE REQUIREMENTS

BACKGROUND IN SUPPORT OF RECOMMENDATION #I-1:

The State Agricultural Land Preservation and Conservation Policy set forth in chapter 17 of the Minnesota statutes contains laudable goals, but no real means of achieving or enforcing those goals.² The law also describes a variety of methods for achieving the policy's farmland preservation goals. It does not, however, specify a timeline or designate responsibility for implementing and enforcing those methods. To our knowledge, none have been implemented. The State Agricultural Land Preservation and Conservation Policy consequently is a statement of a goal and nothing more. For the goals to be achieved, statutory amendments are needed.

The sole enforcement authority for the State Agricultural Land Preservation and Conservation Policy is through the Minnesota Department of Agriculture's (MDA) review of state agency actions that could adversely affect agricultural land.³ The MDA Commissioner is authorized to review these actions and recommend alternatives to reduce any adverse impact only in cases where the agency concludes its action will "adversely affect" ten or more acres of agricultural land.⁴ Where an agency determines an action will adversely affect ten or more acres of agricultural land, it must provide notice of the action to the MDA Commissioner.⁵ The Commissioner must review the action within 30 days of MDA's receipt of the notice. The Commissioner is thereafter authorized to "negotiate with the agency" and to make written recommendations to the agency recommending the action be implemented or recommending alternatives.⁶ Nothing in the statute requires the agency to adopt the Commissioner's recommendations.

Note that agency action is not subject to review by MDA pursuant to the State Agricultural Land Preservation and Conservation Policy if the action is already subject to the state environmental review process under Chapter 116D of the

² The stated goals are: "(a) Protection of agricultural land and certain parcels of open space land from conversion to other uses; (b) Conservation and enhancement of soil and water resources to ensure their long-term quality and productivity; (c) Encouragement of planned growth and development of urban and rural areas to ensure the most effective use of agricultural land, resources and capital; and (d) Fostering of ownership and operation of agricultural land by resident farmers." Minn. Stat. § 17.80, subd. 1 (2011).

³ Minn. Stat. § 17.81 (2011).

⁴ Minn. Stat. §§ 17.82; 17.84 (2011).

⁵ Minn. Stat. § 17.82 (2011).

⁶ Minn. Stat. § 17.84 (2011).

Minnesota Statutes, or if a political subdivision is required by law to review and approve the action.⁷ MDA may still submit comments pursuant to the environmental review process, but the State Agricultural Land Preservation and Conservation Policy does not authorize independent review authority in that case.

RECOMMENDATION #I-1 DETAILS: The State Agricultural Land Preservation and Conservation Policy should be amended to include better enforcement mechanisms and specific notice requirements.

A. The Policy should be amended to make all agency actions affecting ten or more acres of agricultural land subject to review by MDA.

Currently, the State Agricultural Land Preservation and Conservation Policy only requires an agency to submit for review by MDA those actions which the agency determines will adversely affect agricultural land. It should be up to the enforcement authority, not the agency proposing the action, to make the initial determination of whether a proposed action will adversely affect agricultural land. The Policy should therefore be amended to make all agency actions affecting ten acres or more of agricultural land subject to review by MDA.

⁷ Minn. Stat. § 17.82 (2011). The Minnesota Environmental Policy Act (MEPA) states: “No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state’s paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.” Minn. Stat. § 116D.04(6) (2011). The Minnesota Environmental Quality Board (MEQB) has set forth four criteria that [a Responsible Government Unit (RGU)] is required to analyze when determining whether a proposed project has the potential for significant environmental effects: (1) the type, extent, and reversibility of environmental effects; (2) the cumulative potential effects of related or anticipated future projects; (3) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and (4) the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other [Environmental Impact Statements (EISs)]. Minn. R. 4410.1700, Subp. 7 (2011).

B. Section 17.84 of the Minnesota Statutes should be amended to make the MDA Commissioner's recommendations binding unless the proposing agency develops alternatives that are acceptable to MDA.

- The MDA Commissioner's recommendations regarding alternatives to an agency's proposed action should be binding unless the agency proposing the adverse action develops other alternatives acceptable to the Commissioner.

C. The statute should be amended to specify the type of information that the agency must provide to MDA.

- Adding specific notice requirements will help to ensure that the notice provided to MDA is adequate for MDA to understand the substance of the proposed action, its location, and the possible adverse effects of the action. In determining what information is necessary for the notice requirement to be meaningful, the Minnesota Legislature should consult with MDA.

D. The state may wish to develop and use a Land Evaluation Site Assessment (LESA) tool to determine the impact of agency actions on agricultural land.

- The state of Illinois uses a LESA tool for this purpose and could serve as a model for Minnesota.⁸

II. RECOMMENDED CHANGES TO STATE LAND USE PLANNING: INTEGRATE FARMLAND PRESERVATION GOALS INTO THE LAND USE PLANNING FRAMEWORK

BACKGROUND IN SUPPORT OF RECOMMENDATION #II-1:

As noted throughout this report, the state has long had general goals of preserving farmland. Those goals, however, have generally not identified specific preservation priorities or contained effective mechanisms for enforcing the goals. In addition, excepting the nine counties⁹ that participate in the Metropolitan Agricultural Preserves Program (Metro Program) and the Minnesota Agricultural Land Preservation Program (Greater Minnesota Program), farmland preservation goals have not generally been integrated into the state's land use planning framework.

⁸ Illinois LESA System (revised August 2001), available at <http://www.agr.state.il.us/Environment/LandWater/LESA.pdf> (last visited June 7, 2012).

⁹ Ten counties collect the \$5.00 Mortgage Registration and Deed Transfer fee (MRDT fee) that funds the programs, but only nine have land enrolled in them. Ramsey County collects the fee but does not otherwise participate in the program because it is deemed wholly urbanized.

Minnesota’s current statutory land use planning scheme allows and promotes inconsistent approaches to dealing with farmland with little or no state guidance, framework, or accountability.

A. The state’s existing policies for farmland preservation are not adequately integrated into the land use planning framework.

As noted above, Minnesota’s State Agricultural Land Preservation and Conservation Policy, enacted in 1982, already sets forth several state farmland preservation goals, but provides no means of enforcing these goals. Nor is there currently any requirement that the goals be addressed during the land use planning process.

Because of the diversity of types of agricultural operations and farmland in the state, there is no one global solution or approach to farmland preservation that will work throughout the state. At the same time, without some degree of state involvement, farmland preservation will continue to be done on an ad hoc basis or not at all. Assuming policymakers want to ensure the maintenance of an agricultural land base in Minnesota, we recommend a tiered approach to farmland preservation—one in which the state sets a broad framework and provides oversight and enforcement to ensure those goals are addressed by local governments, with planning decisions continuing to be made at the local level.

As described in Appendix C of this report, other states that have used the approach of incorporating state farmland preservation goals into the land use planning framework include Wisconsin and Oregon. This approach enables the state to encourage confinement of development to urban areas and towns already in existence, thus protecting natural resources and farmlands from further urban sprawl. At the same time, it allows local governments to incorporate the state goals in a way that recognizes and addresses unique local conditions and preferences.

If policymakers wish to preserve Minnesota’s farmland, there are actions they can and should take to ensure farmland preservation is integrated into Minnesota’s land use planning laws, thereby creating a more systemic approach to protecting Minnesota’s farmland.

B. Most comprehensive plans include some language about farmland preservation, but do not include implementation policies to promote or achieve farmland preservation goals.

The current statutory framework for land use planning in Minnesota requires several elements be included in comprehensive plans. As noted in Appendix D of this report, describing the state’s statutory framework for land use planning, the direction given to the counties regarding comprehensive plans differs based on whether the counties are located in the metro region or in outstate Minnesota. Counties in the metro region generally have more proscriptions than counties in

outstate Minnesota. In neither case are there typically any requirements that require comprehensive plans to address farmland preservation.¹⁰

According to our analysis, at least 74 of Minnesota’s 87 counties have adopted comprehensive land use plans. The majority of these plans contain some language regarding farmland preservation.¹¹ Only a small portion of the plans also have specific tools or policies to implement farmland preservation goals. Additionally, most of the plans do not assign responsibility for implementing the goals, or provide a timeframe in which implementation must be achieved.

Some counties have implemented tools to preserve farmland. At least five counties—Blue Earth, Chisago, Rice, Stearns, and Waseca—have developed Transfer of Development Rights (TDR) programs that include a farmland preservation component. Dakota County funded a Purchase of Development Rights (PDR) program (also referred to as a Purchase of Conservation Easement) in 2002 with funding from a bond referendum. Since the program started it has been Minnesota’s sole recipient of federal farmland preservation funding. The program has been cited as an exemplar for successful farmland and natural resource protection. The county-level farmland protection programs are described in Appendix G of this report.

¹⁰ In limited circumstances, a metro county comprehensive plan may have to address farmland preservation by considering the county’s “goals, intentions, and priorities” with respect to farmland preservation, among other things. Minn. Stat. § 473.859, subd. 2(d) (2011). The applicability of that requirement is greatly limited by subdivision 2a of that same statute section, stating the farmland preservation and other listed planning requirements only apply “to land use plans adopted or amended by the governing body in relation to aggregate or when the governing body is presented with a written application for adoption or amendment of a land use plan relating to aggregate.” Minn. Stat. § 473.859, subd. 2a (2011). Aggregate means “hard inert materials (such as sand, gravel, or crushed rock) used for mixing with cement to form concrete.” Metropolitan Council, Pub. No. 780-05-059, *Local Planning Handbook*, Glossary, at 1 (2008). Most counties outside of the seven-county metro area must currently “consider” adopting goals to preserve agricultural land. Minn. Stat. § 394.231 (2011). The counties are not, however, required to adopt farmland preservation goals and objectives; they merely have to consider these issues during the development of the comprehensive plan.

¹¹ In the process of developing this report, FLAG obtained and analyzed comprehensive plans from 65 counties.

C. Agricultural zoning approaches vary among the counties and can help or hinder the preservation of agricultural lands.

Local level zoning on agricultural issues varies widely.¹² Some townships have delegated all planning and zoning authority to the county, while other townships have retained their planning and zoning power. According to a 2010 survey conducted by the Minnesota Association of County Planning and Zoning Administrators, 48 of the 54 counties responding to the survey have agricultural zoning districts. The density standards in these districts range widely from one unit per 2.5 acres to one unit per 160 acres. Only twelve counties have an agricultural preservation zoning district.¹³

- In Scott County, where the townships have delegated zoning authority to the county, agricultural zoning is more limited than neighboring Dakota County, where townships retained zoning authority. In Scott County, only one township in the southwest corner of the county and a very small portion of the neighboring township are designated for long-term agriculture.¹⁴ In Dakota County, the townships have generally maintained long-term agricultural use zoning, with a maximum zoning density of one dwelling for every 40 acres. Dakota County staff have credited the townships' maintenance of long-term agricultural use zoning densities as being an essential precursor to the county's PDR program. Without such zoning, fragmentation of farmland may have become so entrenched that no feasible preservation program could have been implemented.
- Stearns County, where animal agriculture is prevalent, emphasizes maximum zoning densities of one dwelling for every 160 acres.
- In other areas, such as portions of Washington County, zoning densities of one dwelling for every five or ten acres have contributed to leapfrog development and the installation of large rural residences interspersed with working farms. These development patterns give rise to the attendant issues common when residences are put next to active farming operations (for example, complaints about noises and smells related to the farming operation; demands for urban

¹² See, e.g., Resource Management Consultants, Inc.; Resource Strategies Corporation; Coughlin, Keene & Associates; *Evaluation of Minnesota Agricultural Land Preservation Programs*, Prepared for the Minnesota Department of Agriculture (June 1999) (hereafter referred to as 1999 MDA Report), at Appendix A, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnalp.pdf> (last visited June 6, 2012).

¹³ Minnesota Association of County Planning and Zoning Administrators, *Zoning Office Survey Summary*, at Section 2 (2010), available at <http://macpza.org/2010%20MAC%20Zoning%20Survey%20Summary%20FINAL.pdf> (last visited June 8, 2012).

¹⁴ See Scott County 2030 Comprehensive Plan, 2030 Planned Land Use Map, available at <http://www.co.scott.mn.us/PropertyGISLand/2030CompPlan/2030PlanDoc/Documents/2030%20Planned%20Land%20Use%20Map.pdf> (last visited June 8, 2012).

services in areas where the extension of such services is inefficient and costly; and long commutes and the resulting transportation issues).¹⁵

- Fillmore County limits the placement of new dwellings in its agricultural zoning districts. New construction of a dwelling must generally “be sited on an existing or former permanent dwelling site, on land classified for more than ten (10) years by the Fillmore County Assessor as pasture, wasteland, woodland or on land having a Crop Equivalency Rating of 65 or less.”¹⁶

Thus, local zoning can either help or hinder the preservation of farmland, depending on the goals of the locality and how it decides to zone based on those goals.

At the same time, local governments must be granted the flexibility to incorporate their preferences and values into the planning process. For example, in some areas that have a lot of animal agriculture, such as Stearns County, it might be more important for farmland preservation policies to be geared to protecting larger blocs of farmland suitable for that type of agricultural production.¹⁷ In contrast, a metro-area county wanting to encourage local food production might emphasize the protection of smaller-acreage parcels used for fruit and vegetable production.¹⁸ Other local governments might want to tie farmland preservation goals to natural resource conservation practices and goals, as Dakota County has done.

D. The Metropolitan Council approach to farmland preservation varies depending on the composition of the Council.

Land use planning done by the Metropolitan Council (Met Council, or Council) and local governments very directly affects farmland preservation. Yet the approach and weight given to farmland preservation in the seven-county metro

¹⁵ See, e.g., Country Messenger, *Township passes garden plot ordinance* (March 13, 2012), available at http://www.presspubs.com/messenger/news/article_63123bb8-6d28-11e1-be43-0019bb2963f4.html (last visited June 11, 2012).

¹⁶ Fillmore County Zoning Ordinance, Section 604.05, Subsec. 9, available at http://www.co.fillmore.mn.us/zoning/documents/2011_Zoning_Ordinance_Sec6.pdf (last visited June 8, 2012).

¹⁷ Stearns County 2030 Comprehensive Plan, at 3-7 and 3-20 (March 2008), available at <http://www.co.stearns.mn.us/Government/CountyDevelopment/StearnsCountyComprehensivePlan> (last visited June 7, 2012) (noting that agricultural zoning “of one housing unit per 40 acres has not prevented the development of 40-acre or larger residential parcels, making it more difficult to assemble and efficiently cultivate farmland,” and therefore setting zoning densities of one unit per 40 - 160 acres).

¹⁸ See Scott County 2030 Comprehensive Plan, at V-33 (revised October 25, 2011), available at <http://www.co.scott.mn.us/PropertyGISLand/2030CompPlan/2030PlanDoc/Pages/2030PlanDocument.aspx> (last visited June 7, 2012) (stating the county will strive to preserve small lot farms used for fruit and vegetable production).

region has varied significantly depending on the composition of the Met Council. At times, the members of the Council have taken a proactive approach to this issue and specifically sought to create policies that will help to avoid the conversion of farmland to sprawling development. At other times, the Council has taken a hands-off approach to farmland preservation issues, stating that those issues fall outside of its jurisdiction. Regardless, every aspect of the Met Council's regional planning—transportation, wastewater treatment, housing development—has an impact on farmland and farming. Farmland is a finite resource—once paved over, it is gone. The Met Council's planning process needs to more consistently address how farmland will be preserved in the seven-county metro region. Whipsawing between a proactive and a hands-off approach depending on the membership of the Council seriously undermines the state's ability to preserve this important natural resource for future generations.

RECOMMENDATION #II-1 DETAILS: Establish additional state farmland preservation goals and integrate them into the state's overall land use planning framework.

A. The state should consider adding additional goals to the State Agricultural Land Preservation and Conservation Policy.

- The goals currently set forth in Minnesota's State Agricultural Land Preservation and Conservation Policy are: (1) "Protection of agricultural land and certain parcels of open space land from conversion to other uses; (2) Conservation and enhancement of soil and water resources to ensure their long-term quality and productivity; (3) Encouragement of planned growth and development of urban and rural areas to ensure the most effective use of agricultural land, resources and capital; and (4) Fostering of ownership and operation of agricultural land by resident farmers."¹⁹
- Additional goals that should be considered for inclusion in the State Agricultural Land Preservation and Conservation Policy are: (1) Protection of large contiguous blocs of "regionally significant agricultural areas"; (2) Encouragement of the continuation of locally important agriculture in areas that fall outside of the regionally significant areas; (3) Protection of agricultural land from development pressure;²⁰ and (4) Protecting parcels used

¹⁹ Minn. Stat. § 17.80, subd. 1 (2011).

²⁰ These first three goals were included in a report issued by the Metropolitan Council's Work Group report, *Policy and Implementation Proposal for the Rural Area*, at 11-12 (March 2002), available at http://www.metrocouncil.org/planning/rural_issues/RuralPolicyProposal.pdf (last visited June 8, 2012). The Rural Issues Work Group additionally noted that agriculture should be broadly defined to include all types of agriculture, including specialty crop production, and stated that the role of agricultural lands should be considered when developing a regional growth strategy.

for fruit and vegetable production and other food crop and livestock production, including smaller-acreage parcels. The state may also wish to develop other natural resource protection goals and integrate those into the land use planning framework as well.

B. Once state farmland preservation goals are established, regional and local governments’ land use planning decisions, comprehensive plans, and zoning ordinances should be consistent with those goals.

- Integrating farmland preservation goals into the existing land use system will provide a more meaningful mechanism for preserving farmland. This approach is also consistent with the Metro and Greater Minnesota programs’ method of land use planning to promote farmland preservation, and will help to buttress those programs.
- For counties in the seven-county metropolitan region, this can be achieved via a requirement that the Met Council’s regional planning documents and local comprehensive plans comport with the state farmland preservation goals.
 - To be consistent with state farmland preservation goals, Met Council regional planning documents should hold firm on the Metropolitan Urban Service Area (MUSA) boundary.²¹ The Met Council should not, therefore, give growth assumptions to the counties that anticipate extending services beyond the existing MUSA boundary. Nor should it approve metro county comprehensive plans that anticipate the provision of these services outside of the existing MUSA boundary.
 - Met Council and metro county comprehensive plans and implementing ordinances should seek to proactively preserve farmland located closest to the MUSA boundary to create a buffer that will help to prevent sprawl. For example, the Portland, Oregon, metropolitan area has used the approach of keeping a firm urban growth boundary (UGB), a concept similar to our metro region’s MUSA boundary. The Portland metropolitan area, located right on the state border, is technically made up of three Oregon counties and one Washington county. This created a natural “control group” by which to measure the success of Oregon’s urban containment effort in its three counties against the similarly situated county in Washington that is not subject to Oregon’s laws. Comparisons revealed that the vast majority of land urbanized in Oregon between 1980 and 1994 took place within UGBs, while the amount of very low-density development in Washington far exceeded the total amount of low-density sprawl in all three Oregon counties

²¹ As noted in the Executive Summary, the MUSA is the area in which the Met Council ensures that regional wastewater services are provided.

combined.²² See Appendix C of this report, describing other state programs for more information about the experience in Portland.

- For counties in Greater Minnesota, the integration of farmland preservation goals with local land use planning can be achieved by adding a requirement to create a farmland preservation plan that complies with state farmland preservation goals. Counties that do not currently engage in comprehensive planning should be required to form farmland preservation plans unless they are eligible to opt out of the planning requirements under the opt out provisions described below.

C. The statutory comprehensive plan definitions should be amended to include a farmland preservation plan component.

- Minnesota Statutes Sections 473.859, subdivision 2 (for metro counties), 394.231 (for Greater Minnesota counties), and 462.352 (for municipalities and townships) should be amended to require that comprehensive plans include a farmland preservation plan component.
- The farmland preservation component should include certain specific farmland preservation provisions. The farmland preservation provisions should include, at a minimum:
 - (1) A requirement to do a background inventory that shows prime farm soils and soils of statewide significance; land enrolled in the Metro or Greater Minnesota programs; lands currently zoned for agricultural use; and all existing farms. The inventory should additionally specify which of those farms supply food crops and products to the local community.
 - (2) A requirement to include an explanation of how the plan addresses state goals.
 - (3) An implementation schedule designating responsibility for implementing farmland preservation strategies and setting a timetable for implementation.
- Subdivision 2 of Section 40A.05 of the Minnesota Statutes sets forth additional elements that the state may wish to consider for inclusion in farmland preservation plans.²³

²² Arthur Nelson & Terry Moore, *Assessing Growth Management Policy Implementation: Case Study of the United States' Leading Growth Management State*, 13 Land Use Policy 241, 253 (1996).

²³ The provisions set forth there pertain to plans developed under the Greater Minnesota Program and require: “(1) integration with comprehensive county and municipal plans; (2) relationship with shoreland, surface water, and other land use management plans; (3) identification of land currently in agricultural use, including the type of agricultural

- All local governments (counties, municipalities, and townships) should generally be required to develop a farmland preservation plan subject to the opt out provisions described below. Local governments that do comprehensive planning should incorporate their farmland preservation plans into the comprehensive plan. Others should have a stand-alone farmland preservation plan.
- Plans should be implemented through local zoning ordinances. The ordinances should, at a minimum: (1) designate land appropriate for long-term agricultural use; and (2) set forth standards and procedures to govern rezoning decisions.²⁴
 - Subdivision 3 of Section 40A.05 of the Minnesota Statutes sets forth additional elements that may be incorporated into local zoning ordinances designed to implement farmland preservation plans.²⁵

use, the relative productive value of the land based on the crop equivalent rating, and the existing level of investment in buildings and equipment; (4) identification of forest land; (5) identification of areas in which development is occurring or is likely to occur during the next 20 years; (6) identification of existing and proposed public sanitary sewer and water systems; (7) classification of land suitable for long-term agricultural use and its current and future development; (8) determination of present and future housing needs representing a variety of price and rental levels and an identification of areas adequate to meet the demonstrated or projected needs; and (9) a general statement of policy as to how the county will achieve the goals of this chapter.”

²⁴ The approach we are recommending—the implementation of state farmland preservation goals through local zoning ordinances, should not give rise to regulatory takings problems under existing case law. The right to impose local zoning restrictions has long been upheld by the United States Supreme Court. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 375, 395 (1926). The state goals suggested here do not impose specific limitations on land use (in contrast to Oregon’s approach which mandated exclusive farm zoning in all agricultural areas). Local comprehensive plans and official controls will be generally applicable in designated agricultural areas, as opposed to applying to only one or a small handful of landowners, and should allow for reasonable use of the property. See *Agins v. City of Tiburon*, 447 U.S. 255, 260 - 262 (1980) (holding that development restrictions intended to preserve open space did not effect a regulatory taking because they allowed for an economically viable use of the land and applied to a number of landowners, rather than requiring one landowner to bear a burden that should be shared more broadly). See also, *Pratt v. State Dep’t of Natural Resources*, 309 N.W.2d 767, 773 (Minn. 1981) (holding that, where a regulation regulates “between competing private uses for the general welfare, ordinarily no taking is involved; but where the regulation is for the benefit of a governmental enterprise, where a few individuals must bear the burden for a public use, then a taking occurs”).

²⁵ The provisions there apply to official controls to implement plans developed under the Greater Minnesota Program and require: “(1) designation of land suitable for long-term agricultural use and the creation of exclusive agricultural use zones, allowing for conditional, compatible uses that do not conflict with long-term agricultural use; (2) designation of urban expansion zones where limited growth and development may be

- The statutory provisions governing the zoning requirements of Wisconsin’s farmland preservation project also have elements Minnesota may wish to consider incorporating. These can be found in Sections 91.36 through 91.48 of the Wisconsin Statutes and are available at <https://docs.legis.wisconsin.gov/statutes/statutes/91/III/36>.
- The state may wish to consider taking a “bottom up” approach to planning. Using this approach, townships would complete their farmland preservation plans and ordinances first and these could later be incorporated into the county plans. This approach may help to ensure consistency between plans and the incorporation of local preferences into county plans.
- There must be a robust public participation process into the formation of plans and official controls. In addition to public meetings and hearings, local governments may wish to form farmer advisory groups consisting of farmers from a broad diversity of types of farming operations to advise them throughout the process. Scott County currently has a Farm Advisory Board to advise it regarding land use planning decisions and other issues that impact the long-term future of farming. More information about the Farm Advisory Board can be found on Scott County’s website at <http://www.co.scott.mn.us/PropertyGISLand/2030CompPlan/NaturalAreaFarmland/Pages/FarmlandPreservation.aspx>.
- Metro county comprehensive plans are currently updated every ten years. Counties and local governments outside of the metro area should be required to update the farmland preservation element of their comprehensive plans every ten years as well, on the same schedule.²⁶
- MDA should review and approve the farmland preservation provisions to ensure they are consistent with state farmland preservation goals.

D. Local governments should be allowed to opt out of the farmland preservation plan requirements under certain limited circumstances.

- The decision to allow a local government to opt out of the farmland preservation plan requirements should be made by the MDA. One possible

allowed; (3) residential density requirements and minimum lot sizes in exclusive agricultural use zones and urban expansion zones; and (4) standards and procedures for county decisions on rezoning, subdivision, and parcel divisions.”

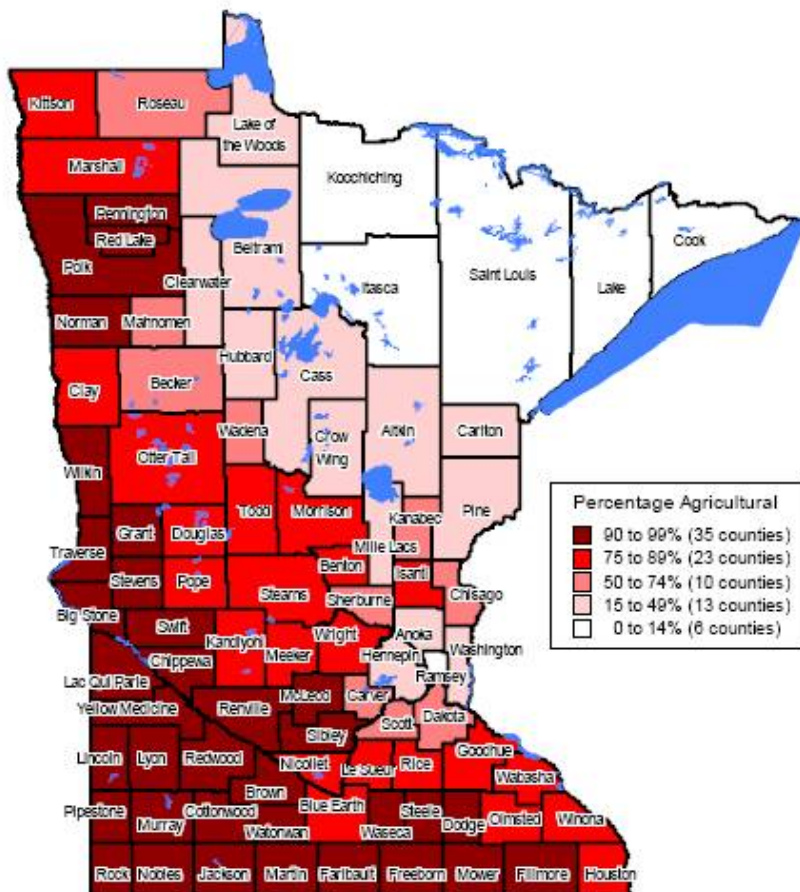
²⁶ According to the Minnesota Department of Natural Resources, local governments should prepare a Natural Resources Inventory and Assessment at least every ten years. Minnesota Department of Natural Resources, *Natural Resource Guidance Checklist - Natural Resource Inventory & Analysis for City or County* (December 2001), available at <http://files.dnr.state.mn.us/assistance/nrplanning/community/nrchecklists/inventory.pdf> (last visited June 8, 2012).

approach would allow local governments to apply to opt out from the planning requirements under the following circumstances:

- Counties with between 0 to 14 percent of their land classified as agricultural in 2007, as identified by Figure 1.1 of the Legislative Auditor’s 2008 report, should not be required to perform the inventories or develop farmland preservation plans because they are unlikely to have enough farmland within their borders to make doing an inventory a useful investment of resources. Municipalities and townships located within the boundaries of a county that opts out pursuant to this provision should also be exempt from the inventory and planning requirements.

A copy of Figure 1.1, excerpted from the Legislative Auditor’s 2008 report, is shown on the following page.

Figure 1.1: Percentage of Land Classified as Agricultural, 2007



SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Revenue’s 2007 Spring Mini Abstract.

- Local governments in Greater Minnesota that did comprehensive plan updates within the last five years which include an inventory of agricultural lands and a functional farmland preservation plan that substantially addresses the state goals should be able to opt out of the initial round of plan updates, with approval from MDA.
- Local governments without enough resources to complete an inventory and not experiencing development pressure should also be eligible to apply to opt out of the requirements, also with approval from MDA.
- Opt out applications should be required for every ten-year farmland preservation plan update as opposed to having a one-time, perpetual opt out.
- Some counties should not be eligible to opt out of the farmland preservation planning requirements. These should include:
 - The metro counties, with the exception of Ramsey County. Ramsey County had 0 to 14 percent of its land classified as agricultural as of 2007, according to the Legislative Auditor's 2008 report.
 - The collar counties that surround the metro region: Chisago, Goodhue, Isanti, LeSueur, McLeod, Rice, Sherburne, Sibley, and Wright counties.
 - Counties with a significant amount of farmland and/or agricultural production. This should include counties with \$50 million per year in gross agricultural outputs, or counties with a minimum of 100,000 acres of farmland.²⁷ Counties meeting either of these two benchmarks should be required to have a farmland preservation plan component in their comprehensive plan.

E. The planning requirements should be phased in, with counties and local governments with the highest rates of population growth developing their plans first.

- The metro counties should develop their plans in conjunction with the next round of comprehensive plan updates. In the interim, measures should be put in place to govern development so as to avoid conversion of farmland while the planning framework is being developed.

²⁷ Both of these benchmarks have been suggested as indicators for areas with the long-term potential for farmland preservation and sustaining farm support services, meaning that these are areas where it makes sense to invest in farmland preservation planning. FLAG interview with Tom Daniels (March 29, 2012).

- F. With assistance from MDA and/or the Department of Natural Resources (DNR), local governments should be required to develop Land Evaluation Site Assessment (LESA) scoring systems to help determine which agricultural lands should be targeted for preservation.**
- LESA is an evaluation tool that uses a numeric rating system to help prioritize agricultural land for protection. LESA was created by the U.S. Department of Agriculture’s Natural Resources Conservation Service (NRCS). It has two components: land evaluation and site evaluation. The land evaluation component measures soil quality and considers capability classes, important farmland classes, soil productivity ratings and/or soil potential ratings. The site assessment component evaluates factors such as parcel size, development pressure and public benefits like wildlife habitat or scenic views. LESA systems assign points and a relative weight to each of the factors considered. The sum of the weighted ratings is the LESA score; the higher it is, the greater the significance of the property.
 - A primary benefit of using a LESA system is that it offers an objective and consistent methodology for evaluating the continued use of specific areas for agriculture, and facilitating the identification and protection of important agricultural land.
 - To facilitate the implementation of LESA systems in a cost-effective manner, MDA and/or DNR should develop a model LESA scoring system for counties to use in prioritizing farmland for protection.
 - Illinois uses a LESA system to determine how state agency projects will affect farmland and to minimize the impacts of development on farmland. There may be aspects of that system which could be used in developing Minnesota’s model LESA system. The Illinois LESA system is available at <http://www.agr.state.il.us/Environment/LandWater/LESA.pdf>.
 - NRCS, within U.S. Department of Agriculture (USDA), has a guidebook on developing LESA systems and is available to assist state and local governments to develop LESA systems. States and localities may adapt the LESA system developed by NRCS to meet the needs of their farmland protection program’s goals and priorities.²⁸ The guidebook provides detailed instructions on creating LESA systems, and may be obtained through the NRCS website, available at <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/nri/?&cid=stelprdb1043786>.

²⁸ James R. Pease and Robert E. Coughlin, *Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands*, second ed., (Ankeny, Iowa: Soil and Water Conservation Society, 1996), at 41.

- Once a model LESA system is developed, counties could have the option of adopting the state system or using it as a baseline but modifying it to reflect local preferences and priorities.
 - Stearns County²⁹ and Dakota County have developed and then refined their own criteria and LESA scoring systems to identify lands that should be targeted for preservation. Both are good examples of factors that counties may wish to consider in targeting areas for preservation.
- G. Additional resources, including funding and staff, should be allocated to MDA and/or DNR to develop educational materials and provide technical assistance to the local governments.**
- Technical assistance should include, at a minimum, assistance in identifying and mapping prime soils and other agricultural lands and assisting local governments to develop farmland preservation plans that are consistent with state farmland preservation goals.
 - MDA previously developed a planning guide to assist local governments with farmland preservation.³⁰ This guide may act as a starting point for the development of educational materials, although it would need to be updated.
- Resources should also be provided to local governments to help them perform the agricultural inventories and the farmland preservation land use plans.
 - Possible funding sources for this are Minnesota's Outdoor Heritage Fund and the Environment and Natural Resources Trust Fund. MDA and/or DNR and the local governments should have high priority for funding to do the agricultural inventories and develop the farmland preservation plans.

²⁹ A report by the Minnesota Department of Natural Resources and 1000 Friends of Minnesota, *Employing a Suitability Model to Support Local Land-Use Decisions*, provides a good overview of the Stearns County LESA system and the process used to develop it, available at <http://www.plannersconference.com/pdf/sessions/final%20Report%20-%20Employing%20a%20Land%20Use%20Model.pdf> (last visited June 7, 2012).

³⁰ James Duncan and Associates, *Planning for Agricultural Land Preservation in Minnesota: A Handbook for Planning Under Minnesota Statutes, Chapter 40A* (June 1996), available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/planning.pdf> (last visited June 8, 2012).

III. ADOPT NEW FARMLAND PRESERVATION TOOLS TO ENCOURAGE LONG-TERM PRESERVATION AND DISCOURAGE GROWTH IN AGRICULTURAL AREAS

BACKGROUND IN SUPPORT OF RECOMMENDATION #III-1:

Every report that has analyzed the effectiveness of the state’s existing farmland preservation programs has concluded the programs as they currently function are not sufficient to provide for the long-term preservation of farmland. Experience from other states also highlights the need for a multi-pronged approach if a state wishes to successfully preserve farmland. It is therefore apparent that to effectively preserve farmland for future generations, the state needs to adopt additional farmland preservation tools to supplement the existing programs.

The suggestions listed here are designed to provide tools to local governments to help them preserve farmland, and to foster state and local partnerships that will better utilize existing resources and create a more comprehensive approach to farmland preservation. In turn, these tools can be used to promote farmland preservation in targeted areas. We have also included suggested approaches that will discourage development in areas where it is not desired.

RECOMMENDATION #III-1 DETAILS: Develop policy tools that encourage long-term farmland preservation in important areas and discourage growth in those areas.

A. Develop a state Purchase of Agricultural Conservation Easement (PACE) program and offer it in the counties that have farmland preservation plans.

State land use regulations will be more effective if they are supported by a PACE program that offers landowners an alternative to development. This approach is preferable to a Transfer of Development Rights approach, given the planning complexities associated with those types of programs and the unpredictability of the likelihood of their success.³¹

- There are several benefits that could be derived from a state PACE program:
 - The program would reward landowners who choose not to develop their land and would give them a viable alternative to development. PACE programs have also been found to fuel economic development because

³¹ Tom Daniels, *Three Farmland Preservation Proposals for the Metropolitan Council*, at 5 (December 3, 2001). *See also*, Appendix B of this report discussing the strengths and weaknesses of Transfer of Development Rights (TDR) and PACE programs.

farmers typically funnel the money they receive from the conservation easement purchase back into their farming operations.³²

- The program could help facilitate the transfer of farmland from one generation of farmers to the next. Because the development value is stripped from the land, the purchase price for the land is more affordable for newer farmers who may otherwise have a difficult time finding land to buy.
- The program could be used to promote conservation efforts, as stewardship and conservation measures could be written into the conservation easement. Overall, the program would provide a vehicle for leveling the playing field for farmers who choose to preserve their land and are good stewards. It would reward those choices, whereas the current system often ends up penalizing those farmers with higher taxes and fewer benefits.
- There are currently no programs available to farmers (outside of Dakota County's farmland protection program) who wish to preserve their farmland for the long-term.
 - Currently, none of the land trust organizations in Minnesota hold easements for the purpose of preserving agricultural land. Farmers who want to ensure their farmland will be preserved for farming purposes thus have no options available to them other than the Metro and Greater Minnesota programs, both of which are insufficient to offer true long-term protection.
- There are several possible funding sources for a state PACE program: Minnesota's Outdoor Heritage Fund; the Environment and Natural Resources Trust Fund; Farm and Ranch Land Protection Program (FRPP) matching funds; and the Mortgage Registration and Deed Transfer (MRDT) fee that funds the Metro and Greater Minnesota programs; and county matching funds.
 - The MRDT fee is currently split equally between the nine counties that offer the program and the state. The state's share of the MRDT fee could be used to fund a state PACE program for farmland. To ensure sufficient funding, the MRDT fee could also be raised, if necessary. Additional funding could come from the federal FRPP, which provides funding for the purchase of agricultural conservation easements. To ensure the PACE

³² American Farmland Trust, *Community Benefits and Costs of Purchase of Agricultural Conservation Easements* (December 2005), available at http://www.farmlandinfo.org/documents/37108/Final_PDF_Pace_Benefits_123005.pdf (last visited June 8, 2012); Estimating the Benefits to Local Stakeholders from Agricultural Conservation Easements (November 2003), available at http://www.farmlandinfo.org/documents/36065/Esseks_AFTPAPER32.pdf (last visited June 8, 2012).

program will be eligible for federal funding, it should be developed to be consistent with that program’s eligibility criteria.³³

- A model for a PACE program that both preserves farmland and provides incentives for conservation practices is Dakota County’s program, which explicitly joins farmland protection with water quality protection. The program is described in Appendix G of this report and is a model the state should consider building upon. Other possible models include the PACE program in Wisconsin,³⁴ which also incorporate conservation objectives. That program is described in Appendix C of this report.
- The general suggested parameters for a state PACE program are described below.
 - The PACE program should be available in those counties that have farmland preservation plans. The use of the program should also be targeted to areas where local zoning and land use management tools limit the development market in an area and where farmland preservation is encouraged. This helps to ensure that the conservation investment will be protected. In addition, protection priority should be given to farms located within close proximity to population centers since these are the lands most at risk of conversion.
 - The PACE program should primarily be administered and monitored at the local level, using the already-existing expertise of local soil and water conservation staff.
 - MDA should be a joint easement holder if state funds are used, but the counties should maintain primary responsibility for monitoring and

³³ The FRPP provides matching funds to help purchase development rights to keep productive farmland and rangeland in agricultural use. USDA partners with state, tribal, or local governments and non-governmental organizations that have existing farmland preservation programs to acquire conservation easements or other interests in land from landowners. USDA provides up to 50 percent of the fair market easement value of the conservation easement.

To qualify, farmland must: be part of a pending offer from a state, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural production. More information about the FRPP program can be found at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/farmranch>, or by contacting the Minnesota office of USDA’s Natural Resources Conservation Service at (651) 602-7857.

³⁴ Wisconsin’s future PACE program funding was eliminated by Wisconsin’s 2011 biennial budget act. Nevertheless, the program’s objectives and general program parameters remain a good model.

enforcing the easements.³⁵ Funding will need to be made available to the counties for monitoring and enforcement activities.

- The counties should provide MDA with annual reports regarding the PACE programs, including the number of easement agreements entered into, acres preserved, cost of preservation, and location.³⁶
- The conservation easements should include a soil and water conservation and stewardship plan developed in collaboration with and monitored by local soil and water conservation staff. These plans should be updated every ten years.
- The LESA tool used for the farmland preservation plans should also be used to help prioritize conservation easement projects.
- Counties should be required to contribute some matching funds to fund the PACE program within their boundaries. Counties could use a portion of their share of the MRDT fee for this purpose.
- When the easements are purchased, landowners should make a monetary contribution to be used toward monitoring the easement. This ensures that there will be funding available to monitor the easement, and that landowners have a stake in the preservation commitment.
- Easements can be donated, with a corresponding tax write-off. Landowners who donate easements should not be required to contribute monitoring funds.

B. Allow farmers to form voluntary Agricultural Enterprise Areas (AEA).

A part of Wisconsin's Working Lands Initiative is the concept of voluntary AEAs. This concept and the role it plays in Wisconsin's program are described in Appendix C of this report. Minnesota should consider adding a similar provision to its existing farmland preservation statutes. Doing so would enable farmers to join together to form voluntary agricultural districts.

- The criteria for establishing an AEA should be similar to Wisconsin's, which include: (1) farmers must petition the state department of agriculture to form an AEA; (2) the petition must be supported by at least five farmers; (3) the petition must be signed by "all [of] the counties, towns, and municipalities" in which the area is located; (4) all of the parcels must be contiguous (unless separated by only a lake, stream, or right of way); (5) the land must be located in a farmland preservation area as identified in a certified farmland

³⁵ Note that the Minnesota DNR holds easements on forestlands.

³⁶ Metropolitan Council, Rural Issues Work Group, *Policy and Implementation Proposal for the Rural Area*, at 36 (March 2002), available at http://www.metrocouncil.org/planning/rural_issues/RuralPolicyProposal.pdf (last visited June 8, 2012).

preservation plan; and (6) the land must be used primarily for agricultural purposes.³⁷

- The farmers who form the districts would enter into farmland preservation agreements with MDA and in return would receive an enhanced property tax credit. In addition, policymakers may wish to consider offering other benefits in these areas, such as economic development or other grants to improve the viability of the farms located within the districts.

C. Make farmland preservation a policy and budget priority.

One way to indicate that preserving farmland is a high state priority is to ensure that state spending reflects that priority. If policymakers wish to preserve agricultural land, state funds should not be used to support development or development infrastructure within agricultural areas. No new spending is required to implement this recommendation; the state would just refrain from subsidizing growth that does not reflect its stated values.

- An example of this approach is the state of Maryland’s land use planning system and farmland protection program. To better direct growth and preserve areas where growth is not desired, Maryland designated Priority Funding Areas (PFA) where it wished to encourage development. These areas generally include existing communities, neighborhood revitalization areas, enterprise zones, heritage areas, and planned growth areas. No state funding is allocated for development projects outside of the PFAs.³⁸

D. Add fees and/or mitigation requirements to discourage development of prime farmland.

One approach states have taken to preserve farmland is to impose monetary fees or mitigation requirements when prime farmland is developed. The idea is not to cut off or stop development, but to channel it more appropriately to areas where development is desired and away from valuable prime farmland. If the state wants to help channel growth and discourage the development of prime farmland, it should consider adopting such measures.

- Impact fees are mandatory payments imposed by local governments at the time of development approval. They are calculated to be the proportionate share of the capital cost of providing a development with major infrastructure

³⁷ Wis. Stat. § 91.84 (2012).

³⁸ See Md. Code, State Fin. & Proc., § 5-7B (2011) (codifying the Priority Funding Areas Act). Note that to maximize the effectiveness of PFAs, this tool needs to be coupled with a disincentive against development outside of the PFAs. Critics have stated that the effectiveness of Maryland’s PFA system is undermined by the fact that it does nothing to prevent sprawl where developers disregard state financial support and instead obtain funding from private or local government sources. J. Celeste Sakowicz, *Urban Sprawl: Florida’s and Maryland’s Approaches*, 19 J. Land Use & Envtl. L. 377, 416 (2004).

such as roads, schools, sewer and water lines, and emergency services. The idea is that the developer is only required to pay its “fair share,” or the cost that the new development will impose on the community.

- One possible model is Wisconsin’s conversion fee approach. In order to discourage the sale of farmland for conversion to non-agricultural purposes, the conversion fee for land removed from a new farmland preservation agreement (signed after January 1, 2011) or a modified farmland preservation agreement (modified after July 1, 2009) is equal to three times the per acre value of the highest class of tillable agricultural land present in the city, village, or town where the land is located.³⁹ The conversion fee previously also applied to land removed from an agricultural zone, but this aspect of the fee was repealed by Wisconsin’s 2011 biennial budget act. Nevertheless, the fee remains a possible model for a fee-based approach. It is described in more detail in Appendix C of this report.
- Mitigation measures seek to minimize the environmental impacts of development by requiring that farmland lost to urban development be matched with the preservation of a comparable amount and quality of other agricultural acres in the same area. The mitigation match may be on a per acre or greater basis. Mitigation is typically accomplished by putting conservation easements on the preserved acres, either purchased directly by the developers or accomplished through a development fee arrangement. The requirements are generally established through local ordinances. The money generated through mitigation fees can be funneled into agricultural preservation programs or into local budgets for mitigation monitoring and enforcement or PACE monitoring and enforcement. The state may also wish to consider creating a statewide farmland banking system equivalent to the wetland banking system.
 - An example of state legislation that allows for impact fees is California’s Mitigation Fee Act.⁴⁰ This Act allows local governments to establish, increase, or impose a fee as a condition of approval of a development project. This policy is intended to shift the burden of funding infrastructure needed to accommodate or serve new development from the taxpayers onto the new development. The Act requires local governments to make and document five findings when adopting a fee: (1) fee purpose; (2) use of fee revenue (note that if the fees are to be used to finance new public facilities or the expansion of existing facilities that will be needed because of the development, the local government must identify the facilities the fees will be used for);⁴¹ (3) the reasonable relationship

³⁹ Wisconsin Department of Agriculture, Trade & Consumer Protection, at http://datcp.wi.gov/Environment/Working_Lands_Initiative/Conversion_Fee/index.aspx (last visited June 8, 2012).

⁴⁰ Cal. Gov’t Code §§ 66000-66005.

⁴¹ Public facilities means “public improvements, public services and community amenities.” Cal. Gov’t Code § 66000(d).

- between the fee’s use and the type of development project on which the fee is imposed; (4) the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed; and (5) the proportionality of the fee—i.e., the reasonable relationship between the amount of the fees and the cost of the facilities attributable to the development on which the fee is imposed.⁴²
- Examples of California local governments that have adopted agricultural mitigation programs are the city of Davis, California, and Stanislaus County, California.
 - The city of Davis enacted a mitigation ordinance in 1995. The ordinance required developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Beginning in 2001, the ordinance required the protection of two acres of prime farmland for every one acre developed.⁴³ Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee in lieu of direct protection. Fees are funneled back into funding farmland preservation efforts.
 - Stanislaus County adopted its Farmland Mitigation Program in 2007. The program is designed to mitigate for the loss of farmland due to residential development in the County. In essence, it requires mitigation for loss of agricultural land at a 1:1 ratio and requires anyone proposing to develop agricultural land to acquire agricultural conservation easements over an equivalent area of comparable farmland prior to development. The County’s Farmland Mitigation Program Guidelines provide that applicants converting parcels greater than 20 acres in size must mitigate by direct acquisition of a permanent agricultural conservation easement. For parcels less than 20 acres in size, the County Board of Supervisors may authorize the applicant’s payment of a mitigation fee in lieu of direct acquisition.⁴⁴

⁴² Cal. Gov’t Code § 66001(a) and (b). The criteria set forth in California’s Mitigation Fee Act were amended in 1996 to comply with the U.S. Supreme Court’s holding in *Dolan v. City of Tigard*, 512 U.S. 374 (1994). There, the Court held that such fees must not only have a required nexus to the development’s impacts, but must also be roughly proportional to the projected impact of the proposed development.

⁴³ City of Davis, *Agricultural Preservation Program* (November 1995), available at <http://cityofdavis.org/pgs/openspace/pdfs/Davis%20Ag%20Preservation%20Program%20-%20Info%20packet%207-06.pdf> (last visited June 8, 2012).

⁴⁴ Stanislaus County, *Farmland Mitigation Program Guidelines*, available at <http://www.co.stanislaus.ca.us/planning/pl/gp/gp-ag-element-b.pdf> (last visited June 8, 2012).

The program was recently upheld by the Fifth Appellate District of the California Court of Appeal.⁴⁵

- Policymakers should consider adopting enabling legislation specifically authorizing state or local agencies and local governments to require dedications of easements, payment of mitigation fees, or impact fees as a condition of development. If a mitigation measure is adopted, it should use more than a 1:1 ratio for the mitigation match in cases where the type of soil being developed is categorized as prime or soils of statewide significance.

E. Add weighted incentives to promote conservation.

If the state wishes to link natural resource protection efforts with farmland protection, there are a number of ways it can do so, doubling the impact of the efforts. The state could use weighted criteria in any of the types of programs available to it.

- A local example is Dakota County's farmland protection program, described in Appendix G of this report. The program is explicitly tied to protecting water quality. It does so by requiring that preserved farms be located near streams or rivers. In addition, farmers who wish to participate in this voluntary program are required to install permanent vegetated buffers between cultivated land and waterways, clean up old farm dumps, ensure that septic systems are operating correctly, and seal unused wells. Enrolled farmers must also have stewardship plans for their farms.
- Possible methods for adding conservation promotion methods into existing and suggested farmland preservation programs and policies are included throughout this chapter of the report.

IV. RECOMMENDED CHANGES TO THE AGRICULTURAL PRESERVES PROGRAMS: MERGE THE PROGRAMS; PROVIDE ENHANCED BENEFITS AND LONGER-TERM PRESERVATION OPTIONS; IMPROVE PROGRAM PROTECTIONS; AND RESTRUCTURE THE ELIGIBILITY CRITERIA

BACKGROUND IN SUPPORT OF RECOMMENDATION #IV-1:

It is important to note at the outset of this section that for some farmers, reserving the right to sell their property for development is an important economic safeguard; the proceeds from such a sale may be used to fund a family's retirement, help to pay for college for their children, or otherwise meet the family's financial needs. To successfully reconcile the tension between preserving farmland and preserving a farm family's ability to provide for their financial needs, the incentives for the state's farmland preservation programs need to be

⁴⁵ *Building Indus. Ass'n of Central Cal. v. Cnty. of Stanislaus*, 190 Cal.App.4th 582 (2010).

adequate to draw farmers in. When committing not to sell their property for development, farmers are giving up something very substantial, and the program incentives need to recognize and account for that. Historically, this has not been the case in Minnesota; program incentives have been low, as has enrollment in the existing programs.

In its earlier years, the Metro Program was viewed as a successful example of a balanced and innovative approach to farmland preservation in urban fringe areas.⁴⁶ The program established a way to preserve agricultural land for farming, while sheltering it from rapidly rising taxes resulting from nearby urban development. As time passed, however, development pressures steadily increased, and it became clear that the program was not sufficient to withstand those pressures. Consequently, the areas designated as agricultural preserves have steadily shrunk, and program participation rates have declined over time.⁴⁷

For its part, the Greater Minnesota Program has never been very successful. It was only implemented in three counties and never had the funding stability or level of incentives necessary for the program to be more appealing to local governments and farmers.⁴⁸

Multiple reports analyzing the two programs thus have recommended changes be made to strengthen them. These reports are described in detail in Appendix A of this report. Generally speaking, the problems identified with the programs are the lack of a long-term farmland preservation option and low program enrollment—largely because of poor program incentives and limited promotion of the

⁴⁶ See, e.g., Rozenbaum and Reganold, *State Farmland Preservation Programs Within the Upper Mississippi River Basin: A Comparison*, Landscape Planning, Volume 12, Issue 4, January 1986, 315-336, at 320.

⁴⁷ See Napton and Borchert, *Preserving Metro Area Farmland*, Center for Urban and Regional Affairs Reporter, Volume XVI, Number 1 (January 1986), citing Metropolitan Council, *Metropolitan Agricultural Preserves Act: A 1985 Status Report* (July 1985), at 3, 18 (showing lands certified agricultural preserve areas as of 1985); Metropolitan Council, *2030 Framework Planning Areas Map*, available at http://gis.metc.state.mn.us/mapgallery/pdfs/Framework/framework2030_pa_8x11.pdf (last visited June 8, 2012) (showing 2030 planning areas, including those designated for agriculture); Metropolitan Council, Publication 78-12-009, *2011 Metropolitan Agricultural Preserve Status Report* (detailing enrollment trends from 2000 to 2011 and showing location of acres currently enrolled in the Metro Program), available at http://councilmeetings.metc.state.mn.us/community_dev/2012/041612/2011%20metro%20ag%20preseres%20program%20-%20info%202.pdf (last visited June 8, 2012); Minnesota Department of Agriculture, *Minnesota Agricultural Land Preservation Program, Status Report 2011*, available at <http://www.mda.state.mn.us/en/news/government/~media/Files/news/govrelations/aglandstatus2011.ashx> (last visited June 8, 2012) (describing participation in the Greater Minnesota Program).

⁴⁸ 1999 MDA Report at V-2, V-4, V-5, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnalp.pdf> (last visited June 6, 2012).

programs. The programs are not fundamentally flawed; they simply lack the resources and commitment necessary to make them succeed.

A. The programs are critical to ensuring farmers who want to keep farming are able to do so.

Stakeholders who provided input during the development of the instant report uniformly believed that Minnesota's existing farmland preservation programs play an important role in the immediate and short-term preservation of farmland in Minnesota. Those programs help farmers who wish to keep farming to do so, despite the pressures and problems that arise from nearby urbanization or other development. Each farmer or farm family deals with these pressures differently: some may choose to sell their land entirely; some may sell a portion of the land or rent a piece out; some continue farming, but hold off on making investments in or expanding the farming operation out of fear that they will not have time to recoup those investments; and others wish to pass the farm on to their children. What the programs do is provide farmers with tools that help to ensure they are not forced to quit farming before they want to, or are forced to sell a farm they had planned to pass on to members of their family. Consequently, the existing programs are integral components of Minnesota's farmland preservation toolbox.

In addition, both programs have been successful in that they help encourage local governments to create and maintain agricultural zoning.⁴⁹ It is widely accepted that once zoning changes permit residential development in agricultural areas, development does occur and farmland is converted to other uses.⁵⁰ Moreover, the experiences of farmers also show that such development generally encroaches upon and hinders existing farming operations. As a result, farmers are less likely to continue farming in those areas. In addition, encroaching development frequently results in shortages of affordable farmland. These land shortages prevent farmers from expanding existing operations because they cannot afford to buy or rent additional land. Moreover, land shortages also prohibit new farmers from buying farmland, while increasing the pressure on existing farmers to sell their land. They also make it quite difficult and expensive for farmers who need to rent land in order to grow produce sold in urban markets to find affordable land within a reasonable driving distance of their homes or markets.

Further, the infrastructure added with new development frequently includes the addition of more paved roads in farming areas and the extension of urban services

⁴⁹ 1999 MDA Report at V-8, V-9, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnaip.pdf> (last visited June 6, 2012).

⁵⁰ Land use patterns in the metro region and surrounding counties confirm that once residential development is allowed in an agricultural area, large numbers of acres are typically taken out of agriculture and developed, resulting in a high rate of farmland losses. Office of the Legislative Auditor, State of Minnesota, "*Green Acres*" and *Agricultural Land Preservation Programs* (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

to these areas. As the number of farms in a given area decreases, the support these farms provide to one another disappears, as do local farm service businesses and the jobs those businesses provide. The lack of a core number of farms and farm support businesses creates yet another disincentive for new farms to locate in the area. Thus, agricultural zoning is an essential ingredient in the farmland preservation formula. Consequently, the fact that the programs have contributed to the retention of such zoning is an important benefit of the programs that should not be overlooked.

B. Having two overlapping state agricultural preserve programs with limited state involvement has failed to facilitate an effective, streamlined approach to farmland preservation.

Participation in the agricultural land preservation programs has historically been low. The Greater Minnesota Program exists in only three counties in Minnesota. Two of those three counties have few property transfers, meaning that those counties generate a low amount of MRDT fees. As a result, the Minnesota Conservation Fund revenues are disproportionately used to fund protection in those counties, relative to the other counties. We do not, however, recommend that the programs be discontinued in those counties. To the contrary, to make the programs more effective, their use needs to be increased throughout the state. At the same time, the programs need to be refocused, streamlined, and tailored to maximize benefits. The first step toward achieving that goal is to merge the programs. Rather than having two somewhat functional programs, the state should have one program that is targeted to achieve its stated goals.

RECOMMENDATION #IV-1 DETAILS: Merge the existing Metro and Greater Minnesota programs into one comprehensive program covering the entire state.

A. Preservation of farmland located within the metropolitan area and throughout Greater Minnesota can and should be accomplished through one streamlined statewide program.

- When the two existing agricultural preservation programs were developed, circumstances were different than they are today. Farmland located in the metropolitan area was subject to development pressure and farmland values there were high. In contrast, land located in Greater Minnesota was not generally subject to development pressure, and farmland values remained relatively steady.⁵¹ Today, however, development pressure and increased

⁵¹ Office of the Legislative Auditor, State of Minnesota, “Green Acres” and Agricultural Land Preservation Programs, at 30 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012); Minnesota Department of Revenue, *Assessment and Classification Practices Report, The*

farmland values are no longer isolated to the metropolitan area. Instead, these same trends are seen throughout portions of the entire state.⁵²

- At the same time, urban sprawl and its consequences are no longer limited to the seven-county metropolitan area. Instead, both have extended to other areas with high population densities—most notably, the collar counties surrounding the metro region, and those areas surrounding Rochester, St. Cloud, and Mankato.
- The enrollment statistics for the Green Acres Program (or Green Acres) further highlight that development and other nonagricultural influences (e.g., the use of land for recreation and hunting) are at play throughout the state. The Green Acres Program, which is described in detail in Appendix F of this report, is only beneficial in areas where nonagricultural influences have driven up the value of farmland. In the 1970s, only five counties participated in the Green Acres Program; all five were located in the metropolitan area. As of 2007, 51 counties throughout the state participated in the program.⁵³ Indeed, between 2000 and 2007, Green Acres Program enrollment for the Greater Minnesota counties increased more than thirty-fold.⁵⁴ Legislation adopted in 2008 required all counties to implement the Green Acres Program.⁵⁵
- As these enrollment statistics make clear, nonagricultural factors now have a significant impact on the value of farmland located throughout the state. Thus, rather than having two separate preservation programs, each with its own requirements and administered by different agencies, the state should streamline the programs into one comprehensive state program, administered by one agency.

Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property, at 2 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012).

⁵² See, e.g., Winona Daily News, *Winona Co. Farmland Values Up* (March 13, 2011), available at http://www.winonadailynews.com/news/local/article_2e83e4a0-4d2b-11e0-b019-001cc4c03286.html (last visited June 7, 2012) (noting drastic increases in the average price-per-acre of farmland throughout the state and citing Federal Reserve Bank data showing a 22.8 percent increase in Minnesota farmland values from the fourth quarter of 2009 to the fourth quarter of 2010).

⁵³ Office of the Legislative Auditor, State of Minnesota, *“Green Acres” and Agricultural Land Preservation Programs*, at 8 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

⁵⁴ Office of the Legislative Auditor, State of Minnesota, *“Green Acres” and Agricultural Land Preservation Programs*, at 8 - 9 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

⁵⁵ Minnesota Laws 2008, Regular Session, Chapter 366, Article 6, Sections 11 - 20.

B. The program should be available in all counties that are required to create farmland preservation plans.

- To most effectively target the streamlined program, it should be integrated with state farmland preservation planning requirements. This integration should be achieved through a requirement extending the Metro Program to include all counties that are required to create farmland preservation plans pursuant to the recommendations described in the instant report. The Greater Minnesota Program should be eliminated. The idea behind this recommendation is to keep the Metro Program and its requirements (as modified by the recommendations made here) applicable in all of the metro counties, while also extending that program to all counties with a farmland preservation plan. The MRDT fee should thus be collected in all of these counties.
- The program should be available in all counties that have a farmland preservation plan. The premise underlying this recommendation is to expand the use of the existing programs, and to better target preservation efforts and funds. By streamlining the two programs into one and making that program available throughout counties that have farmland preservation plans, the state’s farmland preservation tools will be available to a broader range of farmers, not just those in designated agricultural preserve areas, which is the current approach. Additionally, program administration will be streamlined and more efficient.
- Because counties not experiencing development pressure and without a significant agricultural land base or production can opt out of the farmland preservation plans, those counties with plans should have a need for an expanded agricultural preserves program. Consequently, it makes sense to offer the program throughout entire counties, not just in select areas of those counties.
- In addition, many farms that were once located in entirely rural areas are now completely surrounded by development and thus do not generally fall within the designated agricultural preserve areas under the existing program requirements. Although preserving these farms does not contribute to the preservation of a large contiguous bloc of farmland, their preservation is important because they are a valuable resource in their own right. [See, e.g., Case Study #1: Preserving a Family Farm on the Urban Fringe and Providing Multiple Benefits to the Community, in Appendix I of this report.]

C. Oversight of the streamlined program should be performed by the Minnesota Department of Agriculture.

- MDA is dedicated to serving the agricultural sector in Minnesota, has ties and connections throughout all facets of that sector, and possesses the expertise to effectively administer the programs. Farmers are accustomed to working with MDA, and could more easily access information about farmland preservation

options were the programs to be consolidated and administered by that agency.

- Concentrating program administration in one agency would also eliminate the redundancies that result from having two separate agencies administer the programs, thereby helping to make for more cost-effective program administration.

BACKGROUND IN SUPPORT OF RECOMMENDATION #IV-2:

A. The existing programs provide a stable source of dedicated funding for farmland preservation, but only a portion of that revenue is actually used to preserve farmland.

For any farmland preservation effort to be successful, it must be tied to a reliable, dedicated funding source. In Minnesota, funding for the Metro and Greater Minnesota programs is tied to the MRDT fee collected by the counties that participate in the programs. The MRDT fee has proven over time to be a stable funding source for the programs and has consistently provided more than enough revenue to pay for the programs. In addition, because the fee is tied to property transfers, it ensures program funding is available in high growth areas where there is a greater risk of conversion. It also provides a more reliable source of funding than some other state farmland preservation programs which are subject to the unpredictable budget and appropriations processes.⁵⁶

As described in Appendix E of this report, the programs are funded by a \$5.00 MRDT fee. The fee is collected in all seven metro counties and also in the three Greater Minnesota counties that participate in the program. The counties retain half, or a \$2.50 share of the MRDT fee, and forward the remainder to both the Minnesota Conservation Fund and to the state general fund, split equally. The counties use their \$2.50 share to pay for the property tax credits to enrolled farmers.⁵⁷ Minnesota Conservation Fund revenue is also used if the county share is not sufficient to cover the cost of the tax credits. In the metro counties, state general fund revenue may also be used if the Minnesota Conservation Fund revenue is insufficient to cover the cost of the credits. The Greater Minnesota Program does not allow for general funds to be used to pay for tax credits in the event of a shortage in the Minnesota Conservation Fund.

⁵⁶ For example, as noted above, important parts of Wisconsin's farmland preservation program were recently lost when the 2011 budget act eliminated future funding for the state PACE program and legislators voted to repeal a conversion fee that helped fund the program.

⁵⁷ The program statutes require counties to remit unused MRDT revenues to the state if they are not used for specified conservation purposes within one year. According to the Minnesota Department of Revenue, no funds have been remitted to the state since 2002. We were unable to obtain information from the Department regarding the remittance of funds preceding 2002.

Thus far, the combination of county conservation accounts and the Minnesota Conservation Fund has been adequate to reimburse tax credits provided to farmers participating in the programs. No state general funds have been used for the Metro Program with the possible exception of fiscal year 1987, when the Minnesota Conservation Fund was first established.⁵⁸

- According to the Office of the Legislative Auditor, in most years, the state’s revenues from the \$5.00 MRDT fee far exceeded what was needed to pay the state’s share of tax credit costs from the Metro and Greater Minnesota programs.⁵⁹ As a result, the programs have consistently resulted in a net profit for the state.
- Our analysis of data provided by the Minnesota Department of Revenue, as well as data from annual status reports prepared by the Met Council and the Minnesota Department of Agriculture, confirmed that the MRDT fee provides ample revenue to cover the cost of both programs, but the funding is not fully utilized for farmland preservation purposes.
- Our analysis of the data described above also showed that Wright County, which has higher development pressures than the other two counties enrolled in the Greater Minnesota Program, contributes significantly more money to the program than do Waseca and Winona counties. At the same time, the contributions from the Minnesota Conservation Fund tend to be higher in Waseca and Winona counties than in Wright, since those counties have more acres enrolled in the program but experience fewer property transfers, and thus generate less MRDT fees. Those two counties thus draw a disproportionate amount from the Minnesota Conservation Fund relative to the other counties.

B. Program enrollment has historically been low.

Neither the Metro Program nor the Greater Minnesota Program is broadly used. Generally speaking, far more farmland has been eligible for enrollment in the

⁵⁸ See Office of the Legislative Auditor, *Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs*, at 63 - 64 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 8, 2012) (noting that general funds were used in 1987). But see, Minnesota Department of Revenue, *Auditor/Treasurer Manual, Property Tax Administration*, at 6.06-21 (revised November 2011), available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/at_manual/atmanual.pdf (last visited June 8, 2012) (stating the balance of the state conservation fund “has always been more than sufficient” to pay the Metro and Greater Minnesota program tax credits).

⁵⁹ Office of the Legislative Auditor, *Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs*, at 64 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 8, 2012).

Metro and Greater Minnesota programs than has actually been enrolled. This has been true since at least 1999.⁶⁰

Stakeholder data gathered for the instant report indicated two primary reasons for low participation rates: insufficient incentives and a lack of education and outreach regarding the programs. One stakeholder, a county planning and zoning administrator asked: “Who is the cheerleader for these programs? I’ve never heard of them.” Another stakeholder indicated that he regularly comes into contact with county boards of commissioners who have never heard of the programs and did not know the programs existed.

In a survey the MDA conducted in 2009 and 2010, 100 percent of 41 county commissioners responded that it is important to protect the agricultural economy in their county. At the same time, only three (or 1.9 percent) of the county commissioners were familiar with the Metro Program, and only nine (or 5.6 percent) were familiar with the Greater Minnesota Program.

MDA is statutorily charged with promoting the Greater Minnesota Program and providing technical assistance related to the program.⁶¹ Appropriations have not generally been made for these purposes, however.⁶²

Metro Program Enrollment

Participation in the Metro Program peaked in 1997, with almost 202,000 acres enrolled in the program.⁶³ The enrollment decreased in the years from 1998 through 2009. During the time period from 2000 to 2009, more than 20,000 acres

⁶⁰ 1999 MDA Report, at IV-14, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnalp.pdf> (last visited June 6, 2012).

⁶¹ Minn. Stat. §§ 40A.14; 40A.15 (2011).

⁶² Grants of \$20,000 per county were made available soon after the program was first created so that five counties could implement the Greater Minnesota Program on a pilot basis. Of these five counties, three developed programs that remain in place today. The only other funding related to the program was through a LCCMR grant that funded the 1999 report commissioned by the MDA, described in Appendix A of this report, and a 2001 LCCMR grant to Todd County for the purpose of mapping agricultural lands and analyzing the economic impacts to the county when farmland is developed. According to the MDA, Douglas and Kandiyohi counties decided not to participate in the program “due to concerns about the long-term funding of the program.” Minnesota Department of Agriculture, *Minnesota Agricultural Land Preservation Program, Status Report 2011*, at 1, available at <http://www.mda.state.mn.us/news/government/~media/Files/news/govrelations/aglandstatus2011.ashx> (last visited June 11, 2012).

⁶³ 1999 MDA Report, at IV-14, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnalp.pdf> (last visited June 6, 2012); Metropolitan Council, *Minnesota Agricultural Land Preservation Program, Status Report 2011*, at 4.

were removed from the program.⁶⁴ However, enrollment began to rebound slightly during the time period from 2009 to 2011 to just over 195,000 acres.⁶⁵ This was the first increase in enrollment after a decade of consistent yearly declines. The increase has been attributed in part to changes made to the Green Acres Program taking class 2b “nonproductive” land out of the program, thereby decreasing the benefit of the Green Acres Program (driving some farm owners to the Metro Program) and also to the economic downturn, which may have decreased concerns about the eight-year restrictive covenant commitment.⁶⁶

Carver County has consistently had more acres enrolled in the program than the other metro counties, generally followed by Dakota County. As of 2011, Carver had 52 percent of the metro acres enrolled in the program.⁶⁷ Note that, in contrast to the other metro counties, the majority of unincorporated areas in Dakota and Carver counties have agricultural zoning with maximum densities of one dwelling for every 40 acres. This means that Carver and Dakota counties have a greater number of acres eligible to enroll in the Metro Program. These trends are illustrated by Table 1 on the next page.

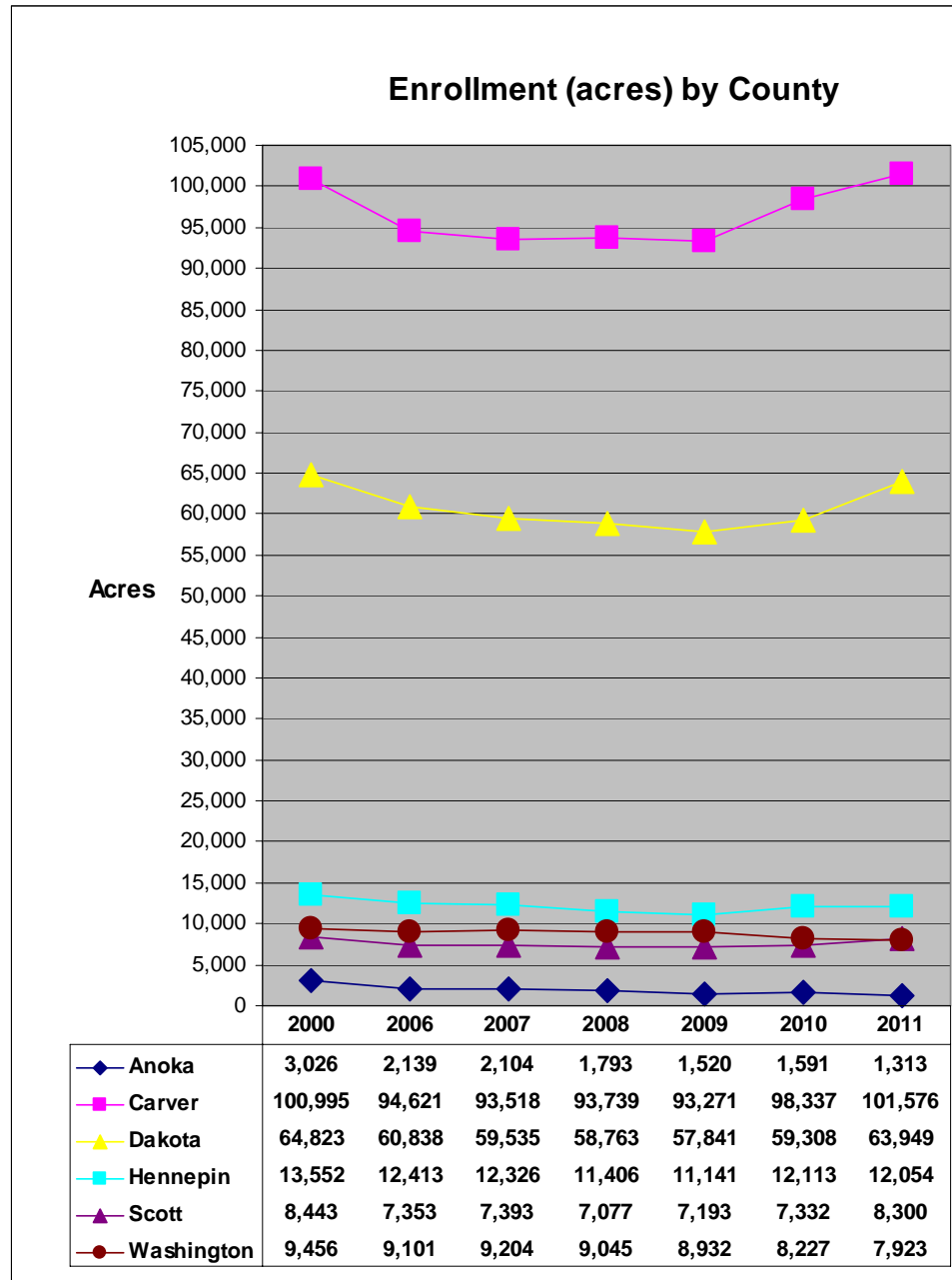
⁶⁴ Metropolitan Council, *2009 Metropolitan Agricultural Preserves Program Status Report*, at 2 (May 2010), available at <http://www.metrocouncil.org/planning/landuse/AgPreservesReport2009.pdf> (last visited June 11, 2012).

⁶⁵ Metropolitan Council, *Metropolitan Agricultural Preserves, Status Report (2011)*, at 4.

⁶⁶ See Metropolitan Council Newsletter, *Acres of Farmland Enrolled in Agricultural Preserves Program Rises* (August 2011), available at <http://www.metrocouncil.org/newsletter/planning2011/AgPreservesAug.htm> (last visited June 11, 2012).

⁶⁷ Metropolitan Council, *Metropolitan Agricultural Preserves Status Report (2011)*, at 6.

Table 1⁶⁸



Greater Minnesota Program Enrollment

Beginning in 1998 and continuing to 2010, the Greater Minnesota Program experienced a modest decline in the number of enrolled acres. The decline in

⁶⁸ Table 1 is based on data contained in the Metropolitan Council’s 2011 Metropolitan Agricultural Preserves Program Status Report, at 5, available at <http://www.metrocouncil.org/planning/landuse/AgPreservesReport2011.PDF> .

protected acres was due to a combination of decreased new enrollments and increased expirations of formerly enrolled acres.⁶⁹

C. Poor incentives continue to be a primary factor driving low enrollment.

Stakeholder input for prior reports and the instant report uniformly indicated that the amount of the tax credit is too low for it to be a strong enough incentive to induce farmers to participate in the program. Farmers enroll in the Metro and Greater Minnesota programs for a broad array of reasons and have mixed motivations for participating in the program. A key determinant for program participation is the size and stability of the property tax credit offered by the program. Yet according to our analysis during the eight-year time period from 2003 to 2011, the Metro Program credit generally hovered between \$1.50 and \$1.76 per acre. Only once did it rise above \$2.00 per acre, when in 2011 the credit was approximately \$2.35 per acre.⁷⁰ The Greater Minnesota Program credit is a flat \$1.50 per acre credit.

Although numerous prior reports have cited the need to increase the amount of the property tax credit, it has not been increased. In order to encourage farmers to participate in the program, an increase should be implemented.

D. A longer duration option is needed to provide for long-term protection of farmland.

While both the Metro and Greater Minnesota programs provide some immediate and short-term protection for farmland, neither provides any significant long-term protection for agricultural lands located in these counties.⁷¹ Indeed, a 2008 report from the Office of the Legislative Auditor about Minnesota’s farmland preservation programs concluded that the “programs can shape development and slow its pace but are not adequate to preserve farmland for the long term.” Therefore, the report stated, in order to preserve agricultural land for the long

⁶⁹ Minnesota Department of Agriculture, *Minnesota Agricultural Land Preservation Program, Status Report 2010*, at 3, available at <http://www.mda.state.mn.us/news/government/~media/Files/news/govrelations/leg rpt-aglandpres2010.ashx> (last visited June 11, 2012).

⁷⁰ This analysis was based on data contained in Met Council status reports regarding the Metro Program for the relevant time period. The reports show on an annual basis both the number of acres enrolled in the program and the amount of the conservation credit. The credit amounts were derived by dividing the amount of the credit by the number of acres enrolled.

⁷¹ See, e.g., Office of the Legislative Auditor, Evaluation Report, “*Green Acres*” and *Agricultural Land Preservation Programs*, at xii (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/pedrep/greenacres.pdf> (last visited June 11, 2012).

term, the Legislature must consider supplementing the existing programs with new approaches.⁷²

Stakeholder input gathered for this report also showed that farmers enrolled in the programs have found that the programs do not provide for long-term protection. Counties may easily terminate the agricultural preserve designation, and the eight-year window that exists between notice of termination and the termination becoming effective is often not long enough for farmers who have invested in their operations to recoup on those investments.

Nevertheless, stakeholder input indicated that the programs are critical to ensuring the immediate and short-term protection of agricultural lands. Given that immediate and short-term protection are necessary precursors to long-term preservation, we do not suggest eliminating the programs. We do believe, however, that a change in mindset of program staff and state and local decision-makers needs to happen. Currently, it is all too often the case that planners and local staff members think of agricultural preservation as a temporary holding place for agricultural land until it inevitably gets developed. As noted in the introduction to this report, agricultural land must be viewed not just for its development value, but for the multiple benefits it brings to our state and its communities. Therefore, the existing programs need to be streamlined, refocused, and strengthened to ensure they effectively protect farmland.

⁷² Office of the Legislative Auditor, Evaluation Report, “*Green Acres*” and Agricultural Land Preservation Programs, at xii (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/pedrep/greenacres.pdf> (last visited June 11, 2012). The report did not recommend any specific tools or policies to supplement the existing programs. Note that legislative proposals to strengthen agricultural land preservation programs and fund pilot purchase of agricultural preservation easements were initiated during the 1997-1998 and 2000-2001 legislative sessions, but did not get passed. See, e.g., S.F. No. 1303 and H.F. No. 1645, 80th legislative session (providing for the purchase of conservation easements in areas where preservation is desirable and appropriating \$1,000,000 for same); S.F. No. 2577 and H.F. No. 2874, 82nd legislative session (appropriating \$5,000,000 for a Dakota county pilot program preserving greenways and agricultural land).

RECOMMENDATION #IV-2 DETAILS: The surplus from the MDRT fee should be used to enhance program benefits and to fund education and outreach efforts.

As described in Appendix A of this report, prior reports have consistently recommended that the surplus MRDT fee funds be used to enhance existing farmland preservation options. Suggested uses for the funds included increasing the amount of the tax credit provided to farmers in the Metro and Greater Minnesota programs, funding an inventory of agricultural lands, and/or funding a PACE program in selected areas. Those recommendations were not adopted. It is our understanding, however, that there have also been proposals to use the funds for other purposes, not related to farmland preservation. If we, as a state, value farmland and wish to preserve it and sustain a strong farming industry in Minnesota, the revenues from the MRDT fee that are in the Minnesota Conservation Fund should be used only to enhance existing farmland preservation programs, as described below.

A. Increase the property tax credit offered by the program.

Prior reports have looked at a range of options for increasing the property tax credit and have concluded that the credit in the Metro and Greater Minnesota programs can and should be increased.⁷³ The 1999 report commissioned by MDA concluded that the guaranteed minimum conservation credit led to a larger number of acres being enrolled in the program.⁷⁴ In contrast, more acres were withdrawn during time periods when the conservation credit dipped to low levels.⁷⁵ MDA staff reiterated that, in their experience, the current credit of \$1.50 per acre is barely an incentive for farmers; county assessors and farmers we interviewed affirmed this sentiment.

- We recommend using a tiered credit that reflects state farmland preservation goals and values, and provides greater benefits to farmers who adopt those

⁷³ See 1999 MDA Report, at Appendix A, also available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012) (presenting funding and enrollment scenarios to identify funding implications for the agricultural preserve programs); Metropolitan Council, Rural Issues Work Group, *Policy and Implementation Proposal for the Rural Area* (March 2002), at 31, available at http://www.metrocouncil.org/planning/rural_issues/RuralPolicyProposal.pdf (last visited June 11, 2012) (recommending a \$5.00 credit for farmers who choose a 30-year enrollment option).

⁷⁴ 1999 MDA Report, at IV-11, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012).

⁷⁵ 1999 MDA Report at IV-11-IV-12, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012).

values. Enhanced benefits should thus be provided to farmers who commit to a longer-term preservation commitment, and those who form Agricultural Enterprise Areas. If the state wishes to encourage enrolled farmers to adopt conservation measures in addition to those already required, an enhanced benefit should also be offered to farmers who agree to adopt those practices. For example:

- Offer the existing \$1.50 per acre credit to farmers who participate in the eight-year program option with the existing conservation practices.
- Offer a credit of \$7.00 per acre to farmers who agree to a 30-year preservation option.
- Farmers who form Agricultural Enterprise Areas should get an additional credit of \$3.00 per acre on top of the baseline property tax credit they receive.
- Farmers who adopt conservation and stewardship measures should get an additional credit of \$5.00 per acre on top of the baseline property tax credit they receive.

We recognize that, in order to adopt enhanced program incentives, the MRDT fee that funds the program will likely need to be increased. This does not seem unreasonable, given that there has been no increase in the MRDT fee since the inception of the Metro Program and only a very limited one in the Greater Minnesota Program, during a time period where land prices in the counties that offer the programs have steadily increased.⁷⁶ Given the multiple benefits of agriculture to our state, the increased fee could be seen as a sound investment.

B. Add a longer-term protection option to the new agricultural preserve program.

In a 2001 report commissioned by the Met Council, land use expert Tom Daniels stated that, to be effective, protection mechanisms must guarantee preservation for at least 30 years.⁷⁷

⁷⁶ See e.g., MPR News, *Farmland prices near record rates*, December 8, 2011, available at <http://minnesota.publicradio.org/display/web/2011/12/08/farmland-price-rates/> (last visited June 11, 2012) (stating that land prices in Minnesota, at the end of September 2011 were about 28 percent higher than a year earlier); Winona Daily News, *Winona Co. Farmland Values Up*, March 13, 2011, available at http://www.winonadailynews.com/news/local/article_2e83e4a0-4d2b-11e0-b019-001cc4c03286.html (last visited June 11, 2012) (noting drastic increases in the average price-per-acre of farmland throughout the state, and citing Federal Reserve Bank data showing a 22.8 percent increase in Minnesota farmland values from the fourth quarter of 2009 to the fourth quarter of 2010).

⁷⁷ Tom Daniels, *Three Farmland Preservation Proposals for the Metropolitan Council*, at 2 (December 3, 2001). Note that the Reinvest in Minnesota Program allows for both permanent easements and limited duration easements of 20 or more years. Minn. Stat. § 103F.515, subd. 3.

- To ensure more effective long-term protection, the agricultural preserve program should be amended to provide a 30-year agricultural preserve option and/or the option of a permanent easement co-held by the MDA. As described above, these options should be coupled with enhanced benefits, such as an increased tax credit for farmers who choose this option.
- The current eight-year covenant should also remain an option for farmers who are interested in immediately protecting their land, but are unable to commit to a longer-term covenant or permanent easement. Farmers who choose the eight-year covenant should be allowed to transition into one of the longer-term preservation options.

C. Require more education, outreach, and technical assistance.

A 1999 report regarding the Metro and Greater Minnesota programs concluded that there was, at that time, insufficient education and outreach to landowners regarding the programs.⁷⁸

- According to the report, agricultural preserves were promoted in the early and mid-1980s, but “there has been little promotion or education concerning the Metro Program in the past 10 to 15 years.”⁷⁹ The report concluded: “Given the overall need to explain the benefits of the program to landowners, educational outreach is an important ingredient in potentially increasing enrollments.”⁸⁰
 - Despite the report’s recommendation for more education and outreach regarding the programs, farmers we interviewed uniformly stressed that it was difficult for them to obtain information about the Metro and Greater Minnesota programs.
- To increase awareness regarding the program, local planning and zoning officials should be required to do an annual report about the program to their county boards.
- Providing more technical assistance to farmers may also help increase program enrollment. Farmers we interviewed indicated that the enrollment process was made harder by the fact that either no or limited assistance was

⁷⁸ 1999 MDA Report, at IV-14, IV-15, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012).

⁷⁹ 1999 MDA Report, at IV-14, IV-15, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012). A 2002 report issued by the Met Council’s Rural Issues Work Group also recommended increased education and outreach about the programs. Metropolitan Council, Rural Issues Work Group, *Policy and Implementation Proposal for the Rural Area*, at 13 (March 2002), available at http://www.metrocouncil.org/planning/rural_issues/RuralPolicyProposal.pdf (last visited June 11, 2012).

⁸⁰ 1999 MDA Report, at IV-15, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmna1p.pdf> (last visited June 6, 2012).

available to them with respect to the enrollment process. [See, e.g., Case Study #2: Enrollment Obstacles in the Metropolitan Agricultural Preserves Program, in Appendix I of this report].

- At a minimum, local governments with farmland preservation plans and therefore able to offer the new, streamlined agricultural preserve program should be required to provide written information about the program and its benefits to farmers annually, well in advance of sign-up deadlines. The letters should also provide state- and local-level personnel contact information. Other types of outreach and communication should also be encouraged.
 - The letter should also be sent to all residents who participate in the Green Acres Program, alerting them that they may be eligible to transition into the agricultural preserve program should they wish to do so.

BACKGROUND FOR RECOMMENDATION #IV-3:

A. The existing program protections against annexation and eminent domain are insufficient.

The existing Metro and Greater Minnesota program protections against annexation and eminent domain have little teeth and leave farmers exposed. Farmers located near development—indeed, those who most need the protection offered by the programs—state that the programs provide only a thin veneer of protection and act largely as a stopgap measure.

Farmers with land located in close proximity to development worry they are at constant risk of annexation and/or eminent domain. For that reason, these farmers may not make investments in the operation or expand it, make improvements to the land, or undertake certain environmental protection and conservation measures they otherwise would. In addition, the land to be annexed or acquired by eminent domain is typically planned for residential uses, while adjoining land remains agricultural. As a result, residential-agricultural conflicts frequently arise in these areas.

Farmers located in areas with development pressure consistently cite the annexation and eminent domain protections as reasons they enrolled in the Metro or Greater Minnesota program. Yet farmers and program administrators who have experience with the application of these provisions note that, as applied, the provisions fail to provide much protection at all. This undermines the stability of the farming operations enrolled in the programs, prevents farmers from making investments in their operations, and hinders the effectiveness of the state's existing farmland preservation programs.

B. Agricultural preserve areas are too easily changed to include less land.

Under the existing programs and their current requirements, as comprehensive plans and zoning change over time, the designated agricultural preserve areas

shrink. Thus, enrolled land might consequently be located in areas that are no longer zoned for long-term agriculture. Even though the land might remain enrolled in the program, the comprehensive plans and zoning maps for the area may not reflect that the property is enrolled in the program because its land use designation was changed. For example, a farmer-stakeholder who gave input for the instant report noted that their family farm property is marked on the county comprehensive plan and the city’s zoning map as residential/commercial/and/or parkland. This, in turn, results in less stability for enrolled farmers because it sets the stage for termination of the agricultural preserve. In addition, it sends a signal to developers that the land will ultimately be developed. This, in turn, may result in farmers being approached by developers, and increase pressure for them to sell their land for development.

RECOMMENDATION #IV-3 DETAILS: Strengthen the existing program protections against eminent domain and annexation and add uniform criteria to guide the termination of agricultural preserves.

A. Require mitigation for farmland acquired through eminent domain or annexed.

Although the agricultural preserve programs provide farmers some protection against eminent domain, these protections are insufficient to ensure farmland is protected.

- To ensure adequate protection of farmland, the agricultural preserve program should incorporate the state mitigation law described in Recommendation #III-1 of this report.
- The program rules should require mitigation for any farmland enrolled in the program and either acquired by eminent domain or annexed.
 - The mitigation should be accomplished through the preservation of an amount of farmland equal to that acquired through eminent domain or annexation and should require that the land be located in the same county, and within a comparable distance to a metropolitan area. The land should also be of a similar soil quality to that acquired through eminent domain.
 - The mitigation requirements should apply to any state or local agency or entity that exercises eminent domain or annexation with respect to land enrolled in the program or located within an Agricultural Enterprise Area.

B. Require strengthened procedural protections for land acquired through eminent domain or annexed, and consider incorporating substantive protections to protect landowners in the condemnation process.

The existing procedural safeguards that apply to the acquisition of enrolled land through eminent domain are only triggered if the acquisition is of ten or more acres.

- Any acquisition of farmland, including those of less than ten acres, disrupts the farm and may have negative environmental and other consequences on the enrolled land. Consequently, the programs' eminent domain protections should apply to any acquisition of enrolled farmland.
- In addition, the eminent domain provisions should be amended to require written notice to the MDA at least 60 days prior to submission of notice to the Environmental Quality Board (EQB), so that the MDA may provide input to the EQB regarding the proposed acquisition. No notice is currently required to the MDA.
 - The written notice should include: (1) detailed maps showing the existing and proposed uses of the land to be acquired; (2) maps showing all farmland located within a ten-mile radius of the land to be acquired; (3) a description of the extent to which the annexation will affect agricultural uses within the area to be acquired and any farmland located within a ten-mile radius of the land to be annexed; and (4) a description of the comprehensive and other land use plans in place for the area in which land is to be acquired and for any farmland located within a ten-mile radius of that land.
- Finally, the eminent domain provisions do not currently require the Minnesota EQB to hold an eminent domain hearing when enrolled farmland is being acquired through eminent domain; they only authorize it to do so. To strengthen the program and provide enrolled farmers with a greater level of stability and security, a hearing should be required in any case where either the farmer or MDA requests one.
- Policymakers may also wish to incorporate substantive eminent domain protections.
 - One additional protection the state should consider adding is a monetary damages requirement when the homestead is separated from the farm as a result of the eminent domain acquisition—for example, when a road is constructed through a farm and separates the homestead from the remainder of the farm.
- MDA should have an opportunity to provide input regarding proposed annexations affecting agricultural preserve land, both to ensure such land is

appropriately considered during the annexation process and also to provide insight that may help to reduce residential-agricultural conflicts. To provide meaningful input, MDA needs advance and detailed notice of the proposed annexation.

- The statutes currently governing the Greater Minnesota and Metro programs do not specify whether any notice is required; they only require that an administrative law judge find one of three enumerated factors is present.⁸²
- The program statutes should be amended to clarify that written notice of the proposed annexation of land enrolled in the agricultural preserve program and/or located within an agricultural preserve area must be provided to MDA.
 - The requirement should also state that the notice must be received by MDA at least 60 days before the matter will be submitted to the administrative law judge.
 - The notice should include: (1) detailed maps showing the existing and proposed uses of the land to be annexed; (2) maps showing all farmland located within a ten-mile radius of the land to be annexed; (3) a description of the extent to which the annexation will affect agricultural uses within the area to be annexed and any farmland located within a ten-mile radius of the land to be annexed; and (4) a description of the comprehensive and other land use plans in place for the area to be annexed and for any farmland located within a ten-mile radius of that land. Affected landowners should be sent copies of all notices and information that is sent to MDA.
- Another approach the state may wish to consider is a voter-approved approach. Ventura County in California uses this approach. Under it, voters must approve any changes to the County General Plan involving the “Agricultural,” “Open Space” or “Rural” land use map designations, or any change to a General Plan goal or policy related to those land use designations.

C. Add uniform criteria to guide the decision to terminate an agricultural preserve.

Currently, local governments can remove land from the agricultural preserve program simply through rezoning the land from the agricultural classification to another land use designation and giving the landowner notice of termination. Enrolled land can be rezoned at any time the local government wishes to do so; there are no criteria that govern the circumstances under which it is appropriate to rezone an agricultural preserve area.⁸³

⁸² Minn. Stat. §§ 40A.121; 473H.14 (2011). The three factors are listed in Appendix E of this report.

⁸³ Minn. Stat. §§ 473H.08, subs. 3 and 4 (2011); 40A.11, subd. 3 (2011).

Because zoning laws often change, the fact that the existing programs allow rezoning to result in the termination of an agricultural preserve area hinders long-term and well-planned farmland preservation.⁸⁴

- Under the new agricultural preserve program recommended by the instant report, government decisions to terminate an agricultural preserve should be guided by a set of uniform criteria.
- Implementing criteria to guide the removal of land from the agricultural preserve program will provide for more long-term preservation and give farmers enrolled in the program the stability and security needed to promote investment in and expansion of their farming operations. Consequently, to achieve a more comprehensive approach to farmland preservation, government decisions to re-designate an agricultural preserve should be made based on set criteria. The criteria should be developed and implemented in consultation with MDA.

BACKGROUND FOR RECOMMENDATION #IV-4:

Current Metro Program requirements contain restrictions that do not reflect the changing nature and demographics of agriculture and how agricultural products are marketed today. Stakeholder input gathered for the instant report also indicated that the eligibility criteria for the program are too restrictive to promote greater program participation and need to be restructured to accommodate a broader diversity of farming operations.

When considering whether to make the changes described below, policymakers should recognize that farm production systems are gradually changing, as is our farming population. For farmland preservation efforts to be effective, they have to be forward-looking. Consequently, policymakers need to consider not only who is farming now, but who will be farming 50 years from now, what they will be growing, and where and how those products will be grown. In all likelihood, given rising energy prices and demographic shifts in our state, there will be a need for farmland near urban areas. Thus, developing policies now to facilitate the inclusion of these farms in the state's farmland preservation programs will pay future dividends.

A. The Metro Program's minimum acreage requirements are a barrier to program enrollment.

Currently, only 40-acre parcels are generally eligible for enrollment in the Metro Program, and land must be zoned for one dwelling unit per 40 acres.⁸⁵ This precludes many farmers near urban areas from enrolling in the program.

⁸⁴ See Teri E. Popp, *A Survey of Agricultural Zoning*, 24 Real Prop. Prob. & Tr. J. 371 (Fall, 1989) (stating that Minnesota's farmland preservation programs "fail miserably" in part because agricultural preserve status is tied to zoning, and termination of the preserve is easily achieved by the landowner opting out or the county rezoning the preserve area).

In areas near population centers, some fragmentation of farmland has already occurred. Moreover, given that land prices are quite high in these areas, many farmers are farming smaller acreages. Indeed, many specialty crop producers raising fruit and vegetables farm less than 40-acre parcels, as do many beginning and immigrant farmers who farm, particularly in the seven-county metro area. This farmland plays an important role in providing a safe and stable supply of food for the metro population and acts as a springboard to launch new farming enterprises. If the farmers who own that land want to preserve it, they should have a way to do so.

B. Enrollment in an agricultural preserve should not affect a farmer’s right to use the land for agriculturally compatible purposes.

Among stakeholders, there is a perception that enrollment in the Metro Program will reduce their ability to use their land for purposes related to their farming operation, but that are not strictly “farming.” For example, some farmers may wish to provide housing for family members or employees who work on the farm. Others may wish to add a small-scale processing facility—such as a creamery—to process the agricultural products grown on the farm. Farmers should be able to continue to use their agricultural land in a way that is profitable, make developments on the land that are related to the agricultural nature of the land, and should not be prevented from pursuing improvements to their operations. Indeed, such improvements contribute to the overall goal of keeping the agricultural land viable, functional, and valuable. Yet there are concerns that by enrolling in the Metro Program, farmers will relinquish the ability to pursue agriculturally compatible uses on their farms.

⁸⁵ Minn. Stat. § 473H.03 (2011). 35-acre parcels are eligible for enrollment “provided the land is a single quarter/quarter parcel and the amount less than 40 acres is due to a public road right-of-way or a perturbation in the rectangular survey system resulting in a quarter/quarter of less than 40 acres.” Minn. Stat. § 473H.03, subd. 3 (2011). 20-acre parcels are eligible for enrollment provided there are: (1) 20 contiguous acres within the preserve area, (2) the parcel is “surrounded by eligible land on at least two sides,” and (3) the local government with zoning and planning authority over the parcel “by resolution determines that: (i) the land area predominantly comprises Class I, II, III, or irrigated Class IV land according to the Land Capability Classification Systems of the Soil Conservation Service and the county soil survey; (ii) the land area is considered by the authority to be an essential part of the agricultural region; and (iii) the parcel was a parcel of record prior to January 1, 1980, or the land was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.” Minn. Stat. § 473H.03, subd. 4 (2011).

RECOMMENDATION #IV-4 DETAILS: Restructure the Metro Program eligibility criteria and program requirements to accommodate a broader diversity of farming operations in the new agricultural preserve program.

A. The minimum acreage requirements should be changed to reduce barriers to enrolling in the Metro Program.

In light of the changes in production methods, the types of farming being done near urban areas, and the rising demand for locally grown food that these farms are ideally situated to fulfill, the state should question whether maintaining a 40-acre minimum acreage requirement continues to make sense today.

- At a minimum, the program eligibility requirements should be amended to allow eligibility for smaller-acreage parcels that are next to already preserved areas. Doing this would increase the size of contiguous blocs of preserved farmland; reduce the likelihood of smaller parcels being developed for residential purposes, thereby decreasing the possibility of rural-residential conflicts; and help provide an important source of stability for smaller-acreage farms, many of which are producing food sold within Minnesota.
- To the extent there is concern that small-acreage landowners who are not really farmers will seek to take advantage of the program benefits, a certification similar to that described in the Green Acres Program recommendations section of this report can be used; the certification recommendation is described below, in Recommendation #VI-1 of this report.

B. Amend the Metro Program requirements to clarify that enrollment in an agricultural preserve does not affect a farmer's right to use the land for agriculturally compatible purposes.

- The Metro Program requirements should be modified to clarify that uses that support compatible enterprises on farms are allowed in agricultural preserve areas. The allowed uses should include but not be limited to:
 - Construction of structures on the land for agricultural purposes and uses compatible with agricultural purposes. Such structures may include but are not limited to housing for workers, interns, or family members; greenhouses; hoop houses; barns for livestock; silos for grain; on-farm processing facilities for processing of products principally grown on the farm; and farm stores, stands, and markets.
 - Operating on-farm businesses such as pick-your-own operations; city-to-country farm tours; community supported agriculture operations; farm stores, stands, and markets; on-farm processing facilities for processing of

- products principally grown on the farm; and agritourism businesses, including bed and breakfast operations.
- Cost-saving and/or environmentally beneficial improvements on the land, including but not limited to the installation of solar panels or wind turbines to power a homestead and/or the agricultural activities occurring on the land.
 - The program should be flexible enough to allow farmers to cluster housing for workers or family, farm stores, or other farm buildings on a small portion of the property in an area that is less well-suited for agricultural production.
 - To promote conservation activities, the agricultural preserve program statutes should also be amended to state that the landowner may keep the land in agricultural use and related uses. For example, buffers, wetlands, and restored prairies are all open space uses that contribute to the farm as a whole and offer conservation benefits beyond the farm. Thus, the program should specifically allow for these uses.
 - MDA should provide technical assistance to local governments to help those that wish to do so incorporate these concepts into their comprehensive plans and zoning ordinances as part of the farmland preservation plan component described in Recommendation #II-1 of this report, above.

V. RECOMMENDED CHANGES TO THE GREEN ACRES PROGRAM: MAKE ALL WORKING FARMS, INCLUDING SMALLER-ACREAGE FARMS, ELIGIBLE FOR PROGRAM BENEFITS

BACKGROUND IN SUPPORT OF RECOMMENDATION #V-1:

The experiences of farmers uniformly show that the Green Acres Program is critical to the immediate preservation of farmland. The program is frequently cited as a key factor in farmers’ ability to hold on to their land despite rising property values associated with development pressures. Thus, although the program is not geared toward long-term preservation of farmland, it is an essential tool in the farmland preservation package, and should be continued and expanded.

A. Program enrollment.

Enrollment in the Green Acres Program is heavily concentrated in the metropolitan region and surrounding collar counties. As of 2007, 47 percent of the farmland in the seven-county metro area was enrolled in the Green Acres Program. Seventy-seven percent of the land in Chisago, Isanti, Sherburne, and Wright counties was enrolled in the program as of 2007. Enrollment rates are most heavily concentrated in the metro counties, the counties surrounding the metro area, the St. Cloud area, and the state’s southeast corner (Winona, Fillmore,

Houston, and Olmsted counties).⁸⁶ Overall, 51 of the 87 Minnesota counties had some land enrolled in the program as of 2007.

During time periods when the value of agricultural land is high, the agricultural homestead property tax classification offers farmers additional protection because agricultural homestead properties are taxed at a lower rate than are other classifications.⁸⁷ However, the degree of benefit associated with the homestead classification varies, depending on whether agricultural land values are high or not.

B. Problems remain with inconsistent administration and implementation of the Green Acres Program eligibility criteria.

A 2008 report by the Office of the Legislative Auditor concluded the Green Acres Program requirements were inconsistently applied.⁸⁸ Subsequently, the Legislature changed the program requirements, addressing some of the concerns raised by the Legislative Auditor. The report and subsequent legislative changes are described in detail in Appendix A of this report.

Stakeholder input gathered for this report indicated that there is a strong perception among stakeholders that eligibility for the Green Acres Program is a subjective determination made by county assessors, and that the eligibility criteria are interpreted and applied differently from one county to another. For example, in some counties, where a farm is on the borderline of eligibility, an assessor may err consistently on the side of including the property in the program, while in another county the assessor may err against inclusion. Given that the Green Acres Program statute now explicitly states the program is intended to preserve farmland, it would seem that the default presumption should be to include land in the program when a farm is on the borderline of eligibility. Many farmers find,

⁸⁶ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 10 - 11 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

⁸⁷ In recent years, agricultural land values have risen at the same time that other land values have declined. As a result, the amount deferred under Green Acres has decreased, making the program less beneficial for farmers. In 2011, the total amount deferred under Green Acres was 21 percent less than in 2010. Minnesota Department of Revenue, *2012 Property Values and Assessment Practices Report Assessment Year 2011*, at 2 (March 2, 2012), available at http://www.revenue.state.mn.us/propertytax/reports/apreport_12.pdf (last visited June 8, 2012). At the same time, the class rate for the first tier of agricultural homestead property, which is set by statute, remained steady at .50 percent of market value. Minn. Stat. § 273.13, subd. 23(a); Minnesota Department of Revenue, *2012 Property Values and Assessment Practices Report Assessment Year 2011*, Appendix A. Note that this rate applies to the first \$1,210,000 of an agricultural homestead property’s value. The remainder of the property is taxed at a rate of 1.0 percent.

⁸⁸ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 34 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

however, that is not the case. It is important to note that this is not universally true, and varies widely from one county to another.

C. Changes made to the property tax classification statute’s definition of agricultural land have hampered farmland preservation and undermined conservation efforts.

The recently adopted distinction between class 2a and 2b lands has heightened issues related to inconsistent implementation of the agricultural land classification and the Green Acres Program criteria. Only properties with ten or more contiguous acres of class 2a agricultural land are defined as agricultural land for property tax purposes and are eligible for the Green Acres Program.

The current statutory definitions are sufficient to support an argument that 2b land interspersed with 2a land should be defined as 2a land.⁸⁹ Experience has shown, however, that this language is generally not considered when classification and program eligibility determinations are made. Instead, the language is read to require the presence of ten contiguous acres of 2a land as a strict prerequisite to eligibility for the agricultural land classification and Green Acres—only if there are ten contiguous acres of class 2a land will an assessor consider classifying interspersed 2b lands as 2a.⁹⁰ According to the Minnesota Department of Revenue, “[t]he rationale for saying that no land can be classified as class 2a unless there is first at least 10 acres in production . . . is because Minnesota Statutes, section 273.13, subdivision 23 . . . [has] very specific size requirements for classification as class 2a.”⁹¹

Thus, in cases where 2b land divides 2a land into masses of less than ten contiguous acres, assessors will most likely determine the property is ineligible for the agricultural land classification and the Green Acres Program.⁹² This remains true even where a farm has over ten acres of class 2a land—if the 2a land is split by even a few acres of interspersed class 2b land. Thus, in cases where the 2b lands divide 2a land into masses of less than ten contiguous acres, assessors will most likely determine the entire property is ineligible for the Green Acres Program. Consequently, farmers have sought to turn class 2b lands over to

⁸⁹ The property tax classification statute defining agricultural property states: “Class 2a property must also include any property that would otherwise be classified as 2b, but is interspersed with class 2a property . . . and other similar land that is impractical for the assessor to value separately from the rest of the property or that is unlikely to be able to be sold separately from the rest of the property.” Minn. Stat. § 273.13, subd. 23(b) (2011).

⁹⁰ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 6 (September 24, 2009).

⁹¹ Minnesota Department of Revenue, bulletin to county assessors, *Classifying Agricultural and Rural Vacant Lands*, at 4-5 (September 24, 2009).

⁹² Note that this also makes the property ineligible for the agricultural homestead classification if the property as a whole is greater than ten acres in size.

agricultural production, regardless of their suitability for agricultural use, so that the land may again be eligible for the agricultural land classification and the Green Acres Program.

The property tax classification statute's distinction between 2a and 2b thus undermines conservation. The state's decision to separate out natural features from the rest of a farm and deny tax relief for these areas because farmers cannot produce income off them has resulted in the destruction of natural systems and their concomitant environmental benefits, as farmers eliminate the natural features so that they can turn these areas over to production.

Described below are two examples of how the class 2a/class 2b distinction may act to undermine conservation by prompting farmers to remove trees and perhaps other natural areas from their farm properties—which seems contrary to state policy and good, holistic farm management practices.

EXAMPLE 1: The first example involves an approximately 30-acre farm. Prior to the 2008 changes, all of the land was classified as agricultural and enrolled in the Green Acres Program. After the changes, approximately 12 acres were classified as class 2a agricultural land. The wooded acres split the 12 acres of class 2a agricultural land so that approximately eight and one-half acres of it were on one side of the wooded acreage and approximately three and one-half acres lay on the other side. As a result, the property was ineligible for the Green Acres Program because it did not have ten contiguous acres of class 2a land.

The landowner's taxes were therefore scheduled to increase significantly. The landowner was consequently planning to remove a portion of the trees from the wooded acreage and convert that land over to pasture in order to meet the ten contiguous acres minimum eligibility requirement for the Green Acres Program.

EXAMPLE 2: Another farm family with an approximately 200-acre farm faces a similar dilemma. The farm includes a 40-acre wooded parcel. That parcel became ineligible for the Green Acres Program as a result of the class 2a/class 2b distinction. It was subsequently transferred to the Rural Preserve Property Tax Program. Although land valuation for that program is not to exceed agricultural land values, the family’s property taxes spiked after enrolling in the Rural Preserve Program. The reason for the increase is most likely due to the fact that the class 2b acres no longer receive the classification rate that applies to agricultural homestead acreage. Previously, when the whole farm was classified as agricultural land, the homestead class rate applied to the wooded acres. Along with the class 2a/2b distinction, however, came the loss of the homestead rate for the wooded acreage. It is not clear that this was an intended consequence of the classification changes, but because of the way the homestead rate is applied, it is happening.

Although the family’s wooded acreage is located next to a highway and they are worried about pasturing the land because of the possibility that cattle might get out, and despite the inherent benefits provided by the woods, the family is considering taking down all of the trees and converting the parcel to pasture so that acreage can again be classified as class 2a land and therefore be eligible for enrollment in the Green Acres Program.

D. The definition of “agricultural land” used for Green Acres Program eligibility has failed to keep up with the new business models and types of farming operations.

The definition of agricultural land that is used for the Green Acres Program excludes small-acreage farms regardless of the amount of production being done on those farms. Excluded farms often include those used for raising fruit and vegetable crops, where the farm is less than ten acres.

The groups most likely impacted by the minimum acreage requirement are Community Supported Agriculture (CSA) farming operations, beginning and immigrant farmers, small-scale diversified farms, and other farmers that may be participating in farmers’ markets and direct marketing projects. Under the current rules, these operations are excluded from Green Acres eligibility if they are less than ten acres, even where a farmer’s property is devoted to agricultural production, is being actively farmed, and the farmer derives a substantial portion of his or her income from the sale of produce raised on the farm. Moreover, many of the farms excluded from the Green Acres are “real” farms that do intensive fruit and vegetable production and sell their products directly to metro-region

consumers, often at the farmers' market or through a community supported agriculture marketing arrangement. Many are also located on the urban fringe or in areas with development pressure and need the benefits offered by the agricultural classification and the Green Acres Program.

Farms with production methods that emphasize using pastured acres for grazing or allowing animals to forage instead of a feedlot production method have also been excluded from the Green Acres Program. Some farmers using foraging methods have been told that they do not have enough animals in the assessor's line of sight to qualify for the program. Others have been told they cannot make a living off the farm and thus cannot qualify for the program, despite that the program eligibility requirement related to income was eliminated.

Properties of less than ten acres may, however, still qualify for the agricultural land classification used for property tax purposes and might be eligible for the agricultural homestead classification if they are exclusively or intensively used for agricultural production.⁹³ These properties should also be eligible for the Green Acres Program.

E. Valuation for Green Acres purposes remains an issue.

Because the valuation method uses the sale of land in areas where production is largely devoted to corn and beans, the valuation metric does not translate well to other types of land, especially pastured areas.

The valuation methodology used to determine the agricultural use value of land enrolled in the Green Acres Program was most recently reviewed in 2011. The review culminated in a 2012 report analyzing various possible methodologies for valuing class 2a agricultural land, both tillable and non-tillable. According to the report, there was "not clearly a methodology which would yield 'truer' agricultural land prices" than the current methodology.⁹⁴ The report thus recommended its continued use.⁹⁵ The group involved in the study and report intends to continue meeting in order to explore whether it can identify improvements that should be made to the valuation methodology.

⁹³ Minn. Stat. § 273.13, subd. 23(f) (2011).

⁹⁴ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 1, 15 (February 14, 2012), available at <http://archive.leg.state.mn.us/docs/2012/mandated/120215.pdf> (last visited June 8, 2012).

⁹⁵ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 17 (February 14, 2012), available at <http://archive.leg.state.mn.us/docs/2012/mandated/120215.pdf> (last visited June 8, 2012).

RECOMMENDATION #V-1 DETAILS: All working farms should be eligible for Green Acres Program benefits and the agricultural classification used for property tax purposes.

Given that the Green Acres Program is intended to preserve farmland, it should include all working farms. The program’s current exclusion of certain natural habitats classified as class 2b lands and its minimum acreage requirements makes the program difficult to administer and excludes important types of farmland from the program. As described below, these restrictions should be eliminated.

- A. Make small-acreage farms eligible for Green Acres Program benefits and the agricultural land property tax classification designation.**
- The Green Acres Program requirements should be modified to state that smaller-scale farming operations of less than ten acres are eligible for Green Acres benefits provided they are producing agricultural products for sale and meet other eligibility requirements.
 - Many of these types of operations are located within the seven-county metropolitan area and supply their products to metro-area consumers. These operations are thus located in areas heavily impacted by development pressures. Therefore, the benefits provided by the Green Acres Program would help to preserve these farming operations by making it affordable for the farmers to continue farming in their current location. It is important to target these lands for preservation, both because doing so will help to stabilize the food supply for the metropolitan area and because these farms are economic drivers for the burgeoning community of small-scale beginning and immigrant farmers.
 - While the tax benefits derived from the Green Acres Program or the agricultural homestead classification (both of which depend on land being classified as agricultural for property tax purposes) may not be substantial given the size of these properties, many smaller-acreage farms operate on slim margins, and the benefits would help to sustain their operations.
 - Should the Green Acres Program statute not be amended to make small-acreage farms eligible, it should at least be amended to make any property classified as agricultural for property tax purposes eligible for the program.⁹⁶

⁹⁶ Under current law, land must generally consist of at least ten acres and have been used to produce agricultural products for sale during the preceding year to be defined as

- The exclusive or intensive use exception which allows some properties of less than ten acres to be classified as agricultural for property tax purposes should be amended to more clearly define what types of operations qualify for the exception.
 - Currently, there are no objective criteria to govern the types of operations that qualify for the exclusive or intensive use exception. According to the Minnesota DOR, “exclusive” agricultural use means land that has border-to-border plantings of agricultural crops. Where the property has a residential structure, it must be used “intensively” for an enumerated purpose. These include: drying or storage of grain or storage of machinery or equipment used to support agricultural activities; growing nursery stock; livestock or poultry confinement (pasturing or grazing does not qualify); or market farming.⁹⁷ Examples of intensive uses provided to county assessors by DOR include: eight acres used for poultry production or a five-acre parcel with one acre “used intensively for strawberry production where berries are sold at the local farmer’s market.” According to DOR, in that case, the one acre used for strawberry production could be classified as class 2a agricultural land “if daily labor and income received from production are shown . . . to be intensive.”⁹⁸ It does not describe what volume of labor and income is sufficient to be considered intensive. Because these criteria remain subjective, assessors are likely to interpret and apply them differently, resulting in inconsistent determinations about whether land meets the requirement.⁹⁹

agricultural land for property tax classification purposes. Some properties of less than ten acres may be classified as agricultural if the property was used “exclusively or intensively” for agricultural production during the preceding year. See Minn. Stat. § 273.13, subd. 23(f) (2011). A property meeting the exclusive or intensive use standard is taxed at the rate used for the agricultural land classification. Regardless, the property remains ineligible for the Green Acres Program because the program currently requires a minimum of ten acres.

⁹⁷ Minn. Stat. § 273.13, subd. 23(f) (2011).

⁹⁸ Minnesota Department of Revenue, *Green Acres Implementation for 2009 Assessment*, (August 19, 2008).

⁹⁹ Minnesota Office of the Legislative Auditor, *Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs*, at 41 (February 2008), available at *Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs* (last visited June 11, 2012) (stating that “[d]isputes also arise over whether farms of less than 10 acres qualify as ‘exclusively and intensively used for agricultural products,’ as required by law.”). Although the Legislature modified the statute subsequent to the Legislative Auditor’s report so that it now has more specificity regarding what constitutes an intensive use (see 2008 Minn. Chapter Law 366, Article 6, Section 26), this application of this language remains highly subjective.

- The amended definition should take into account the realities of the types of smaller-scale farming operations that are becoming increasingly common in areas surrounding population centers and should open up the exception to diversified farming operations that are likely excluded under current interpretations of the exclusive or intensive use requirement. Policymakers may also wish to consider whether there are circumstances under which pasturing should be considered an intensive use, as these systems have been associated with environmental benefits,¹⁰⁰ and farmers are able to make a substantial amount of income from them on a relatively small number of acres.

B. An optional proof requirement should be added to the Green Acres Program statute.

- To minimize the likelihood that land not really used for a farming operation will be eligible for the Green Acres Program, an optional certification process should be added to the Green Acres statute.
- The process should allow an assessor to require certification if questions as to qualification are raised. In that case, the assessor should have the option of requesting proof in the form of a sworn certification from the landowner attesting that, during the preceding year, the property was used to cultivate agricultural products for sale.
 - The suggested proof requirement should not rely on documents verifying sales because fruit and vegetable transactions, and many other types of direct marketing transactions, are typically characterized by cash sales and informal verbal contracts between buyers and sellers. Thus, given the realities of the way these sales take place, a proof requirement that attempts to verify sales will exclude large numbers of fruit and vegetable producers. Moreover, a proof requirement based on verified sales will invariably raise complicated issues with respect to its administration. Thus, the proof requirement is drafted with the realities of the direct marketing business model in mind and is designed to avoid problems in administration.
 - Alternative forms of proof that could be used to show a farm is used to produce and sell agricultural products include: the federal Internal Revenue Service Schedule F tax form used to report farm income coupled with documents showing participation in a certification, licensing, or marketing system—for example, the operation is certified to USDA organic standards, participates in the Minnesota Agriculture Water Quality Certification Program; is licensed to use the Minnesota

¹⁰⁰ United States Department of Agriculture, Sustainable Agriculture Network, *Profitable Poultry: Raising Birds on Pasture*, at 11 - 13 (January 2006), available at <http://www.sare.org/publications/poultry/poultry.pdf> (last visited June 8, 2012).

Grown label; has obtained a food handler’s license from MDA; or is a CSA marketing operation. Each class of documents described above shows an intent to grow and sell farm products and should therefore be sufficient to exclude hobby farms from inclusion in the program.

C. Formally incorporate a presumption of inclusion for farms that are on the borderline of eligibility.

As noted earlier in this report, there is no consistent practice for handling cases where a farm is on the borderline of eligibility. One assessor may err consistently on the side of including the property in the program, while in another county the assessor may err against inclusion.

- Given that the Green Acres Program statute now explicitly states the program is intended to preserve farmland, the default presumption should be to include land in the program when a farm is on the borderline of eligibility.

D. Clarify the “primarily devoted to” Green Acres Program eligibility requirement.

In its 2008 report, the Legislative Auditor stated that the “primarily devoted to” requirement is “subjective and lacks precision.”¹⁰¹ As a result, despite being similarly situated, farmers may be found eligible for the Green Acres Program in one county and ineligible in another.¹⁰² The report thus concluded that this subjectivity gives rise to “charges of unfairness for taxpayers and among counties.”¹⁰³ Consequently, the report recommended adding specificity to the statutes regarding the “primarily devoted to” requirement.¹⁰⁴ No subsequent changes were made.

- Because it is vague and difficult to interpret and apply, the “primarily devoted to” criterion should be clarified.
 - The Legislative Auditor urged DOR to develop and recommend to the Legislature a set of specific standards to clarify the meaning of the “primarily devoted to” criterion. The Auditor recommended that DOR

¹⁰¹ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 42 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

¹⁰² Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 45 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

¹⁰³ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 42 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

¹⁰⁴ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 42 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

work with assessors, farm service agencies, and other stakeholders to develop the standards.¹⁰⁵

- It is important to note that, for the standards to be workable, they must be based on practical information obtained from assessors and farmers. Consequently, the stakeholders involved in developing the standards should include county assessors and representatives of membership-based farm organizations and farmers. The farmers should be from different regions of the state and from a variety of farming operations, representing the full spectrum of the state’s diverse farming operations.

E. Change the property tax classification statute to ensure that the agricultural land definition includes all land that is part of a working farm.

The current statutory definition of agricultural land forces an artificial distinction between productive and non-productive land, and discourages environmental stewardship and conservation efforts. The types of areas the Legislature has defined as class 2b lands are often integral parts of diversified farming operations that help to make the farm more productive. For example, these areas provide buffers that benefit the rest of the farming operation; create and support habitats for wildlife that provide ecological benefits to the remainder of the farm; allow for lower intensity uses in sensitive environmental areas; reduce runoff that could negatively impact other parts of the farm and nearby waterways; and are typically part of an integrated plan for managing a sustainable farming operation.

By partitioning off these areas as lands not related to the overall farming operation, the legislative changes ignore the important benefits these areas provide to the overall farming operation—and their role as an integral and indivisible part of the whole of a farm. As a result, the changes cast a much wider net than necessary to address the issues the Legislative Auditor’s 2008 report identified with the Green Acres Program.¹⁰⁶ While the legislative changes may help to exclude some types of hobby farms and hunting grounds from the Green Acres Program, they unnecessarily penalize active diversified farming operations.

- Amend the property tax classification statute to more explicitly allow class 2b land interspersed with or surrounded by class 2a land to qualify for Green Acres benefits.

¹⁰⁵ Office of the Legislative Auditor, State of Minnesota, “*Green Acres*” and *Agricultural Land Preservation Programs*, at 43 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 11, 2012).

¹⁰⁶ The primary issues the Auditor’s report raised about Green Acres were: (1) that Green Acres was not being uniformly implemented by the counties; and (2) in some cases, landowners were using the program to avoid paying higher taxes when they were not in fact farming. Office of the Legislative Auditor, *Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs*, at 35, 43 - 48 (February 2008), available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 8, 2012).

- As noted above, class 2b land is generally ineligible for the Green Acres Program. It may be eligible for program benefits, however, if the class 2b land is interspersed with class 2a land and is impractical to separate from class 2a land, or unlikely to be sold separately from the class 2a lands.¹⁰⁷
- DOR has provided guidance to assessors about the factors to apply in making an “impractical to separate” determination. According to DOR, class 2b land masses that are more than ten contiguous acres are generally considered “practical to separate,” and therefore are not eligible for enrollment in the Green Acres Program. In contrast, class 2b land masses of less than ten acres are typically considered “impractical to separate,” and therefore may be eligible for enrollment in the Green Acres Program.¹⁰⁸ Even with internal guidance from DOR, these determinations remain highly subjective and will invariably result in inconsistent administration of the Green Acres Program.
- The definition of class 2a land should be amended to state that class 2a land will include property that would otherwise be classified as 2b, where the 2b land is interspersed with class 2a land, is under common ownership, and where the amount of class 2a land is equal to or greater than the amount of class 2b land. The 2b land should then be classified as class 2a land regardless of whether it is practical to separate or is likely to be sold separately. Such an amendment would help to ensure the program achieves its goals of preserving the whole farm, not just certain types of farmland. At the same time, the amendment would also allow the Legislature to address the concerns regarding landowners improperly using the program to avoid paying higher taxes when they are not in fact farming.

F. Consider incorporating a long-term commitment into the Green Acres Program.

To encourage preservation, policymakers may wish to consider the option of incorporating an alternative voluntary longer-term commitment option coupled with enhanced benefits.

¹⁰⁷ Minn. Stat. § 273.13, subd. 23(b) (2011).

¹⁰⁸ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 3 - 6 (September 24, 2009). DOR has noted that there may be exceptions to the general rule described above, and has authorized assessors to deviate from the rule. It has provided assessors with a list of factors to consider in determining if class 2b land should be considered “impractical to separate.” The factors assessors may consider are: how interspersed the class 2b land is with the class 2a land; if it would be possible to convert the class 2b land to agricultural use; whether there are setback requirements that prevent the class 2b land from being farmed; and if it is likely the land could be sold separately, given market conditions, and the size, shape, and location of the land. DOR has stressed that this last factor (i.e., whether the land is likely to be sold separately) should be given the least weight of all of the factors.

- One possible option would be to allow farmers who commit not to build a non-agricultural residence on the property for 30 years to receive a 30 percent reduction in property taxes for each of those years. The benefit of this approach is that it would not affect the state budget, and the tax increases would largely be borne by rural residences. Given that these residences are largely responsible for increased service needs in the rural areas, they should therefore perhaps share in a larger portion of shouldering those costs.

VI. RECOMMENDED STEPS TO SUPPORT AND PROMOTE THE ECONOMIC VIABILITY OF FARMING IN MINNESOTA

BACKGROUND IN SUPPORT OF RECOMMENDATION #VI-1:

According to USDA’s most recent agricultural census, published in 2007, the average age of farmers in Minnesota is 55; in the seven-county metropolitan region, the average age is 57. Nearly one-half (48.9 percent) of Minnesota’s farmers have a primary occupation other than farming. During the time period from 2002 to 2007, the number of tenant farmers in the metro region increased, while the number of farm owners decreased.

The 2007 U.S. Census of Agriculture showed U.S. farmers older than 55 years of age control more than half of the country’s farmland, and new farmers make up only 10 percent of farmers and ranchers.¹⁰⁹ It is estimated that 25 percent of the nation’s current farmers will retire in the next 20 years, and that 70 percent of its farmland will change hands.¹¹⁰ At the same time, farmer surveys conducted by the University of Minnesota near 2008 showed that nearly 60 percent of the respondents “did not have an up-to-date estate plan and nearly 89 percent did not have a farm transfer plan.”¹¹¹

These trends are important because they paint a picture of today’s farmers. They reinforce and give statistical confirmation of the issues we see in our day-to-day work with farmers: many of Minnesota’s farmers need to have jobs off of the farm in order to support themselves and their families; the state’s farmers are aging, but do not necessarily have plans to govern the transition of their land; and, at least in the metro region, there are a growing number of farmers who rent land under short-term annual leases, and for whom land access is an issue.

¹⁰⁹ See Center for Rural Affairs at http://www.cfra.org/resources/beginning_farmer (last visited June 8, 2012).

¹¹⁰ University of Vermont, the FarmLASTS Project, Farm Land Access, Succession, Tenure and Stewardship, at ii (April 2010), available at <http://www.uvm.edu/farmlasts/FarmLASTSResearchReport.pdf> (last visited June 8, 2012).

¹¹¹ United States Department of Agriculture, CSREES, Family Farm Forum, Farm Transitions, at 2 (April 2008), available at http://www.csrees.usda.gov/nea/ag_systems/pdfs/farm_transitions_update.pdf (last visited June 8, 2012).

At the same time, we know that there are a growing number of beginning and immigrant farmers in Minnesota who want to farm, but have difficulty finding and affording land either to buy or rent. Presumably, some of these farmers will be the ones to continue Minnesota’s farming industry as other farmers retire, provided they can successfully establish and maintain their operations.

In addition to statutes and regulations adopted explicitly for protection of farmland or farming operations, many states have adopted laws and policies that indirectly protect farmland from conversion to other land uses by enhancing the economic opportunities for farmers and thereby reducing pressure on the landowner to sell or take the land out of production.

One category of such policies that can have a significant benefit for the most vulnerable farmland parcels—i.e., smaller parcels located near population centers—is promotion of local agriculture, chiefly local food production. States have taken different approaches to promoting local agriculture, including changing state procurement laws, setting state purchasing goals, and encouraging private economic development through state grants. Several state approaches to the promotion of local agriculture and the legal issues related to those measures are discussed in Appendix C of this report.

RECOMMENDATION #VI-1 DETAILS: The state must create and implement policies to support farmers, and remove regulatory obstacles and barriers that impede successful farming operations.

The future of Minnesota’s agricultural sector depends in part on the ability of new generations to establish successful farming operations. One of the biggest challenges to entering farming is gaining access to affordable and secure land. There are often insurmountable obstacles to beginning farmers purchasing and renting land, especially if they are not related to the current farm owners.

- A. If policymakers wish to have a vibrant farming sector and economy, they need to develop policies that will help to facilitate the transfer of land from one generation of farmers to the next and allow for affordable access to good quality farmland.**
- The state should allocate resources to MDA, MDA’s Farm Advocate Program, and nonprofit organizations to assist farm families to plan carefully for the transfer of ownership and management to their children, other relatives, or beginning farmers. It may also wish to consider adopting a beginning farmer tax credit similar to Iowa’s, which is described below. Note that conservation measures could be made a required component of the leases were such a credit adopted. In addition, the adoption of long-term lease requirements under such a program could help facilitate conservation, since short-term annual leases

tend to discourage investments in conservation measures or other environmental practices.

- Possible models include programs that allow beginning farmers to purchase quality, affordable farmland; for example, the Vermont Land Trust’s Farmland Access Program. More information about the program is available at <http://www.vlt.org/initiatives/affordable-farmland>. Another example is Michigan’s Ann Arbor Township, which leases a 153-acre farm for \$1.00 per year to a nonprofit that helps new farming operations start up.¹¹² Beginning farmers use the land for their farming operations until they have sufficient capital to acquire their own land.¹¹³ In Pennsylvania, a county economic development council west of Philadelphia is working with Temple University and local agricultural groups to create a land bank to keep land available for beginning farmers to lease.¹¹⁴
- Iowa’s Beginning Farmer Center, created by the Iowa Legislature in 1994, is another model for supporting the transition of land from one generation of farmers to the next. The Center is part of Iowa State University Extension and is designed to focus on the needs and issues facing beginning farmers and to facilitate the matching of beginning farmers with existing farmers who want to transition their farm businesses to the next generation. Generally speaking, Iowa’s Beginning Farmer Center seeks to coordinate statewide education programs and services for beginning and retiring farmers; assess the needs of beginning farmers and retiring farmers; and provide programs and services “that develop skills and knowledge in financial management and planning, legal issues, tax laws, technical production and management, leadership, sustainable agriculture, human health and the environment.”¹¹⁵

¹¹² Note that if this approach were used in Minnesota, the nonprofit organization would be required to apply for an exemption under the state’s corporate farm law. See Minn. Stat. § 500.24(z) (2011) (stating the requirements for a nonprofit to be exempt under the corporate farm law).

¹¹³ Governing, *Striving to Relocalize Food Production* (May 29, 2012), available at <http://www.governing.com/topics/energy-env/col-striving-relocalize-food-production.html> (last visited June 8, 2012); United States Department of Agriculture, Sustainable Agriculture Research & Education Program, *Ann Arbor Township Farm, Supporting Sustainable Small Farms* (June 28, 2010), available at mysare.sare.org/mySARE/assocfiles/933754AATownshipFarm.doc (last visited June 7, 2012).

¹¹⁴ Governing, *Striving to Relocalize Food Production* (May 29, 2012), available at <http://www.governing.com/topics/energy-env/col-striving-relocalize-food-production.html> (last visited June 8, 2012).

¹¹⁵ See Iowa State University Beginning Farmer Center at <http://www.extension.iastate.edu/bfc/objectives> (last visited June 8, 2012).

- Iowa also has a Beginning Farmer Tax Credit Program that “encourages owners of capital agricultural assets to lease them to Iowa’s qualifying beginning farmers. The program provides the agricultural asset owner a credit against Iowa income taxes owed.”¹¹⁶ To encourage longer-term lease agreements, the leases must be for at least two years and a maximum of five years. The landowner gets income tax credit for each year’s lease. The landowner and beginning farmer can seek to extend the lease and credit beyond the term of the original lease.¹¹⁷

B. Funding should be allocated to MDA for it to convene a task force to review and recommend changes to streamline its administrative rules governing food handling and licensing.

For farmers to be successful, the regulations that apply to their farm businesses need to be scale-appropriate. Many smaller-scale and mid-sized family farms that sell directly to consumers run into regulatory barriers when they seek to add value to or direct market their products. For example, it is our understanding that the food handler licensing requirements administered by MDA were originally developed for grocery stores, but apply equally to farmers who wish to sell value-added products from the farm directly to consumers. These regulations put a burden and cost on farmers that may be inappropriate given the scale of their operations, and that they are selling directly to consumers.¹¹⁸ Farmers have also been prevented from creating farmstay programs and developing value-added products on their farms because of an inability to comply with the regulatory requirements that apply.

- The task force should be comprised of farmers from diverse geographic locations and types and sizes of farming operations; farmer-based organization representatives; MDA Food and Dairy Inspection Division staff, and representatives from the Minnesota Department of Health.
- The task force should review the administrative rules governing food handling and licensing to ensure they are scale-appropriate for farming operations that direct market their products to consumers, while also ensuring that food safety needs are met.

¹¹⁶ See Iowa Agricultural Development Authority at <http://www.iada.state.ia.us/> (last visited June 8, 2012).

¹¹⁷ See Iowa Agricultural Development Authority, Beginning Farmer Tax Credit Program Brochure, available at http://www.iada.state.ia.us/images/2012/2012_Tax_Credit_Brochure.pdf (last visited June 8, 2012).

¹¹⁸ Although the cost of the license itself may not be very high, the cost of complying with plumbing and other requirements related to having an on-farm store can certainly be cost-prohibitive.

C. Policymakers can help to create markets for Minnesota’s farms and promote economic development by creating policies that assist farmers to better market their products and use their assets for related income-producing activities.

- States have taken different approaches to promoting local agriculture, including changing state procurement laws, setting state purchasing goals, and encouraging private economic development through tax state grants. Examples of a state purchasing goals approach and an economic development approach are, respectively, the Illinois Local Food, Farms and Jobs Act of 2009 and Vermont’s 2011 Economic Development Act. Both are described in Appendix C of this report.
- Finally, if the state wishes to promote local food production and support beginning and immigrant farmers, policies need to be developed to support the growing number of smaller-acreage farms located in the urban fringe areas. Many of these farms are run by beginning and/or immigrant farmers who grow and sell food directly to metro-area residents. These farms are an important resource for local food production in the metropolitan region and for economic development. They provide a steppingstone for new farmers seeking to establish farming operations; provide jobs and food for them and their families, as well as members of the communities where the farms are located; and provide revenue for local farm support businesses. In addition, smaller farms make good use of productive soils that are well-suited to farming but that tractors and other machinery might not be able to get in to, and can also help preserve sensitive environmental areas by not disturbing natural areas and habitats. However, there are no policies in place to support these small-acreage farming operations. Indeed, existing policies generally act to undermine and destabilize these operations. The state should develop policies to encourage the creation and long-term viability of farm enterprises likely to be profitable on the urban edge and on small acreages.

VII. CONCLUSION

As noted throughout this report, Minnesota has no cohesive statewide plan or vision for preserving the invaluable resource of the state’s farmland, and its existing programs have not been particularly effective. If policymakers wish to preserve Minnesota’s farmland for future generations, the state’s farmland preservation toolbox needs to be updated and expanded both to meet today’s needs and to address the challenges the state may face in the future. Policymakers should therefore consider adopting the policies suggested in this report.

Appendix A

Minnesota's Agricultural Land Preservation Programs: Prior Reports and Recommendations

I. INTRODUCTION

A number of prior reports done or commissioned by the Minnesota Department of Agriculture and the Metropolitan Council have analyzed the strengths and weaknesses of Minnesota's existing farmland preservation programs and recommended steps the state could take to modify those programs to better preserve farmland. Generally speaking, these reports' recommendations for changes to existing programs have not been acted upon. Many of the prior report recommendations remain relevant today and should be implemented. These reports are summarized below and will be cited in other sections of this report to the extent they inform our analysis and recommendations. We also have appended full copies of them to the instant report.

II. 1979 REPORT BY THE RURAL AREA TASK FORCE TO THE METROPOLITAN COUNCIL

This report, commissioned by the Metropolitan Council, recommended preserving agricultural land located in the seven-county metropolitan area for the following reasons: (1) the majority of the farmers in the area were committed to farming; (2) much of the farmland located in the metro area was "highly productive"; (3) farmers had "substantial capital investments" in their farming operations; (4) much of the farmland in the metro area had been "carefully managed for productive farm use"; and (5) there was a sufficient amount of other land in the area to support future development needs.¹ The report additionally concluded that uncertainty about the future of farming "was a significant factor in the decline of farming in the region," noting that the number of acres of agricultural land in the

¹ Resource Management Consultants, Inc.; Resource Strategies Corporation; Coughlin, Keene & Associates; *Evaluation of Minnesota Agricultural Land Preservation Programs*, Prepared for the Minnesota Department of Agriculture (June 1999) (hereafter referred to as 1999 MDA Report), at IV-2, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnap.pdf> (last visited June 6, 2012), attached at the end of this appendix.

metro region decreased by 160,000 acres during the ten-year time period from 1964 to 1974.²

The Rural Area Task Force's findings ultimately led to the enactment of the Metropolitan Agricultural Preserves Act in 1980.³

III. 1997 METROPOLITAN COUNCIL TASK FORCE RECOMMENDATIONS REGARDING PERMANENT AGRICULTURAL LAND IDENTIFICATION PROCESS

To assist counties and local governments in identifying and targeting farmland for preservation during their comprehensive planning and zoning processes, a task force appointed by the Metropolitan Council developed a tool called the Agricultural Land Identification Process.⁴ The impetus for developing the land identification tool was the regional planning document adopted by the Met Council in 1996, which stated the importance of developing a system to identify and preserve land located in the metro region.⁵ During the summer of 1997, a task force consisting of Met Council staff and stakeholders (including farmers; Soil and Water Conservation District personnel; city, state, and township elected representatives; and county staff and administrators) was established to accomplish that goal.⁶

In the process of developing the agricultural land identification system, the task force “established goals for agricultural land preservation, reviewed national models for identification of agricultural lands, and evaluated relevant data sources.”⁷ The task force ultimately recommended that a Land Evaluation Site Assessment (LESA) tool be used to identify important agricultural lands located within the metro region.⁸ It concluded that, for consistency, the land evaluation procedure should be completed on a regional basis by the counties and the Met Council. It also recommended a process for developing the land evaluation criteria to be used in the LESA. The task

² 1999 MDA Report, at IV-3.

³ 1999 MDA Report, at IV-2 – IV-3.

⁴ Metropolitan Council, Rural Issues Work Group, *Policy and Implementation Proposal for the Rural Area*, at 1 (March 2002), attached at the end of this appendix.

⁵ Metropolitan Council, *Regional Blueprint* (revised December 19, 1996), at 41-43, available at www.metrocouncil.org/planning/landuse/Blueprint96.pdf (last visited June 6, 2012).

⁶ Metropolitan Council, Phase 1: Task Force Report and Recommendations, Permanent Agricultural Land Identification Process (December 22, 1997), attached at the end of this appendix.

⁷ Metropolitan Council, Phase 1: Task Force Report and Recommendations, Permanent Agricultural Land Identification Process (December 22, 1997).

⁸ Metropolitan Council, Phase 1: Task Force Report and Recommendations, Permanent Agricultural Land Identification Process (December 22, 1997). Land Evaluation Site Assessment systems are described in more detail in Chapter 4 of this report.

force generally recommended that these criteria include “land capability classifications and a productivity rating that will identify suitable agricultural land.”⁹

With respect to the site assessment portion of the identification process, the task force recommended a basic, easy-to-apply framework. It concluded that the site assessment procedure should be completed by municipalities, as doing so would allow local knowledge and preferences to be taken into consideration. The suggested site assessment criteria were:

- Land suitable for agriculture (Land Evaluation results)
- Land in agricultural tax classification
- Land in current agricultural use
- Adjacent land in current agricultural use
- Land zoned agriculture (1:20 density or less dense)
- Land made up of parcels at least 20 acres in size
- Land outside Future Urban Area (i.e., land located outside of an identified urban transition area, the 2020 MUSA, and the 2040 Urban Reserve)
- Adjacent land zoned agriculture (1:20 density or less dense)
- Land designated agriculture by County
- Land designated agriculture by Metropolitan Council¹⁰

The task force recommended that the agricultural land identification process be made a mandatory component of all metro region comprehensive plans except for those jurisdictions that were “wholly urbanized or planned for total urbanization by 2020.” Use of the LESA tool was never mandated, however. Instead, the LESA tool developed by the task force was provided to the counties for use at their option. Although many counties appended the LESA to their comprehensive plans, it is not clear that many counties actually used the tool.

IV. 1999 MINNESOTA DEPARTMENT OF AGRICULTURE REPORT

This report was funded by LCCMR in 1997. The overall goal of the report was to evaluate Minnesota’s agricultural preservation programs—both the metropolitan area and statewide programs.

⁹ Metropolitan Council, Phase 1: Task Force Report and Recommendations, Permanent Agricultural Land Identification Process (December 22, 1997).

¹⁰ The value for the criteria was assigned as follows: if the answer was yes, one point was awarded; if a criterion was inapplicable, no points were awarded; if the answer was no, one point was subtracted.

In forming the report, the team did stakeholder interviews; reviewed and analyzed Minnesota’s Metro and Greater Minnesota Agricultural Preserves Programs and the Green Acres Program; examined Minnesota’s experience with other agricultural preservation tools—specifically, agricultural zoning, purchase of development rights, and transfer of development rights; and reviewed the agricultural districting programs in New York and Michigan, and considered how those programs might be relevant to Minnesota.¹¹

A key finding of the report was that the stability and amount of the property tax credit provided by the programs are critical factors in drawing farmers to enroll in the them. During the time period when there was no guaranteed minimum credit, the report found enrollment in the programs declined. In contrast, once a minimum guaranteed credit was incorporated into the program, enrollment held steady.¹² The report further noted that “the non-monetary benefits of landowner participation in [the program], such as limitations on annexation and eminent domain proceedings and protection from local ordinances or regulations that constrict or regulate normal agricultural practices, although important, do not have as direct an influence on landowner participation as does the conservation credit.”¹³

Generally speaking, the report found the Metropolitan Agricultural Preserves Program (Metro Program) to be successful. It did not make specific recommendations for changes to that program. It did, however, recommend a number of changes to the Greater Minnesota Agricultural Preserves Program (Greater Minnesota Program). The recommended changes were not implemented. As discussed below, many of the report’s findings and recommendations remain relevant today and should be implemented.

The report’s key findings and recommendations with respect to the Greater Minnesota Program are described below.

A. Key Findings

The report had three key findings regarding the Greater Minnesota Agricultural Preserves Program. They were: (1) the Metro Program provided a good incentive for local governments to designate land for long-term agricultural use; (2) the Greater Minnesota Program was not targeted to preserve lands most at risk of conversion—rather, it targeted land “relatively vulnerable” to development, as well as land with a low risk of development; and (3) stakeholder input indicated the Greater Minnesota Program preserved land “for insufficient periods of time, and benefits were not sufficient to encourage participation in areas that should be targeted for participation.”¹⁴ Stakeholder input for the instant report showed that the report’s key

¹¹ 1999 MDA Report, at I-4 – I-5.

¹² 1999 MDA Report, at IV-11 – IV-12.

¹³ 1999 MDA Report, at IV-14.

¹⁴ 1999 MDA Report, at V-1.

findings remain relevant today, 13 years later, and affirmed these issues seriously undermine the program’s effectiveness.

B. Recommended Changes to the Greater Minnesota Agricultural Preserves Program

The report determined that changes in four specific areas were needed to make the Greater Minnesota Program more effective. The report thus recommended specific steps to achieve improvements in the program. Each of these is discussed in more detail below.

1. Restructure the Greater Minnesota Program’s focus to more successfully target lands at risk of conversion

The report concluded that the Metro Program was successful at targeting land in need of preservation because of its “built-in focus on the rapidly urbanizing Twin Cities region.” In contrast, the report stated the Greater Minnesota Program did not successfully target those areas most at risk of conversion.¹⁵

Given the scarce resources available for farmland protection, the report thus recommended that the Greater Minnesota Program be restructured to prioritize protection in “those areas of Minnesota outside the metropolitan region that are experiencing the highest potential development growth in their proximities and have the stronger agricultural land base, production and investments to protect.”¹⁶ The report additionally noted that refocusing on higher growth areas would have the added benefit of improving revenue to the state via increased recordings of mortgages and deeds.¹⁷ As described in Chapter 4 of this report, our analysis of data provided by the Metropolitan Council and the Department of Revenue showed that Wright County, which has higher development pressures than the other two counties enrolled in the Greater Minnesota Program, contributes significantly more money to the program than do Waseca and Winona counties. At the same time, the contributions from the State Conservation Fund tend to be higher in Waseca and Winona counties than in Wright, since those counties have more acres enrolled in the program but experience fewer property transfers, and thus generate fewer mortgage registration and deed transfer (MRDT) fees.

The report recommended several criteria for determining the counties and sub-regions that should be targeted by the Greater Minnesota Program. The recommended criteria were:

- Projected population growth for the next 10 years, either for the county as a whole or for specific growth area within a county. The report identified the location of the top growth areas at that time. These included all counties

¹⁵ 1999 MDA Report, at V-1 – V-2.

¹⁶ 1999 MDA Report, at V-1.

¹⁷ 1999 MDA Report, at V-1.

contiguous to the seven-county metropolitan area, forming a belt stretching from Rochester to St. Cloud, as well as Crow Wing County.¹⁸

- Communities within counties located along the growth corridor, and in close proximity to the metro region, including: major highway corridors such as Interstates 94 and 35, and U.S. Highway 52. According to the report, because these highway corridors provide access to rural counties outside the metro region, they stimulate “the growth of bedroom communities and rural development of five and ten acre residential lots.” Consequently, the report concluded these highway corridors should be a criterion in deciding which counties the Greater Minnesota Program should target.¹⁹
- Counties that have rural development around urban areas, specifically five- and ten-acre residential lots. The report recommended the development patterns be studied in counties located within the growth area and stated that counties experiencing scattered development on large lots near townships, developed urban areas, or near growth corridors be targeted for inclusion in the Greater Minnesota Program.²⁰
- Counties with “a strong agricultural land base, significant crop and livestock production and investment in agricultural infrastructure.” Although the report noted that it was difficult to develop specific benchmarks to determine if this criterion was met, it ultimately suggested three possible benchmarks: (1) counties with “an average market value of agricultural products sold of \$20 million or more as determined by the Agricultural Census” should be targeted for inclusion in the Greater Minnesota Program; (2) at least one-third of the land in the county “is in agriculture as defined by the ‘land in farms’ category under the Agricultural Census”; and/or (3) the estimated market value of agricultural land and buildings in the county should be more than \$100 million. The report specifically noted that the suggested benchmarks were “suggestions only and should not prevent a small county with limited acreage in agriculture from being considered, particularly if this county is experiencing rural development pressures.”²¹
- Counties with low-level agricultural land preservation efforts. The report recommended targeting those counties with outdated comprehensive plans, that do not consider agriculture a primary land use, and have not implemented agricultural zoning ordinances.²²

¹⁸ 1999 MDA Report, at V-2.

¹⁹ 1999 MDA Report, at V-2.

²⁰ 1999 MDA Report, at V-2.

²¹ 1999 MDA Report, at V-2 – V-3.

²² 1999 MDA Report, at V-3.

2. Strengthen the Greater Minnesota Program by incorporating better incentives that will increase program participation

The report found that the Greater Minnesota Program did not provide sufficient incentives to farmers for the program to be a compelling option for them. Consequently, the report recommended strengthening the program to make it a more appealing option for farmers. In addition, the report recommended increasing farmers' commitments to the program to "provide a greater and longer benefit to those jurisdictions that endorse the program."²³

Specific suggestions to strengthen the Program were:

- Increase the property tax credit from \$1.50 per acre to at least \$3.00 per acre. The report noted that the tax credit is a key factor farmers consider when determining whether to participate in the program.
- Increase the enrollment period from eight to ten years.
- Strengthen the annexation protections for land enrolled in the program.
- In addition to providing participants with property tax credits, allow for differential use assessments—that is, value the land at its agricultural use value rather than its fair market value.²⁴

None of the recommended changes were made. Stakeholder input for the instant report confirmed incentives for the program remain insufficient to encourage increased landowner enrollment in the program.

3. Make changes that will instill greater confidence in the stability of the Greater Minnesota Program's long-term funding

The report found that counties declined to participate in the Greater Minnesota Program because of concerns that its long-term financing is insecure.²⁵ In contrast to the Metro Program, the Greater Minnesota Program does not have a provision allowing general fund revenues to be appropriated to cover the tax credit if the conservation fund runs short.²⁶ As a result, farmers had no assurances that program funding would be sufficient to pay the conservation credit during the time period they were enrolled in the program. Moreover, counties declined to participate in the program due in part to concerns "over encouraging long-term landowner commitments to preservation without having reciprocal funding guarantees by the State."²⁷

²³ 1999 MDA Report, at V-4.

²⁴ 1999 MDA Report, at V-4 – V-5.

²⁵ 1999 MDA Report, at V-5.

²⁶ 1999 MDA Report, at V-5.

²⁷ 1999 MDA Report, at V-5.

To instill greater confidence in the funding for the Greater Minnesota Program, the report recommended that an examination of the program's funding mechanism be performed. The report prepared an analysis of future funding for the program. The analysis examined several scenarios for population growth and funding, and found that if growth continued as projected for 2020 in the growth areas identified by the report, but the MRDT fee that funds the program remained the same, the program would operate at a deficit and would not be able to cover the cost of the conservation credits. In contrast, if the fee were increased from \$5.00 to \$10.00, the program would operate at a surplus with an enrollment of approximately 900,000 acres. The third scenario found that if the fee were increased to \$17.00, the program could provide an enhanced credit of \$3.00 per acre and still have a surplus.²⁸

To instill greater confidence in the long-term funding stability of the Greater Minnesota Program, the report specifically recommended the implementation of a sliding scale conservation fee. Under this approach, "mortgage registrations and deed transfers involving progressively higher amounts would pay progressively higher fees."²⁹ The report additionally recommended that state general funds be made available to cover tax credit costs in the event those costs exceed the revenues available for the Greater Minnesota Program.³⁰ This recommendation was not implemented.

4. Do more education and outreach to landowners

The report found there was insufficient education and outreach with respect to both the Metro and Greater Minnesota Programs.³¹ According to the report, local governments were largely responsible for education and outreach regarding farmland preservation in the metro area. The report noted that, in the early and mid-1980s, the Metropolitan Council and several counties and municipalities did outreach regarding the agricultural preserves programs. The report concluded, however, that "there has been little promotion or education concerning the Metro Program in the past 10 to 15 years."³² The report further stated that for the programs to be effective, more education and outreach to landowners was needed.³³ It suggested New York State's experience with locally led educational efforts as a possible model for increasing program enrollment.³⁴ Stakeholder input for the instant report affirmed that the

²⁸ 1999 MDA Report, at V-6.

²⁹ 1999 MDA Report, at V-7.

³⁰ 1999 MDA Report, at V-7.

³¹ 1999 MDA Report, at IV-14 – IV-15.

³² 1999 MDA Report, at IV-15.

³³ 1999 MDA Report, at IV-15.

³⁴ 1999 MDA Report, at IV-15. The report specifically referred to the New York State program's creation of local advisory committees, which included farmers, extension agents, and soil and water conservation district representatives. The committees assisted landowners

programs remain woefully under-promoted, and that outreach and education about the programs to landowners, local government personnel, and elected officials is necessary.

Specific recommendations to improve education and outreach were to provide funding to the Minnesota Department of Agriculture for the following purposes: establish competitive grants to encourage local preservation efforts; help create local farmland preservation committees to increase awareness of farmland preservation, work with the Department to identify lands for preservation and preserve these through zoning, and improve the agricultural economy “through promotion of marketing and other agriculture income enhancing enterprises”; establish a “Voluntary Agricultural Preserves Program to foster recognition of agricultural preservation efforts”; create promotional materials regarding the farmland preservation programs; analyze tools and incentives for additional farmland preservation tools and programs; and encourage and support counties and private organizations to consider using additional preservation tools such as Purchase of Agricultural Conservation Easement (PACE) and Transfer of Development Rights (TDR) programs.³⁵ The recommendations were not implemented.

5. Change Greater Minnesota Program zoning requirements

As a precursor to inclusion in the Greater Minnesota Program, a county must have agricultural zoning in place. The 1999 MDA report further recommended that the program add a requirement for agricultural zoning ordinances to have maximum zoning density requirements of one non-farm residential unit per 40-acre parcel.³⁶ This change was not made.

Stakeholder input for the instant report did not indicate the Greater Minnesota Program’s lack of a maximum density requirement is a current concern. To the contrary, as discussed in Chapter 4 of this report, the Metro Program maximum density requirement has impeded preservation in the metro area.

C. Recommended Changes to the Green Acres Program

The report concluded the Green Acres Program did not effectively preserve farmland for the long-term.³⁷ It made several recommendations to strengthen the program’s eligibility requirements. These were:

- Require that the sales of agricultural products from Green Acres land be at least \$200 per acre.

interested in enrolling in the program, performed education and outreach to landowners, and assisted county planning staff in implementing the program. See MDA Report, at IV-21.

³⁵ 1999 MDA Report, at V-8.

³⁶ 1999 MDA Report, at V-9.

³⁷ 1999 MDA Report, at V-10.

- Require that 51 percent of the land enrolled in the program be tillable acres.
- Require land to be at least 20 acres to be eligible for enrollment in the program.
- Require that land must be located in an area zoned for agricultural use with a maximum zoning density of one non-farm residential unit per 40-acre parcel to be eligible for the Green Acres Program.³⁸

The report additionally recommended that enrolled land located within the Municipal Urban Services Area (MUSA) should be phased out of the program over a five-year period.³⁹ None of the recommended changes were implemented.

D. Other Supplemental Tools

The report recommended that the Department of Agriculture analyze the effectiveness of TDR and PACE programs as a farmland preservation tool, summarize efforts underway with the Green Corridor Project then in place in Chisago and Washington counties, and distribute this information to the counties.⁴⁰ Although the Minnesota Department of Agriculture did spend several years trying to promote a state-level PACE program, no such program was ever developed.

V. DECEMBER 3, 2001, REPORT BY TOM DANIELS – THREE FARMLAND PRESERVATION PROPOSALS FOR THE METROPOLITAN COUNCIL⁴¹

A. Benefits

The Metropolitan Council commissioned Tom Daniels, a nationally recognized farmland preservation expert, to recommend farmland preservation options for the seven-county metro region.⁴² Those recommendations are contained in his 2001 report to the Met Council.

³⁸ 1999 MDA Report, at V-10.

³⁹ 1999 MDA Report, at V-10.

⁴⁰ 1999 MDA Report, at V-11.

⁴¹ A companion piece to this report, also provided to the Metropolitan Council by Mr. Daniels, was a survey and analysis of farmland preservation programs. The survey described the tools used to preserve farmland and analyzed their strengths and weaknesses. A copy of the survey and analysis is appended to this report, but is not summarized here, as it did not analyze Minnesota’s farmland preservation programs, or recommend changes to those programs.

⁴² Mr. Daniels is a Professor in the Department of City and Regional Planning at the University of Pennsylvania, and holds a Ph.D. in Agricultural Economics. For nine years, he managed the farmland preservation program in Lancaster County, Pennsylvania. This program has been widely cited as a model for farmland preservation. Mr. Daniels often serves as a consultant to state and local governments and land trusts.

In his report, Daniels estimated there were approximately 500,000 acres of farmland in the metro region, comprising about 27 percent of the region.⁴³ The report sought to examine farmland preservation scenarios that would help to meet the goal of preserving at least 400,000 acres of farmland in the seven-county metro area.⁴⁴ In the report, Daniels noted that while some farmland would invariably be converted to non-farm uses, the “challenge is to identify the agricultural lands that have the best chance of remaining in production over the long term and to devise programs that both protect the farmland base and enable farmers to continue to farm.”⁴⁵

B. Report Conclusions and Recommendations:

1. Minnesota’s farmland preservation tools will not successfully preserve farmland for the long-term

The study concluded that Minnesota’s preservation tools were insufficient. It stated “relying on the MUSA line, the Metropolitan Ag Preserves program, and county zoning will not retain agricultural land in the long run.” The MUSA “can and has been extended outward at times. . . . [T]he Metropolitan Ag Preserves program does not require a long term or permanent commitment, and agricultural zoning can be changed by local elected officials.”⁴⁶

2. Counties should use an integrated package of farmland protection tools

In its analysis of the factors that make for a successful farmland preservation program, the report concluded that “no single farmland protection technique can guarantee the future viability of a region’s farm operations.”⁴⁷ Instead, it stated that “an integrated package of farmland protection techniques” is required for effective farmland preservation.⁴⁸ The report noted that the nation’s most successful farmland protection programs “feature a combination of voluntary, regulatory, and financial

⁴³ Tom Daniels, *Three Farmland Preservation Proposals for the Metropolitan Council* (December 3, 2001) (hereafter referred to as 2001 Daniels’ Report), at 3. According to data maintained by the Metropolitan Council, as of 2010, over 500,000 acres of agricultural land remained in the seven-county metropolitan area. See land use inventory data for 2010, available through Metropolitan Council’s Download Tabular Data Tool, at http://stats.metc.state.mn.us/data_download/DD_start.aspx (last visited June 6, 2012).

⁴⁴ A precursor to the report was a 2001 white paper by the Metropolitan Council. The white paper concluded that “a minimum of 400,000 acres of prime agricultural lands need(s) to be preserved within the region to meet the goals of protection of this valuable resource and to serve as a minimum critical mass necessary for preservation of agricultural communities.” 2001 Daniels’ Report, at 3.

⁴⁵ 2001 Daniels’ Report, at 3.

⁴⁶ 2001 Daniels’ Report, at 2.

⁴⁷ 2001 Daniels’ Report, at 3.

⁴⁸ 2001 Daniels’ Report, at 3.

compensation methods.”⁴⁹ These programs typically use three main techniques: growth boundaries, agricultural zoning, and purchase or transfer of development rights.⁵⁰ The report also stressed that permanent protection is the most effective option, but noted that “less than permanent protection may offer an acceptable compromise as long as the protection will occur over a minimum of 30 years.”⁵¹

3. Permanent agricultural areas should be prioritized for preservation

The report recommended concentrating preservation efforts within designated permanent agricultural areas.⁵² Generally speaking, the report identified permanent agricultural areas as those with agricultural zoning that set maximum densities of one dwelling per 40 acres. At the time the study was done, Carver, Dakota, and Scott counties all had this type of agricultural zoning. In contrast, Anoka, Hennepin, and Washington counties had rural area zoning that allowed one dwelling per 10 acres. As a result, the report noted these counties had significant non-farm development in most of the farming areas.⁵³

The study concluded that the investment of public money for farmland preservation would be more likely to succeed in the three counties (Carver, Dakota, and Scott) with agricultural zoning.⁵⁴ There were two primary reasons for this conclusion. First, agricultural zoning would hold down the cost of conservation easements because the “permitted development potential is more restricted than under rural residential zoning.” As a result, counties with agricultural zoning could preserve more farmland for less money than counties with rural residential zoning.⁵⁵ Second, agricultural zoning would keep preserved farmland from “becoming surrounded by non-farm development.”⁵⁶

⁴⁹ 2001 Daniels’ Report, at 3-4.

⁵⁰ 2001 Daniels’ Report, at 10.

⁵¹ 2001 Daniels’ Report, at 2.

⁵² 2001 Daniels’ Report, at 5. The Metropolitan Council identifies geographic planning areas within the seven-county metropolitan area. These designations are thereafter generally incorporated into county comprehensive plans. At the time the 2001 report was published, the geographic planning designations for rural areas included a category for Permanent Agricultural Areas. The current planning designations that apply in rural areas are: Rural Centers; Rural Residential Areas; Diversified Rural Communities; and Agricultural Areas. See Metropolitan Council, *2030 Regional Development Framework* (amended December 14, 2006), at 8-9, available at <http://www.metrocouncil.org/planning/framework/Framework.pdf> (last visited June 6, 2012).

⁵³ 2001 Daniels’ Report, at 2.

⁵⁴ 2001 Daniels’ Report, at 4.

⁵⁵ 2001 Daniels’ Report, at 4.

⁵⁶ 2001 Daniels’ Report, at 4.

The report additionally noted that in areas without agricultural zoning, preserved areas “can act as a magnet for non-farm development because of the ‘preserved view’ that the farm provides.”⁵⁷ This dynamic results in farms being surrounded by residential development, conflict between the farm and its non-farming neighbors, and nuisance complaints against the farm. Consequently, farmers are unlikely to participate in a PACE program if they “believe their farms could become preserve ‘islands’ in a sea of non-farm residences.”⁵⁸

4. Create permanent conservation easement programs jointly funded by the Metropolitan Council and the counties

The report recommended protecting farmland via permanent conservation easements. It suggested the Met Council and counties jointly fund the program. It noted that without some funding from the Met Council, it was unlikely that counties could obtain enough money to fund effective farmland preservation efforts.⁵⁹ The report advised against the use of TDR programs as they would “require extensive planning and implementation costs, with no guarantee of success because of the variety of zoning in the rural parts of the six counties.”⁶⁰ The report additionally noted that PACE programs have the additional benefit of promoting economic development. According to the report, studies showed that farmers typically use the proceeds from the PACE program “to reinvest in their farms.”⁶¹

C. Analysis of Farmland Preservation Scenarios

The report set forth three scenarios, each assuming funding from the Met Council, and matching funds from county governments. The report suggested that funds for the conservation easement programs could come from the sale of general obligation bonds, noting that the purchase of agricultural easements “is a long-term capital program for which bonds are typically used as the financing tool.”⁶² The basic premise of the preservation scenarios was for the counties to acquire agricultural preservation easements, in consultation with the Met Council.⁶³ The Met Council would also have approval authority for the county conservation easement program guidelines and for each project. The three scenarios the report posited are described below.

⁵⁷ 2001 Daniels’ Report, at 4.

⁵⁸ 2001 Daniels’ Report, at 4.

⁵⁹ 2001 Daniels’ Report, at 5.

⁶⁰ 2001 Daniels’ Report, at 5.

⁶¹ 2001 Daniels’ Report, at 4.

⁶² 2001 Daniels’ Report, at 6, 8.

⁶³ 2001 Daniels’ Report, at 5.

- Scenario 1 suggested a pilot PACE program in Dakota County, lasting five to six years.⁶⁴ This area was targeted for the pilot program because the report found it was the “region’s leading agricultural county,” and it had a “critical mass” of farmland, consisting of 220,000 acres.⁶⁵ In addition, Dakota County’s farming area adjoined Rice and Goodhue counties, both “major farming counties.”⁶⁶

The study recommended that if the Dakota County pilot proved successful, the Met Council should consider expanding the program to at least Scott and Carver counties.⁶⁷ It also noted that a successful pilot program in Dakota County could spur interest in other county level PACE programs and possibly a state-funded PACE program. Note that Dakota County’s current Farmland and Natural Areas Program (FNAP), described in Appendix G of the instant report, was formed without Met Council funding, but does incorporate many components of Scenario 1.⁶⁸ It has been cited as an exemplar of a dynamic program for farmland preservation and natural resources conservation.⁶⁹

- Scenario 2 posited a five- to six-year PACE program in Dakota, Scott, and Carver counties.⁷⁰ These counties were targeted because all had areas zoned for long-term agriculture, and had limited population growth in the townships during the years preceding the study.⁷¹ As of 1997, there were approximately 500,000 acres of farmland in the three counties combined, comprising almost 70 percent of the metro region’s farmland.

The report also stated that preserving farmland in western Scott County would help to preserve a “critical mass” of farmland in Scott and Carver counties, and

⁶⁴ At the end of this time, the counties would independently run the PACE programs without Metropolitan Council funding or support, the Metropolitan Council could continue helping the counties, or the program could be terminated, except for the counties’ obligation to monitor and enforce compliance with the easements. 2001 Daniels’ Report, at 6.

⁶⁵ 2001 Daniels’ Report, at 5.

⁶⁶ 2001 Daniels’ Report, at 5.

⁶⁷ 2001 Daniels’ Report, at 5.

⁶⁸ For example, the program is administered by county staff and a citizen advisory board; the program guidelines set criteria for ranking farms, describe policies for valuing easements and negotiating their purchase, and provide for the monitoring of conservation easements.

⁶⁹ See e.g., Dakota County, *Farmland and Natural Areas Program*, available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/default.htm> (last visited June 6, 2012); American Farmland, *The Changing Landscape for Farmland Protection*, at 2 (Spring, 2011), available at http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf (last visited June 6, 2012).

⁷⁰ At the end of this time, the counties would independently run the PACE programs without Metropolitan Council funding or support, the Metropolitan Council could continue helping the counties, or the program could be terminated, except for the counties’ obligation to monitor and enforce compliance with the easements. 2001 Daniels’ Report, at 6-8.

⁷¹ 2001 Daniels’ Report, at 6.

noted that preservation in Scott County would help to protect farmland in neighboring LeSueur County.⁷²

- Scenario 3 considered a six- to eight-year PACE program in six of the seven metro counties.⁷³ Under this scenario, up to \$20 million of the Met Council’s funds would be used for preservation in Dakota, Scott, and Carver counties. The maximum funding from the Met Council to any one of these counties would be capped at \$8 million, and the counties would be required to authorize at least \$4 million in preservation funds to be eligible for Met Council funding. Ten million dollars would be available to fund preservation in Anoka, Hennepin, and Washington counties. Met Council funding to these counties would be capped at \$4 million, and the counties would have to authorize at least \$2 million in PACE funding to receive Met Council funds.

As described below, although a six-year PACE program was recommended in a 2002 report by the Met Council’s Rural Issues Work Group, no PACE programs have been implemented except for a county PACE program initiated by Dakota County.

VI. 2002 METROPOLITAN COUNCIL RURAL ISSUES WORK GROUP REPORT

The Metropolitan Council Rural Issues Work Group (hereafter referred to as “Work Group”) was comprised of eight Met Council members. The Work Group reviewed Met Council policies regarding agricultural and rural lands and considered options for increasing their effectiveness.⁷⁴ Its goals were generally to strengthen policies to protect farmland and rural areas, protect “agricultural uses as permanent land uses,” and ensure that “Smart Growth principles are applied throughout the region’s rural areas.”⁷⁵

In developing the report, the Work Group gathered input from local officials and citizens during public meetings held throughout the region’s rural areas, heard staff presentations, and spoke with local and national experts.⁷⁶ The Work Group used the

⁷² 2001 Daniels’ Report, at 6.

⁷³ Ramsey County was excluded because it was deemed fully urbanized. 2001 Daniels’ Report, at 1. At the end of the six- to eight-year time period, the counties would independently run the PACE programs without Metropolitan Council funding or support, the Metropolitan Council could continue helping the counties, or the program could be terminated, except for the counties’ obligation to monitor and enforce compliance with the easements.

⁷⁴ Metropolitan Council, Rural Issues Work Group, *Policy and Implementation Proposal for the Rural Area* (March 2002) (hereafter referred to as 2002 Metropolitan Council Rural Issues Work Group), at 2.

⁷⁵ 2002 Metropolitan Council Rural Issues Work Group, at 2.

⁷⁶ 2002 Metropolitan Council Rural Issues Work Group, at 2.

information it gathered to form regional objectives, policies, and implementation programs. These were forwarded to the entire Met Council along with the recommendation that they be incorporated into the new Blueprint 2030, adopted in 2002.⁷⁷

Although the Blueprint 2030 did contain some of the Work Group’s policy recommendations, it was not implemented. Instead, a new Met Council membership was appointed by Tim Pawlenty (then the newly elected Governor), and the new membership developed its own regional planning document to replace the 2030 Blueprint. The new planning document was entitled the 2030 Development Framework. Although the 2030 Development Framework did acknowledge that prime agricultural lands were an important regional natural resource, it did not seek to preserve agricultural lands and had no policies in place to do so. Thus, the Work Group’s recommendation were not acted upon.

A. Key Finding: Metropolitan Council Needs to Adopt New Tools to Effectively Preserve Agricultural Lands

In its 2002 report, the Work Group noted that Met Council planning “includes long-standing policies supporting the conservation and protection of agricultural and rural lands within the metropolitan area.”⁷⁸ At the same time, the report stated that “Council policies have not always been effective in protecting rural and agricultural lands from development.”⁷⁹

Generally speaking, the Work Group advocated the Met Council pursue a growth strategy that incorporated “Smart Growth principles.” For rural areas, this typically meant guiding growth to areas with existing infrastructure, guiding growth away from agricultural areas, and seeking to minimize development’s negative impacts on natural resources.⁸⁰ The Work Group stressed that by utilizing Smart Growth principles, the region would benefit from lower taxes and less strain on local budgets, decreased demand on highways, protection of farmland, and protection of natural resources.⁸¹

B. Review and Analysis of Then-Existing Land Use Areas and Corresponding Policies

In its report, the Work Group reviewed then-existing land use policies for rural and agricultural areas. At that time, rural areas were divided into three geographic planning designations: rural growth centers (typically small towns located within rural and agricultural areas); permanent agricultural areas (generally areas zoned for

⁷⁷ 2002 Metropolitan Council Rural Issues Work Group, at 2.

⁷⁸ 2002 Metropolitan Council Rural Issues Work Group, at 1.

⁷⁹ 2002 Metropolitan Council Rural Issues Work Group, at 2.

⁸⁰ 2002 Metropolitan Council Rural Issues Work Group, at 3.

⁸¹ 2002 Metropolitan Council Rural Issues Work Group, at 3-4.

long-term agriculture, with maximum zoning densities of one house per 40 acres); and permanent rural areas.⁸²

The Work Group noted that the primary tool used to preserve farmland in these areas was the Metropolitan Agricultural Preserves Program.⁸³ It also noted the Met Council's prior effort to preserve farmland through its development of the 1997 Permanent Agricultural Land Identification Process, described above.

The Work Group stated that, despite the Council's efforts to preserve farmland, "the expanding urban area and recent strong regional economy are increasing pressure to develop the region's prime agricultural and rural lands, particularly those at the urban edge."⁸⁴ The Work Group concluded that, in light of the decline in metro lands used for farming, and the strong market for single-family homes in rural areas, "the tools historically used by the state and region to protect agricultural and rural lands will not be sufficient to withstand development pressures."⁸⁵

C. Recommended Policy Changes for Permanent Agricultural Areas⁸⁶

1. Objectives for Permanent Agricultural Areas: Consolidate growth in developed areas and preserve agricultural lands

The Work Group's objectives stressed the importance of treating farmland as a natural resource, protecting that land, and concentrating growth in already developed areas, such as established towns. The Work Group recommended five specific objectives for the Permanent Agricultural Areas:

1. *Protect regionally significant agricultural areas. Large, contiguous agricultural areas within the Metropolitan region should receive protection from non-farm development to ensure the continuation of a valuable economic sector that is integrally tied to its natural resource base.*
2. *Consider all types of agriculture. Agriculture should be defined broadly. It should cover all types of agriculture, including specialty farming (sod farms, berry farms, nurseries, vineyards, etc.) and farming on less-than-prime soils.*

⁸² 2002 Metropolitan Council Rural Issues Work Group, at 1.

⁸³ 2002 Metropolitan Council Rural Issues Work Group, at 1.

⁸⁴ 2002 Metropolitan Council Rural Issues Work Group, at 1.

⁸⁵ 2002 Metropolitan Council Rural Issues Work Group, at 1.

⁸⁶ In its report, the Work Group divided the metro region's rural areas into four proposed land use policy areas: Rural Settlements, Permanent Agricultural Areas, Diversified Rural Areas, and Rural Residential Areas. The report developed planning objectives and priorities for each of these areas and recommended policies to implement the recommended objectives. It also considered policies to promote natural resources preservation in the rural areas. Only those recommendations for the Permanent Agricultural Areas are described in the instant report.

3. *Encourage continuation of locally significant agriculture. Agricultural lands that are not within large, contiguous blocks should also be encouraged to continue in agricultural production. Policies for these agricultural lands will be addressed in the Diversified Rural Area.*
4. *Reduce development pressures on agricultural lands. Guiding growth to rural settlements and the urban area will relieve development pressure on agricultural areas.*
5. *Identify agricultural lands as a natural resource. Agricultural lands are an important natural resource. They provide water recharge areas, open space, habitat and connections between important natural resource areas. The role of agricultural lands as a resource should be considered as the regional growth strategy is developed.*⁸⁷

2. Develop boundaries for a Permanent Agricultural Area

The Work Group additionally recommended developing boundaries for a permanent agricultural area based on an analysis of various factors, including the location of all farms; prime soils; specialty cropland on non-prime soils; lands eligible for the Metropolitan Agricultural Preserves Program; and lands identified in local plans as Permanent Agricultural Areas.⁸⁸ After developing boundaries for the Permanent Agricultural Area, the report stated the Met Council should consider the need for a critical mass of farmland.

The Work Group defined “critical mass” as “the number of acres of farmland that enable farm support businesses to continue in operation,” noting that “without support services, farmers struggle to survive.”⁸⁹ According to the report, there were two views of critical mass: (1) 400,000 acres, or (2) “enough farmland in close proximity to produce \$50 million in farm products.”⁹⁰

3. Policies to achieve objectives for the Permanent Agricultural Areas

The Work Group made a set of policy recommendations designed to achieve the objectives for the Permanent Agricultural Area. In doing so, it stressed the need to use multiple tools, including a combination of incentives and regulations to preserve farmland and prevent conflicting uses in agricultural areas.⁹¹ The policy recommendations were:

⁸⁷ 2002 Metropolitan Council Rural Issues Work Group, at 11.

⁸⁸ 2002 Metropolitan Council Rural Issues Work Group, at 11.

⁸⁹ 2002 Metropolitan Council Rural Issues Work Group, at 11.

⁹⁰ 2002 Metropolitan Council Rural Issues Work Group, at 11.

⁹¹ 2002 Metropolitan Council Rural Issues Work Group, at 11.

- i. *Increase the property tax credit for the Metropolitan Agricultural Preserves Program to encourage increased participation.*⁹²
- ii. *Establish a PACE Program to offer a permanent protection alternative.*
- iii. *Maintain a maximum zoning standard of one house per 40 acres in agricultural areas.*
- iv. *Provide incentives to encourage the creation of “Agricultural Security Districts” with a maximum zoning standard of one house per 160 acres. Possible incentives suggested were priority for PACE funds and “technical assistance.”*
- v. *Support zoning standards that minimize conflict between farming and non-farm uses (for example, limits on non-agricultural commercial and industrial operations, prohibitions on cluster developments that result in “a concentration of people not engaged in agriculture that may cause conflicts with agricultural operations and demand for urban-level services, and road standards to reduce conflicts on county roads between agricultural use of roads and other uses.*
- vi. *Encourage the development of Transfer of Development Rights Programs that designate Permanent Agricultural Areas as sending areas and Rural Growth centers as receiving areas.*
- vii. *Establish where growth will occur by establishing “growth reserve areas” and using orderly annexation agreements to plan and stage growth in rural and regional growth centers located within Permanent Agricultural Areas.*
- viii. *Encourage coordination of land use plans among local governments.*
- ix. *Work with other agencies to promote the use of management practices that will reduce soils erosion, and improve water and air quality.*
- x. *Work with regional partners to do more education and outreach regarding agricultural preservation tools and programs.*
- xi. *Coordinate agricultural land preservation efforts with counties adjacent to the seven-county metro area.*
- xii. *Provide economic development support by helping to connect new farmers with land to farm, supporting access to capital for beginning farmers, and supporting and promoting Department of Agriculture economic development programs.*

⁹² 2002 Metropolitan Council Rural Issues Work Group, at 12.

- xiii. *Continue to restrict public facilities that will conflict with agricultural uses, attract additional development in agricultural areas, and place demands on the highways system unless no alternative site exists.*
- xiv. *Enhance right-to-farm protections by requiring landowners who apply for permits for non-farm uses to sign agreements stating they understand they are in an agricultural area in which farming activities are protected, and they will not expect urban services.⁹³*

4. Recommended implementation strategies for achieving policies in Permanent Agricultural Areas

In addition to developing objectives and policies for the Permanent Agricultural Areas, the Work Group also developed a set of recommended implementation strategies to achieve the policies for this area. The recommended implementation strategies were:

1. *Direct regional wastewater treatment system investments to areas outside the Permanent Agricultural Area.*
2. *Limit wastewater treatment system hookups for sewer lines crossing a Permanent Agricultural Area. If a current, or future, sewer line crosses through a Permanent Agricultural Area, the Metropolitan Council should prohibit connections to the line in this area.*
3. *Define Permanent Agricultural Area boundaries.*
4. *Develop and propose statutory changes to enhance the Metropolitan Agricultural Preserves Act by providing an alternative, longer-term enrollment option. The existing short-term program would remain as an option. However, a longer-term/higher- benefit option would be created.*
5. *Develop a program and pursue funding for a Purchase of Agricultural Preservation Easements (PAPE) program.*
6. *Develop and distribute informational materials and model ordinances, conduct informational workshops and offer to provide technical assistance to local governments pursuing innovative planning and zoning techniques.*
7. *Allow opportunities for potential transfer of development rights programs and offer to provide technical assistance to officials and staff of local governments interested in establishing a TDR program. As an incentive to create TDR programs, the Metropolitan Council could increase the priority for wastewater treatment investments for rural growth centers that create a TDR program with neighboring jurisdictions.*
8. *Promote the benefits of coordinated planning and provide facilitation services. Metropolitan Council staff should develop materials and*

⁹³ 2002 Metropolitan Council Rural Issues Work Group, at 11-13.

workshops promoting the benefits of coordinated planning and offering guidance on implementing coordinated planning processes.

9. *Provide planning grants to encourage local governments interested in implementing innovative tools.*
10. *Establish a forum for dialogue with officials and staff of counties adjacent to the seven-county Metropolitan Area. Specific Metropolitan Council staff should be designated to conduct outreach efforts to surrounding counties. To be effective, staff should develop a consistent and continuing forum for discussing planning issues that affect both the seven-county metro area and surrounding counties.*
11. *Promote appropriate road design and access management along county and state highways throughout the rural area to mitigate development pressures on Permanent Agricultural Areas and guide growth away from Permanent Agricultural Areas and toward areas that are planned for some level of growth.*⁹⁴

As noted above, none of the Work Group’s objectives, policies, or implementation methods were adopted. They provide, however, an important starting point for considering how to approach farmland preservation issues in the metro region.

D. Suggested Approach for Amending the Metropolitan Agricultural Preserves Program

The Work Group’s report additionally suggested amending the Metropolitan Agricultural Preserves Program to strengthen the program and make it more effective.⁹⁵ The key strategies recommended to strengthen the program were:

- (1) provide an alternative longer-term enrollment option of 30 years;
- (2) increase the property tax benefit from \$1.50 per acre to \$5.00 per acre for landowners who choose the longer-term option; and
- (3) require a current soil conservation plan and other best management practices, including restricting the construction of non-farm buildings and ensuring farm buildings are built on non-productive farmland, for lands enrolled in the longer-term option.⁹⁶ The plans would be certified by the local Soil and Water Conservation District.⁹⁷

⁹⁴ 2002 Metropolitan Council Rural Issues Work Group, at 20-22.

⁹⁵ 2002 Metropolitan Council Rural Issues Work Group, at 30.

⁹⁶ 2002 Metropolitan Council Rural Issues Work Group, at 31. The report also recommended clarifying the economic hardship rules in Minnesota Statutes § 473H.09 to “better define what constitutes a case of hardship that would allow a landowner to withdraw early.” *Id.*

⁹⁷ 2002 Metropolitan Council Rural Issues Work Group, at 31.

The report stated that increased property tax credits could be paid out of existing State Conservation Fund balances, via federal farmland protection matching funds, and by increasing the amount of the mortgage registration and deed transfer fee that funds the program.⁹⁸ None of the recommended changes were made.

E. Suggested Approach for Implementing a Purchase of Agricultural Conservation Easement (PACE) Program

The Work Group recommended the implementation of a ten- to fifteen-year PACE program, targeting 200,000 acres of farmland for preservation.⁹⁹ The objectives of the proposed PACE program would be to create a “barrier of preserved farmland to limit the spread of development into the countryside,” and to create “large contiguous blocks of preserved farmland to protect a critical mass of farms and farmland that will help keep farm support businesses profitable and thus support agriculture as an industry.”¹⁰⁰ The preservation targets suggested were: 35,000 acres in Carver County; 35,000 acres in Dakota County; 10,000 acres in Hennepin County; 15,000 acres in Scott County; and 5,000 acres in Washington County.¹⁰¹

The Work Group suggested the Met Council develop a set of minimum criteria for the PACE program. It further suggested the Met Council thereafter work with counties to develop “county-administered programs that meet the minimum criteria,” as well as any additional criteria developed by the county.¹⁰² Suggested eligibility criteria included:

1. Farmland must be located within the Permanent Agricultural Area and eligible for the Metropolitan Agricultural Preserves Program;¹⁰³
2. The county must provide at least matching funds of at least 50 percent of the purchase funds provided by the Council;¹⁰⁴
3. Easements must be permanent;¹⁰⁵ and
4. Eligible parcels must be at least 50 acres in size.¹⁰⁶

⁹⁸ 2002 Metropolitan Council Rural Issues Work Group, at 31. The report acknowledged that funds from the Federal Farmland Protection Program had only been used for the purchase of conservation easements, and noted that it was unclear whether program funding could be expected to fund payments to a 30-year program as opposed to a permanent one. 2002 Metropolitan Council Rural Issues Work Group, at 32.

⁹⁹ 2002 Metropolitan Council Rural Issues Work Group, at 35-36.

¹⁰⁰ 2002 Metropolitan Council Rural Issues Work Group, at 34.

¹⁰¹ 2002 Metropolitan Council Rural Issues Work Group, at 35.

¹⁰² 2002 Metropolitan Council Rural Issues Work Group, at 34.

¹⁰³ 2002 Metropolitan Council Rural Issues Work Group, at 34.

¹⁰⁴ 2002 Metropolitan Council Rural Issues Work Group, at 34.

¹⁰⁵ 2002 Metropolitan Council Rural Issues Work Group, at 34.

The PACE program proposed by the Work Group would primarily be administered by county staff. The Met Council would be a joint easement holder, but the county would maintain primary responsibility for monitoring and enforcing the easements.¹⁰⁷ The counties would provide the Met Council with annual reports regarding the PACE programs, including the number of easement agreements, acres preserved, cost of preservation, and location.¹⁰⁸ Like its other recommendations, the Work Group's PACE program suggestions were not implemented.

VII. FEBRUARY 2008 LEGISLATIVE AUDITOR'S REPORT

This report was developed by the Office of the Legislative Auditor's Program Evaluation Division. The report evaluated three of Minnesota's programs that provide tax advantages to agricultural land: the Metro and Greater Minnesota Agricultural Preserves Programs and the Green Acres Program.

The report concluded that, while the existing programs can help to slow the rate of development, they do not adequately assure long-term preservation of farmland. Consequently, the report noted that the state will need to adopt other approaches if it wants to preserve farmland for the long term.¹⁰⁹ The report did not recommend any specific approaches for adoption.

A. Key Findings and Recommendations Related to the Metro and Greater Minnesota Agricultural Preserves Programs

The report generally found that, while both of the agricultural preserves programs do help to "shape development and slow its pace," the programs are not sufficient to preserve farmland for the long-term, especially in areas facing development pressure.¹¹⁰ Factors contributing to this conclusion were:

- Farmland was lost in all counties participating in the program during the time period from 1982 to 1997.¹¹¹ While the report noted that it was impossible to isolate the effect of the farmland preservation programs from the many other

¹⁰⁶ 2002 Metropolitan Council Rural Issues Work Group, at 36.

¹⁰⁷ 2002 Metropolitan Council Rural Issues Work Group, at 36.

¹⁰⁸ 2002 Metropolitan Council Rural Issues Work Group, at 36.

¹⁰⁹ Office of the Legislative Auditor, "Green Acres" and Agricultural Land Preservation Report (February 2008) (hereafter referred to as 2008 OLA Report), at xii, available at <http://www.auditor.leg.state.mn.us/ped/pedrep/greenacres.pdf> (last visited June 6, 2012).

¹¹⁰ 2008 OLA Report, at 54. According to the report, this finding was based on conversations with county and municipal officials about the programs' impacts on development; data on the loss of farmland to other uses; and "analysis of factors that could limit the effectiveness of the programs, including competing financial incentives, acres enrolled, local government participation, and the duration of farmers' and local governments' commitments to preservation." *Id.*

¹¹¹ 2008 OLA Report, at 55-56.

factors at play, it did take the loss of farmland into account as a partial indicator of the programs’ effectiveness.¹¹²

- The financial benefits offered by the programs are quite small in comparison to the financial gains available when farmland is converted to other uses.¹¹³
- A small number of acres are enrolled in the programs, and enrollment has steadily declined since the late 1990s.¹¹⁴
- Only three counties participate in the Greater Minnesota Program.¹¹⁵
- Participation in the programs can be easily terminated.¹¹⁶ The report noted that many acres of farmland that were once enrolled in an agricultural preserves program have been removed from the program, and “the proportion of expired acreage is higher in and near the metropolitan area.”¹¹⁷
- The statutes governing the Metro and Greater Minnesota agricultural preserves programs do not designate a specific state or local agency to have enforcement authority over land held in agricultural preserves.¹¹⁸

Consequently, the report recommended the state consider supplementing the agricultural preserves programs with other tools and policies to foster more effective farmland preservation.¹¹⁹ Although it listed a number of possible alternatives—for example, adding incentives to increase landowner participation in the program, focusing the program on only high-quality farmland, modifying local land use planning authority by requiring local governments to meet a statewide standard on high-quality farmland, or offering permanent easements for agricultural lands—the report did not ultimately recommend a specific course of action for promoting the long-term preservation of farmland.¹²⁰

The report’s only specific recommended change was that “the Legislature should specify who has enforcement authority and provide sanctions for those who do not follow the law.”¹²¹ The report suggested that, although various enforcement options were plausible, “one possibility would give enforcement authority to the Metropolitan Council for the seven-county metropolitan area and to the Department of Agriculture

¹¹² 2008 OLA Report, at 55.

¹¹³ 2008 OLA Report, at 57.

¹¹⁴ 2008 OLA Report, at 57-58.

¹¹⁵ 2008 OLA Report, at 59.

¹¹⁶ 2008 OLA Report, at 60-61.

¹¹⁷ 2008 OLA Report, at 60.

¹¹⁸ 2008 OLA Report, at 62.

¹¹⁹ 2008 OLA Report, at 62.

¹²⁰ 2008 OLA Report, at 62.

¹²¹ 2008 OLA Report, at 62.

for the rest of the state. This would not alter local government roles in the land preservation programs but would provide oversight in cases when the covenants are not fulfilled as the law prescribes.”¹²²

B. Key Findings and Recommendations Related to the Green Acres Program

With respect to the Green Acres Program’s effectiveness in preserving farmland, the report found the program “substantially reduces the variation in taxable value between farmland with value added by nonagricultural factors and that without.”¹²³ The report also concluded that the Green Acres Program “does not effectively preserve farmland because it does not require a long-term commitment, its benefits are small in comparison with the financial gain of selling the land, and it is not targeted to high-quality farmland.”¹²⁴

In addition, the report found a general lack of uniformity in the implementation and administration of the Green Acres Program. It made several recommendations aimed at fixing this problem. These include:

- *The Legislature should clarify who and what types of land should benefit from the Green Acres Program.*¹²⁵
- *The Legislature should change the Green Acres law by eliminating the criterion for a minimum income level if it also adds specificity to statutes for classifying property as agricultural and defining land that is “primarily” agricultural.*¹²⁶
- *The Department of Revenue should continue its efforts to make the Green Acres Program more consistent statewide. At the same time, it should make some changes including modifying its statewide approach for valuing nontillable land in the program.*¹²⁷

Subsequent to the Legislative Auditor’s report, the Legislature made a number of changes to the statutes governing the Green Acres Program. The changes most relevant to the Legislative Auditor’s Report were: elimination of the minimum income requirement; limiting the type of land that is eligible for the program by distinguishing between class 2a productive land, which is eligible for the program, and 2b rural vacant land, which is ineligible; adding a requirement that all counties

¹²² 2008 OLA Report, at 62.

¹²³ 2008 OLA Report, at 34.

¹²⁴ 2008 OLA Report, at 34.

¹²⁵ 2008 OLA Report, at 38.

¹²⁶ 2008 OLA Report, at 42.

¹²⁷ 2008 OLA Report, at 50.

implement the program; and requiring the valuation methodology to be re-examined.¹²⁸



(c) Farmers' Legal Action Group, Inc.

¹²⁸ Laws of Minnesota 2008, Regular Session, Chapter 366, Article 6, Sections 11-20; Laws of Minnesota 2009, Regular Session, Chapter 12, Article 2; Laws of Minnesota 2011, Regular Session, Chapter 13.

Appendix B

Policy and Planning Tools Used to Preserve Farmland

I. INTRODUCTION

State and local governments use a wide variety of land use policies and planning tools to preserve farmland and to prevent it from being converted to non-agricultural uses. In most cases, the use of a singular land use policy or planning tool will be insufficient to effectively preserve farmland. Instead, the coordinated use of a combination of tools is necessary.¹ Described below are the main land use policy and planning tools typically used by state and local governments to preserve farmland.²

II. GROWTH MANAGEMENT LAWS

Growth management laws are intended to control the pattern and timing of urban growth. They strive to take a comprehensive approach to regulating development and set policies to ensure that new development is primarily located within designated urban growth areas or boundaries. Growth management laws generally have two aims: (1) to promote orderly development and avoid scattered, unplanned development; and (2) to preserve specified resources by directing development away from those areas. Growth management laws can be used to protect farmland by channeling new development away from specified agricultural areas with high natural resource value, such as prime farmland.

¹ University of Pennsylvania, Department of City and Regional Planning, Daniels, Tom, *Farmland Preservation Planning in Local Land Use Planning: Costs, Planning and Effectiveness*, available at <http://nercrd.psu.edu/publications/rdppapers/farmranch.daniels.pdf> (last visited June 7, 2012); The American Planning Association, *Policy Guide on Agricultural Land Preservation* (April 25, 1999), available at <http://www.planning.org/policy/guides/pdf/agriculturallandpreservation.pdf> (last visited June 7, 2012); For additional overview, see also Elisa Paster, *Preservation of Agricultural Lands Through Land Use Planning Tools and Techniques*, 44 Nat. Resources J. 283 (2004).

² Except as noted otherwise, the information in this section of the report was obtained through fact sheets and publications produced by the Farmland Information Center, a partnership between the United States Department of Agriculture's Natural Resources Conservation Service and the American Farmland Trust, a nonprofit organization dedicated to helping "farmers and ranchers protect their land, produce a healthier environment and build successful communities." The Farmland Information Center serves as a clearinghouse for information about farmland protection and stewardship.

Growth management programs are often established at the state level. They may apply to the entire state, a particular region, or to specific high-growth counties. The programs typically establish urban growth areas and boundaries (UGBs) in which infrastructure and development is allowed. UGBs generally include all land already in urban use and land necessary for additional urban growth. Development outside of the UGBs is prohibited, or limited for a specified time period.

Growth management laws may direct local governments to identify lands with high natural resource, economic, and environmental value and protect them from development.³ Some growth management laws also limit new development to areas where public services such as water and sewer lines, roads, and schools are already in place. Growth management laws may also direct local governments to make decisions that are consistent with plans for neighboring jurisdictions. These types of provisions help ensure that different communities are working toward the same goals.

A. Benefits

- Growth management laws typically require governmental entities to inventory and identify their resources and existing infrastructure. As a result, preservation is strategically targeted toward the most valuable and vulnerable natural resources and designed to protect working farms in close proximity, thereby protecting a critical mass of farmland necessary to maintain a viable agricultural industry. At the same time, development is directed to areas with the infrastructure capacity to serve growth in that area, and scattershot development is avoided or limited.
- Growth management laws can effectively preserve farmland if they contain a strong farmland protection component that is actively monitored and enforced.⁴

³ For example, Oregon’s planning program uses UGBs to encourage future housing and development in urban areas, land already committed to rural development, and on land without natural resources. Cities are required to establish UGBs and may not expand UGBs into areas containing productive farmland unless other options for expansion have been exhausted. See *1000 Friends of Oregon v. LCDC*, 724 P.2d 268 (Or. 1986); *1000 Friends of Oregon v. LCDC*, 642 P.2d 1158 (Or. 1982). Washington’s Growth Management Act requires counties to develop inventories of important agricultural land, and adopt measures to protect those areas. Wash. Rev. Code § 36.70A.170 (2011); see also, Mark W. Cordes, *Agricultural Zoning: Impacts and Future Directions*, 22 N. Ill. U. L. Rev. 419, 424 (2002).

⁴ See, e.g., Oregon’s Land Conservation and Development Act, enacted in 1972. The Act directed county officials to inventory farmland and designate it for agriculture in their comprehensive plans. County governments were required to enact exclusive agricultural protection zoning and adopt other farmland protection policies. City governments were required to establish urban growth boundaries. The Act is generally credited with stopping the widespread conversion of farmland in Oregon. See Teri E. Popp, *A Survey of*

- Urban growth boundaries encourage orderly growth, an efficient use of natural resources, and economic and environmental resources, and inform the building industry and residents where public infrastructure will be provided for residential and commercial development.
- Well-targeted growth management laws can help to protect a critical mass of farmland and enable the continuation of commercial farming and the survival of support businesses.

B. Drawbacks

- Regional planning can be controversial and may be opposed by local governments and residents.
- Growth management laws may limit the ways in which farmers make non-agricultural use of their land and may deprive them of the ability to profit financially from the non-agricultural development of their land. For that reason, these laws may be extremely unpopular with area farmers.
- Regional planning authorities may not be elected officials and are therefore not necessarily accountable for the decisions they make.
- Regional planning authorities may not be well situated to appreciate the value of local resources and the character of those communities.
- Growth management laws are complex and generally take a long time to implement.

III. AGRICULTURAL DISTRICT PROGRAMS

Agricultural district programs are intended to stabilize the land base by protecting blocs of farmland large enough to maintain a farming community. These programs are also designed to support the business of farming by providing farmers with incentives to continue farming.⁵ The programs can be designed to protect agricultural land, reduce farming expenses, prevent land use conflicts, and encourage local planning for farmland protection.

Agricultural district programs allow the formation of special areas where commercial agriculture is encouraged and protected. Like Minnesota's

Agricultural Zoning: State Responses to the Farmland Crisis, 24 Real Prop. Prob. & Tr. J. 371, 390 (1989) (noting “commentators generally agree” that the Act “has stopped massive conversion of farmland to urban uses”). Oregon’s farmland preservation program is described in more detail in Appendix C of this report.

⁵ Note, *Farmland and Open Space Preservation in Michigan: An Empirical Analysis*, 19 U. Mich. J.L. Reform 1107, 1138 (1986); Rodney L. Clouser, *Issues at the Rural-Urban Fringe: Land Use—Agricultural Districts*, Institute of Food and Agricultural Sciences, University of Florida, Publication #FE555 (2009), available at <http://edis.ifas.ufl.edu/pdffiles/FE/FE55500.pdf> (last visited June 7, 2012).

Agricultural Preserves Program, agricultural district programs are typically authorized by state legislatures, but are implemented at the local level.

Enrollment in agricultural districts is voluntary. In exchange for enrollment, farmers receive various benefits designed to make farming a more economically viable business option. Economic benefits typically include tax relief in the form of a use-based property tax value, property tax credits, and/or tax exemptions. Most programs also provide farmers with protection against nuisance suits in an attempt to reduce land use conflicts between farmers and neighboring landowners. Some programs protect farmers from regulations that interfere with normal farming operations. Many programs impose sanctions on farmers for withdrawing from the program, including reimbursement of economic benefits received through the program.

To better maintain a land base for agriculture, some agricultural district programs protect farmland from annexation and eminent domain. These protections range from prohibitions on the use of eminent domain in agricultural districts to requiring that certain procedural processes occur prior to use of the eminent domain power.⁶ Some agricultural district programs also require state agencies to limit new infrastructure, such as roads and sewer service, in agricultural districts. In addition, some programs make Purchase of Conservation Easement program eligibility available to farmers who are enrolled in the agricultural district program.

Some states also use their programs to encourage local planning for farmland preservation. Programs may encourage local planning by: limiting agricultural district authorization to jurisdictions with farmland protection plans, requiring the adoption of land use regulations to protect farmland, involving planning bodies in the development and approval of districts, and limiting non-farm development in and around agricultural districts.

A. Benefits

- Agricultural districts help keep farming viable by securing a large land mass and providing economic benefits to farmers.
- Voluntary enrollment makes these programs more popular with farmers.
- Agricultural district programs are flexible. Eligibility criteria, benefits, and restrictions can be tailored to meet local goals.

⁶ See, e.g., N.Y. Agric. & Mkts. Law § 305(4); For further information on eminent domain and farmland preservation see *Much Ado About Kelo: Eminent Domain and Farmland Protection*, American Farmland Trust E-News (December 2005), available at <http://www.farmlandinfo.org/documents/30393/Kelo.pdf> (last visited June 7, 2012); Jess M. Krannich, *A Modern Disaster: Agricultural Land, Urban Growth, and the Need for a Federally Organized Comprehensive Land Use Planning Model*, 16 Cornell J.L. & Pub. Pol’y 57, 85 (2006).

B. Drawbacks

- Because the programs are implemented at the local level, their effectiveness depends on whether local officials promote the programs and make them widely available to farmers. In addition, programs may be inconsistently implemented and administered.
- Limits on non-farm development may not prevent expansion of public services, into agricultural areas. Eminent domain and annexation protections may not be sufficient to protect farmland.
- The benefits provided by agricultural districts may not be enough incentive for farmers to enroll or stay in programs. In areas where development pressure and land values are high, farmers may prefer not to participate in programs since the long-term future of farming in that area may be uncertain, and farmers can reap more benefits by selling their land for development than by participating in the program.

IV. AGRICULTURAL PROTECTION ZONING

Zoning is a method of land use regulation through which a local government divides an area into districts and then applies regulations in each zoning district regarding the types of uses that are allowed in that district. Zoning ordinances also set forth building guidelines and structural standards.

Agricultural protection zoning (APZ) generally refers to zoning ordinances that: (1) designate areas where farming is the primary land use; and (2) discourage, restrict, or prohibit other land uses in those areas. In addition, APZ ordinances typically limit the residential densities that are allowed in an agricultural protection land use zone.

Generally, APZ ordinances are designed to protect productive farmland and preserve the agricultural land base by keeping large areas of good farmland relatively free of non-farm development. APZ ordinances may achieve this by limiting or prohibiting nonfarm uses in agricultural zones. Additionally, APZ ordinances frequently limit the number of residential housing units allowed within a set amount of acres. APZ ordinances may limit or prohibit other nonfarm buildings as well.

Some local ordinances also authorize commercial agricultural activities, such as farm stands or on-farm processing operations that enhance farm profitability. Some also incorporate right-to-farm provisions that seek to protect farmers from nuisance lawsuits.

A. Benefits

- By restricting non-farm development in agricultural areas, APZ ensures that enough farms exist in the area to support local agricultural service businesses and maintain a viable farming community.

- APZ limits speculation related to land development and helps keep land prices affordable for farmers by restricting the development potential of large areas of agricultural land.

B. Drawbacks

- APZ ordinances are controversial because landowners fear they might reduce the market value of land. In addition, some APZ ordinances are viewed unfavorably because they limit farmers’ rights to operate farm-related businesses; for example, by prohibiting the construction and operation of on-farm processing facilities or retail businesses.
- The farmland protection offered by APZ ordinances is temporary. Local governments can amend their ordinances to remove or reduce APZ ordinances. In addition, landowners can request rezoning of their property or variances from an APZ ordinance.

V. CLUSTER ZONING

Cluster zoning applies to a form of zoning in which developable parcels are grouped on small adjacent lots, preserving the remaining area as open space. The portion of the parcel that is not developed may be restricted by a conservation easement. Cluster zoning can keep land available for agricultural use, but generally is not designed to support commercial agriculture. Instead, it is associated with suburban development.⁷ The protected land is typically owned by a developer or homeowners association, is generally located in close proximity to a development, and may not be large enough for farmers to operate a viable farm business. Consequently, cluster zoning is not an ideal tool for protecting farmland. Instead, it is better used as a vehicle to preserve open space or create buffers between farms and residential areas.

VI. CONSERVATION EASEMENTS

Conservation easements are restrictions that farmers voluntarily place on their farmland to protect it from development and keep it available for farming. Landowners typically grant a conservation easement to a qualified conservation organization or public agency, such as a land trust or a government-sponsored program for purchasing conservation easements. In turn, the organization or agency receiving the easement monitors and enforces the restrictions set forth in

⁷ See University of Pennsylvania, Department of City and Regional Planning, Daniels, Tom, *Farmland Preservation Planning in Local Land Use Planning: Costs, Planning and Effectiveness*, available at <http://nercrd.psu.edu/publications/rdppapers/farmranch.daniels.pdf> (last visited June 7, 2012); Gary Pivo, Robert Small, & Charles R. Wolf, *Rural Cluster Zoning: Survey and Guidelines*, Commentary, University of Arizona, Land Use Law (September 1990), available at <http://www.u.arizona.edu/~gpivo/Rural%20Cluster%20Guidelines.pdf> (last visited June 7, 2012).

the easement agreement. Farmers can donate or sell conservation easements to an organization or agency.

Agricultural conservation easements typically limit non-farm development and other uses incompatible with farming on the farmland that is subject to the easement. Most easements permit construction of farm buildings and do not restrict farming practices. Farmers also remain eligible for any state or federal programs for which they qualified before entering into the easement. In some cases, an easement might require the farmer to develop a soil and/or water conservation plan.

While conservation easements are intended to limit development on the property covered by the easement, they do not affect other private property rights. Therefore, farmers retain the right to use their land for farming and other purposes that do not interfere with preserving the land for continued agricultural use. Farmers who grant a conservation easement continue to hold title to their properties and may transfer their property, as they desire. All future landowners are bound by the conservation easement and must comply with the restrictions set forth by the easement agreement.

Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent, but some types of easements only impose restrictions for a limited number of years.

Farmers who donate conservation easements may be eligible for income, estate, and property tax benefits. Federal income tax benefits apply to donated easements that meet the federal definition of a charitable contribution. Qualifying farmers may take an income tax deduction for the value of the donated easement. To qualify for the deduction, the conservation easement must be designed to ensure there is a public benefit from the easement.⁸ Fifteen states (not including Minnesota) also offer a credit against state income tax liability for donated conservation easements.⁹ Property taxes may also be reduced for farmers who sell conservation easements, since the market value of their property may be lowered by the restrictions the easement places on their land.¹⁰

⁸ See I.R.C. § 170(h)(4)(A).

⁹ Minnesota Forest Resources Council, *Forestland Retention*, Appendix C – Land Transactions, at 12 (May 12, 2010), available at http://www.frc.state.mn.us/documents/council/MFRC_POLICY_Revised_AppC_LandTransactions_2010-05-12.pdf (last visited June 7, 2012).

¹⁰ See, e.g., Minn. Stat. § 273.117 (2011) (granting assessors the discretion to adjust the land value of property subject to a conservation easement).

A. Benefits

- Conservation easements are a flexible tool with the terms negotiated between the farmer and the organization or agency acquiring the easement.
- In addition to protecting farmland, conservation easements can be used to protect other natural resources that are present on a farm property, such as wetlands and wildlife habitats.
- Minnesota law recognizes permanent easements, thus allowing for long-term protection of farmland to be achieved in a single transaction.
- Conservation easements can be an effective and efficient tool for protecting farmland and preventing its conversion to non-agricultural uses. If used strategically, conservation easements can help to stabilize the land base, preserve important agricultural lands, and promote a thriving farm community.
- Significant income tax and other tax benefits available from donating easements encourage farmers to consider donating easements or selling them at less than the market value rate.

B. Drawbacks

- Easements can be complicated and time-consuming to negotiate and draft.
- To be effective, easements must be actively monitored and enforced. Funding for monitoring and enforcement activities can be difficult to obtain.¹¹
- As easements age and land ownership changes, violations may increase.
- Some counties may be resistant to conservation easements because of concerns regarding how easements affect property values and, as a result, property taxes.
- There is no statewide entity authorized to hold agricultural easements in Minnesota. As a result, agricultural conservation easements can only be used in those counties that have county level farmland protection programs and which hold conservation easements for land located in their county. The Minnesota Land Trust, the only organization which holds conservation easements throughout the state of Minnesota does not currently hold any agricultural easements and is not focused on acquiring agricultural easements.

¹¹ Minnesota Forest Resources Council, Forestland Retention, Appendix C – Land Transactions, at 10-11 (May 12, 2010), available at http://www.frc.state.mn.us/documents/council/MFRC_POLICY_Revised_AppC_LandTransactions_2010-05-12.pdf (last visited June 7, 2012).

VII. PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT PROGRAMS

In those cases where farmers sell agricultural conservation easements, the easements are typically sold to a government agency or private conservation organization that has implemented a purchase of agricultural conservation easement program (PACE). PACE is known by a variety of other terms, the most common being purchase of development rights (PDR).

Generally speaking, PACE programs are voluntary programs that pay farmers to protect their land from development. The agency or organization usually pays a farmer the difference between the value of the land for agricultural use and the value of the land for its “highest and best use”—generally considered to be residential or commercial development. In turn, the easement prohibits all future non-agricultural development of the land. Easement value is typically determined by professional appraisals. It may also be established through a numerical scoring system that evaluates a property’s suitability for agriculture.¹²

State governments can play a variety of roles in the creation and implementation of PACE programs. Some states have passed legislation allowing local governments to create PACE programs, which are implemented, funded, and administered at the local level. Others have enacted PACE programs that are implemented, funded, and administered by state agencies. In the middle of these two alternatives are PACE programs in which the state works cooperatively with local governments to purchase easements.¹³ Cooperative programs typically allow

¹² For example, the Land Evaluation and Site Assessment (LESA) is an evaluation tool that uses a numeric rating system to help prioritize agricultural land for protection. LESA was created by the USDA’s Natural Resources Conservation Service (NRCS). It has two components: land evaluation and site evaluation. The land evaluation component measures soil quality and considers capability classes, important farmland classes, soil productivity ratings and/or soil potential ratings. The site assessment component evaluates factors such as parcel size, development pressure and public benefits like wildlife habitat or scenic views. LESA systems assign points and a relative weight to each of the factors considered. The sum of the weighted ratings is the LESA score; the higher it is, the greater the significance of the property. States and localities may adapt the federal LESA system to meet the needs of their farmland protection program’s goals and priorities. James R. Pease and Robert E. Coughlin, *Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands*, second ed. (Ankeny, Iowa: Soil and Water Conservation Society, 1996), at 41. The current LESA handbook, *Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands*, provides detailed instructions on creating LESA systems. The guidebook may be obtained through the NRC website and is available at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1047455.pdf (last visited June 7, 2012).

¹³ In the absence of any state action, some local governments have created independent PACE programs. For example, Dakota County’s Farmland and Natural Areas Program (FNAP) strives to protect large contiguous agricultural areas, including through the County’s purchase of permanent easements restricting non-agricultural uses on protected

a state to set broad policies, goals, and criteria for protecting agricultural land. County or township governments select the farms that meet these criteria and which they believe are most critical to the viability of local agricultural economies, and monitor the land once the easements are in place.

A. Benefits

- The same benefits that apply to conservation easements also apply to PACE programs, with the exception of the tax benefits.
- PACE programs provide farmers with a financially competitive alternative to selling land for development. PACE programs also provide farmers with working capital that they can use to enhance the economic viability of their farm business.
- By removing the non-agricultural development potential from farmland, the future market value of the land is typically reduced. If the land is later sold, this reduction in market value may help to make the land more affordable for beginning farmers and others who want to purchase agricultural land for the purpose of farming. It may also help to facilitate the transfer of the farm to family members and reduce estate tax burdens.
- PACE involves communities in sharing the costs of protecting agricultural land so that those costs are not borne solely by farmers.
- The cost of purchasing, monitoring, and enforcing an agricultural conservation easement is regularly less than the cost of purchasing land in fee title.¹⁴

B. Drawbacks

- The same drawbacks that apply to other conservation easements also apply to PACE programs.
- Because farmers sell development rights at today’s rates they lose opportunity to capture future property value increases. At the same time, farmers are generally protected because they are willing sellers in these voluntary transactions.

farmland. See Dakota County, Farmland and Natural Areas Program Summary and Overview (updated on July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+Summary+and+Overview.htm> (last visited June 7, 2012). Dakota County’s FNAP is described in more detail in Appendix G of this report.

¹⁴ Minnesota Forest Resources Council, Forestland Retention, Appendix C – Land Transactions, at 13 (May 12, 2010), available at http://www.frc.state.mn.us/documents/council/MFRC_POLICY_Revised_AppC_LandTransactions_2010-05-12.pdf (last visited June 7, 2012).

VIII. TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS

Transfer of development rights (TDR) programs can be used to protect farmland by shifting development from an agricultural area to an area planned for residential or urban growth. TDR programs establish sending and receiving zones. The sending zones are generally located within agriculturally significant areas that should be protected from sale, subdivision, and development. The receiving zones are those areas determined to be more suitable for growth based on existing infrastructure systems and growth management strategies.

Farmers with land located in the sending zone may sell the right to develop their property to a developer or other private party. The farmer is compensated for the value of his or her development rights and a permanent agricultural conservation easement is applied to the farmland, prohibiting development on that land. In exchange, the purchaser of those rights is usually allowed to build in the receiving area at a higher density level than would ordinarily be permitted by the local zoning ordinance.

TDR programs are generally established through local zoning ordinances. The local government responsible for enforcing the zoning ordinance that created the TDR program is responsible for approving TDR transactions and monitoring land use restrictions placed on farmland pursuant to the transactions.

Although TDR programs are designed to accomplish the same purposes as PACE programs, the two programs are different. TDR programs are not publicly funded. Instead, TDR programs involve the purchase of development rights on the private market, usually by a developer. In contrast, under PACE programs, a publicly funded conservation organization or public agency reimburses farmers for giving up their development rights.¹⁵

A. Benefits

- By channeling development away from low-density spaces towards areas that have existing services and infrastructure and are thus capable of handling increased development, TDR programs allow the county to more cost-effectively absorb growth.
- The voluntary nature of TDR programs makes them more acceptable to landowners.
- TDR programs strive to compensate farmers for the value of their development rights and can provide a capital stream that farmers may use to stabilize their farming operations.

¹⁵ Note that “TDR banks” can be established to buy development rights with public funds. The bank may hold those rights and later sell them to developers and other private landowners; David L. Szlanfucht, *How to Save America's Depleting Supply of Farmland*, 4 Drake J. Agric. L. 333, 347 (1999).

- TDR programs utilize private rather than public funding to help preserve farmland.

B. Drawbacks

- Because TDR programs are dependent on the private market, they may not be effective during times when demand for development is low or nonexistent.
- Receiving area residents are often resistant to increased density.
- Local zoning ordinances may undercut the effectiveness of TDR programs if the ordinances offer developers alternative paths to achieving the same benefits offered through the TDR program. If local ordinances allow a developer to increase density via alternative methods, the TDR program will be less effective.
- Very few jurisdictions have successfully used TDR programs to protect farmland. TDR programs are complex, must be carefully designed to achieve their goals, and need to be used in conjunction with strong zoning ordinances.

IX. COMPREHENSIVE PLANNING

Comprehensive plans allow local governments to outline a vision for the future of a community. The plans set forth the policies, goals, and guidelines for development and the provision of public services. Comprehensive plans can be used to preserve farmland by designating areas for long-term agricultural use and areas where future development will be encouraged. Comprehensive plans may seek to protect farmland by incorporating PACE and TDR programs into the plan; establishing policies to encourage farming; promoting the economic viability of farms; removing barriers to farm profitability, such as restrictions to small-scale on-farm processing or direct marketing; and providing a means for farmers to advise local planners on land use policies related to agriculture.

A. Benefits

- Comprehensive plans can set a vision for the future of agriculture in a community and can strategically target high-value agricultural areas for preservation. Using comprehensive plans to preserve farmland can allow a local government to self-identify which areas are valuable to it; for example, prime soils and soils of statewide significance, other locally important soils that have the ability to grow unique local crops, or smaller parcels located near population centers that are used to grow fruits and vegetables. The plans can also include provisions to encourage certain types of farming operations and methods if that is important to a community; for example, the use of organic or sustainable farming practices, the implementation of soil and water conservation measures,

protection of natural habitats, or the production of food that is sold locally.

- A well-structured and publicized public participation process can allow local residents to weigh in on the effects of a proposed comprehensive plan.
- Many local governments are familiar with the comprehensive planning process and have the ability and expertise to do comprehensive planning.

B. Drawbacks

- The quality and content of comprehensive plans varies widely from one jurisdiction to another. As a result, these plans do not provide a systematic approach to farmland preservation.
- There is no requirement for comprehensive plans to address farmland preservation, and many do not.
- Local planners may need some training about how to incorporate farmland preservation goals, policies, and techniques into their comprehensive plans.
- Comprehensive planning is often time-consuming and expensive, and requires a high level of planning expertise.

X. FARMLAND MITIGATION LOSS LAWS AND POLICIES

Mitigation laws seek to reconcile the tension between new development and farmland preservation by requiring protection of comparable or higher quality land when farmland is converted from agriculture to another use. Mitigation laws and policies regularly require developers to protect an acre of farmland for every acre converted by placing a permanent conservation easement on another parcel. Some policies allow developers to pay a fee instead of directly protecting farmland; in turn, the fee may be used by the entity administering the mitigation program to preserve selected farmland. Other policies are directed at local governments and direct them to mitigate the loss of any agricultural land taken by eminent domain by purchasing a conservation easement or paying a fee to the state's farmland protection program to protect comparable land.¹⁶

¹⁶ See, e.g., Connecticut's Public Act 04-222, enacted in 2004. The Act the law requires a local government to either purchase an agricultural conservation easement on "an equivalent amount of active agricultural land of comparable or better soil quality" within its jurisdiction or pay a mitigation fee to the state's farmland protection program to protect similar land elsewhere in the state. The entire mitigation process is to be supervised by the state's farmland preservation program and subject to the approval of the Commissioner of Agriculture and Consumer Protection. A copy of the Act is available at <http://www.cga.ct.gov/2004/act/Pa/2004PA-00222-R00SB-00589-PA.htm> (last visited June 7, 2012). Connecticut's program is described in more detail in Appendix C of this report.

A. Benefits

- Mitigation can be useful where, due to existing development nearby, sites with high-quality agricultural soils might not be farmed even if they were not developed.
- Mitigation policies can help to ensure there is no net loss of high-quality farmland within a state.
- Mitigation policies can preserve large blocks of farmland, helping to ensure an economically viable farming community.

B. Drawbacks

- Developers may use mitigation agreements as a first option, rather than seeking to build on soils that are not in agricultural use or away from high-quality farmland.
- Mitigation may be used without adequate assurances that the soils ultimately protected were equivalent in quality and in the same part of the state as those lost to development.
- Mitigation policies and laws do not encourage more efficient development, and do not address issues related to urban/suburban sprawl.¹⁷

XI. PROPERTY TAX EQUALIZATION INCENTIVES

Property tax equalization programs are intended to help ensure the economic viability of agriculture and help to correct inequities in the property tax system. As new residents and businesses move to rural areas, local governments often raise property tax rates in response to the increased demand for public services. At the same time, these increased tax rates do not take into account farmers’ current use of the land for agricultural purposes; farmers’ lack of need for the services being requested by new residents; or the disproportionate effect the taxes have on farmers, given that their land holdings are necessarily greater than those of new residents who simply have homes in the country.

Property tax equalization programs are state-enacted laws. They generally direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value. These laws are commonly referred to as differential assessment, current use assessment, or current use valuation laws. The cost of property tax equalization programs is typically borne at the local level.

¹⁷ See American Farmland Trust, Edward Thompson, Jr., *Full Mitigation of Farmland Development: A Proposed Approach* (2007), available at <http://www.farmlandinfo.org/documents/36778/FullMitigationforFarmlandDevelopment-AnAFTProposal.pdf> (last visited June 7, 2012).

A. Benefits

- The combination of expensive real estate, the complications associated with encroaching development, and high taxes hinder farmers from expanding their farming operations, and create a strong economic incentive for farmers to stop farming and sell land for development. Property tax equalization programs help ensure that farmers who want to continue farming will not be forced to sell land just to pay their tax bills.
- Because property taxes are assessed on a per-acre basis, and farmers often own large tracts of land, farmers often pay a higher share of local property taxes than other residents. At the same time, owners of farmland demand fewer local public services than residential landowners. Property tax equalization programs help to remedy this disparity by reducing the amount of property taxes paid by farmers.
- Property tax equalization programs are common and have been widely accepted. According to the American Farmland Trust, as of 2006, all states had “at least one program designed to reduce the amount of money farmers are required to pay in local real property taxes.”¹⁸

B. Drawbacks

- Property tax equalization program benefits may be small compared to the value of land for development. As a result, program incentives may be insufficient to influence landowner decisions.
- Programs that do not require a long-term commitment are unlikely to result in the preservation of farmland.
- Programs may inadvertently subsidize real estate speculators who keep their land in agriculture until developing it.
- Programs may not strategically target the most valuable soils and the most threatened parcels of farmland.
- Programs may not be consistently implemented and administered at the local level. In addition, local officials responsible may not always have an incentive for enrolling and keeping properties in the programs, since doing so may reduce the amount of taxes received by the local government in the short term.
- Public education is required to inform landowners about property tax equalization programs and obtain their participation.

¹⁸ American Farmland Trust, Farmland Information Center Fact Sheet and Technical Memo, *Differential Assessment and Circuit Breaker Tax Programs* (2006), available at http://www.farmlandinfo.org/documents/29479/DA_8-06.pdf (last visited June 7, 2012).

XII. CIRCUIT BREAKER TAX RELIEF CREDITS

Circuit breaker tax programs offer tax credits to offset farmers’ property tax bills and reduce the amount farmers are required to pay in taxes. Unlike property tax equalization programs, most circuit breaker programs are state-funded. Some circuit breaker programs offer tax credits when a farmer’s property tax benefits exceed a specified percentage of the farmer’s income.¹⁹

Michigan and Wisconsin have taken steps to expressly tie their circuit breaker programs to farmland protection goals. In Michigan, landowners must sign ten-year restrictive agreements with their local governments to ensure the land continues to be used for agriculture during the ten-year period. In Wisconsin, local governments must adopt plans and enact APZ ordinances to ensure the tax credits are targeted to land that is used for agricultural production.

A. Benefits

- Circuit breaker programs are specifically targeted to help alleviate the financial pressures that force some farmers to sell their land for development and to make farming a more financially viable business option.
- These programs are administered at the state level, which should decrease problems related to inconsistent implementation and administration.

B. Drawbacks

- Income taxation issues are complicated and can be politically unpopular, especially during a time of budget deficits.
- Circuit breaker programs should be tied to farmland protection goals to effectively preserve farmland.

XIII. RIGHT-TO-FARM LAWS

Right-to-farm statutes seek to protect farmers from nuisance lawsuits. Most protect farmers from lawsuits brought by neighbors who moved to the area after the farming operation was established. Others only protect farmers who use accepted farming practices and comply with applicable federal and state laws. Some right-to-farm laws require that a notice be placed on deeds to properties located within agricultural areas informing buyers that they may experience inconveniences (e.g., odors, noises, and dust) due to nearby farming operations. In

¹⁹ Michigan, New York, and Wisconsin offer this option. See M.C.L. § 324.36109 (2012); N.Y. Tax Law Article 22, Part 1, § 606 (2012); Wis. Stat. Ann. §§ 71.28, 71.57-71.61 (2011).

addition, right-to-farm laws often prohibit local governments from enacting laws that would unreasonably restrict farming operations.

A. Benefits

- Right-to-farm laws may help to make farming more economically viable by protecting farmers in developing communities from the threat of lawsuits brought by new neighbors who are unfamiliar with the noise and odors typically associated with a farming operation.
- Right-to farm laws affirm that agriculture is an important part of the state and local economies.

B. Drawbacks

- Right-to-farm laws do not directly protect farmland. Nor do they protect farmers from the many pressures and inconveniences associated with development, which lead some farmers to sell their land for developments. In addition, depending on how the laws are structured, they may prevent even long-term rural residents or other farmers from suing neighbors for nuisances that are the result of inappropriate farming practices.



(c) Farmers' Legal Action Group, Inc.

Appendix C

Farmland Preservation Programs in Other States

I. INTRODUCTION

States concerned about protecting their agricultural land base have a variety of tools they may use to address these concerns. The land use tools most commonly used to preserve farmland are described in Appendix B of this report. In addition to using tools explicitly aimed at preserving farmland, many states have also adopted laws and policies that act to indirectly protect farmland by enhancing the economic opportunities for farmers, and thereby reducing pressure on the landowner to sell or take the land out of production.

This section will first discuss the farmland preservation efforts of four different states, each taking a slightly different approach to the issues. Although many states have farmland preservation programs or policies in place, we chose to examine those of these particular states because they represent an array of approaches, and because some aspects of their experiences with farmland preservation may be instructive for Minnesota. Thereafter, this section will also describe examples of state efforts to develop policies that promote the purchase of food grown within the state as a means of providing enhanced economic opportunities for farmers.

II. CONNECTICUT – EMPHASIS ON DIRECT PURCHASE OF DEVELOPMENT RIGHTS

A. Origins

Connecticut's current farmland preservation efforts have their origins in the mid-1970s. In 1974, the Governor's Task Force on the Preservation of Agricultural Lands in Connecticut made recommendations regarding the amount of farmland acreage necessary to achieve certain levels of local food consumption. The Task Force also surveyed farmland owners and discovered that approximately half were willing to sell their development rights.¹ As a result, a law was passed in

¹ Chloe Bradley Wardropper, *My Land or Our Land: Farmland Preservation in Connecticut*, at 79-80 (April 2009), available at http://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1284&context=etd_hon_theses&sei-redir=1#search=my+land+or+our+land+farmland+preservation+connecticut (last visited June 12, 2012).

1978 creating the Connecticut Farmland Preservation Program (CFP). The law designated funds and created an infrastructure for state-level purchase of development rights as a means of preserving state farmland.² CFP’s declared goal is to preserve 130,000 acres of farmland, with 85,000 acres specifically designated as “cropland.”³

B. Program Structure

Through the Connecticut Farmland Preservation Program, the state purchases development rights on eligible land from willing sellers. Landowners interested in participating in CFP apply directly to the Connecticut Department of Agriculture, where the Commissioner assesses the property using established criteria such as the percentage of prime and important agricultural soils and cropland—as classified by the U.S. Department of Agriculture’s National Resources Conservation Service—present on the property, the parcel size, and proximity to other active farmland, protected lands, and farm services. Other factors to be considered by the Commissioner in deciding whether to acquire development rights on agricultural land include, but are not limited to: (1) the risk that the land will be sold for nonagricultural purposes; (2) the land’s current productivity and the likelihood of continued productivity; (3) the degree to which the acquisition would contribute to the preservation of the agricultural potential of the state; (4) any encumbrances on the land; (5) the cost of acquiring the development rights; and (6) the degree to which the acquisition would mitigate flood hazards.⁴

If a farm meets the minimum scoring criteria, the Commissioner may accept the application. The value of development rights is determined by appraisal as the difference between a farm’s unrestricted market value and its market agricultural value.⁵ The Commissioner has discretion to accept the property as a gift, pay the full value of development rights up to a cap of \$20,000 per acre, or negotiate any

² Paul Frisman, *Genesis of the Farmland Preservation Program*, OLR Research Report (September 9, 2005), available at <http://www.cga.ct.gov/2005/rpt/2005-R-0684.htm> (last visited June 12, 2012).

³ Chloe Bradley Wardropper, *My Land or Our Land: Farmland Preservation in Connecticut*, at 80 (April 2009), available at http://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1284&context=etd_hon_theses&sei-redir=1#search=my+land+or+our+land+farmland+preservation+connecticut (last visited June 12, 2012). This specification is a result of agricultural land definitions broadly inclusive of pasture and forested land in addition to cropland. See Conn. Gen. Stat. § 1-1(q) (2012) (defining “agriculture” and “farming” broadly).

⁴ Conn. Gen. Stat. § 22-26cc(a) (2012).

⁵ Connecticut Department of Agriculture, *Farmland Preservation Program*, available at <http://www.ct.gov/doag/cwp/view.asp?a=3260&q=399016> (last visited June 12, 2012).

payment amount in between.⁶ Landowners who donate an agricultural conservation easement or sell one at less than its appraised value in a bargain sale may claim a federal income tax deduction equal to the amount of their donation.⁷ Easements must conform to several requirements, such as inclusion of state easement language, allowance only of agricultural and compatible uses, and prohibition of subdivision or conversion to non-agricultural use; however, public access is not required.⁸ The Department is also authorized, with the approval of the State Properties Review Board, to purchase property in fee simple with the purpose of reselling it exclusive of development rights upon consideration of the above factors and the likelihood of subsequent sale.⁹

As an offshoot of the CFP, the Joint State-Town Farmland Preservation Program was established in 1986 to encourage towns to create local farmland preservation programs that limit conversion of their prime farmlands to nonagricultural uses.¹⁰ It is administered by the Department of Agriculture as part of the CFP, with the same baseline project eligibility requirements and no separate state funding.¹¹ Participating municipalities are required to adopt a policy in support of farmland preservation and establish an agricultural land preservation fund.¹² Eligible

⁶ See Conn. Gen. Stat. § 22-26gg (2012) (specifying that “individual landowners applying for such program shall be eligible to receive not more than twenty thousand dollars per acre for development rights”).

⁷ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 1, 5 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012); see also Land Trust Alliance, *Conservation Donation Rules*, available at <http://www.landtrustalliance.org/policy/tax-matters/rules/conservation-donation-rules> (last visited June 12, 2012).

⁸ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

⁹ Conn. Gen. Stat. § 22-26jj (2012).

¹⁰ See Conn. Gen. Stat. § 22-26cc(e) (2012) (clarifying that a municipality and the state may jointly own development rights, provided joint ownership by the municipality is limited to land within its boundaries); Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut's Agricultural Lands* (2005), <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

¹¹ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut's Agricultural Lands* (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

¹² See Conn. Gen. Stat. § 22-26cc(e) (2012) (allowing joint ownership where a municipality “paid a part of the purchase price from a fund established pursuant to section 7-131q”); Conn. Gen. Stat. § 7-131q(b) (“Any municipality, by vote of its legislative body, may establish a special fund, which shall be known as the Agricultural Land Preservation Fund.” Moneys deposited in the fund may come from “whatever

property must have a minimum gross value of annual agricultural production of \$10,000.¹³ Priority is given to projects that comply with local or regional open space or conservation and development plans.¹⁴

Towns may solicit willing landowners to apply to the CFP; the state and town then work together to purchase development rights jointly.¹⁵ An applicant’s score can be raised by the opportunity to leverage local funds for the purchase.¹⁶ Depending on how much active agricultural land is located within a three-mile radius of an applicant’s farm, the state is authorized to pay between 10 percent and 75 percent of the value of development rights.¹⁷ Easements must include the same restrictions required of all easements acquired through the CFP.¹⁸

Prior to 2007, the State Bond Commission had to approve each individual farm project, causing significant delays for landowners. A 2007 law removed this requirement and created a Farmland Preservation Advisory Board within the Department of Agriculture to help review and guide policies and initiatives on farmland preservation, as well as provide comments and recommendations to assist the Commissioner in processing purchase of development (PDR) applications.¹⁹

source and by whatever means, as gifts, . . . grants or loans for agricultural land preservation purposes” or appropriation by the municipality.).

¹³ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

¹⁴ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

¹⁵ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands* (2005), <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

¹⁶ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 17 (2005), <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

¹⁷ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

¹⁸ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

¹⁹ See Conn. Gen. Stat. § 22-261l (2012) (establishing the Farmland Preservation Advisory Board and its responsibilities). The twelve members of the advisory board must include: 1. a University of Connecticut Cooperative Extension Service representative appointed by the governor; 2. a Connecticut Farm Bureau representative, who may be an owner and operator of a Connecticut farm, appointed by the governor; 3. five Connecticut

Until 2008, to be eligible for CFP a property had to include a minimum of 30 acres of cropland or be adjacent to a larger parcel.²⁰ A law passed in 2008 gives the Commissioner discretion to acquire development rights on parcels that fail to meet established criteria for “reasons of size, soil quality or location but that may contribute to local economic activity through agricultural production.”²¹ This Community Farms Program was created to protect farms important to communities for their historical contributions to town character or maintenance of a connection to agricultural activity and local produce, despite their failure to meet the broader program’s minimum established criteria. In December 2011, the Department announced that \$2 million had been authorized for the program.²²

C. Funding

Funding for the CFP initially came from state bond funds. The Community Investment Act (CIA), passed in 2005, provides a source of funding that, while small, is more reliable than bonding commitments and is considered quite innovative as a source of revenue outside the General Fund.²³ The CIA requires town and city clerks to collect a \$40 fee for all documents filed on municipal land records, which is then remitted to a dedicated fund to be divided equally among four state agencies and used for several purposes, including farmland preservation.²⁴ A 2007 Act also created “lump sum bonding” to ensure that \$5 million would be released to the Department of Agriculture every six months

farm owners and operators appointed by the governor, Senate president pro tempore, the House speaker, the Senate majority leader, and House majority leader; 4. a Connecticut Agriculture Experiment Station representative appointed by the Senate minority leader; 5. a Connecticut Conference of Municipalities representative appointed by the House minority leader; 6. a representative of an organization whose mission includes farmland preservation, who may be an owner and operator of a Connecticut farm, appointed by the Senate president pro tempore; 7. a representative of an organization whose mission includes food security, appointed by the House speaker; and 8. a representative of a financial lending organization whose clients include Connecticut farm owners and operators, appointed by the governor. Members are appointed for three-year terms and are then eligible for reappointment.

²⁰ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

²¹ Conn. Gen. Stat. § 22-26nn (2012).

²² State of Connecticut, Department of Agriculture, *Agriculture Commissioner Reviczky Announces Pilot Program for Community Farms Preservation*, December 6, 2011, available at http://aginfolgv.org/agvocate_program/PDFs%20and%20Documents/2011_dec_6_community_farms_program_final.pdf (last visited June 12, 2012).

²³ See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

²⁴ See Conn. Gen. Stat. § 7-34a(e) (directing clerks to collect the \$40 fee, retaining \$4 for local capital improvements and remitting the remaining \$36 to the General Fund).

to enable the Department to move forward expeditiously on farmland protection projects rather than seeking Bond Commission approval for each transaction.²⁵ In 2009, farmland preservation advocates worked to defend the CIA against several proposals to use the funds to address state budget deficits.²⁶ The Act survived, but some of the money was rerouted to assist the state’s dairy farmers.

The Joint Town-State Program stretches scarce state funding for farmland preservation by leveraging local funding for projects that are identified as particularly important for the locale and by encouraging towns to seek outside funding—such as through the federal Farm and Ranch Lands Protection Program or private land conservation organizations—for PDR projects.²⁷

D. Impact

Since the Connecticut Farmland Preservation Program began, development rights to 37,262 acres have been acquired to protect 283 farms.²⁸ Over half of these protected acres are classified as prime and important farmland soils, and the program continues to work towards its ultimate goal of preserving 85,000 acres of cropland on 130,000 acres of Connecticut farmland. The program has been criticized for protecting an average of only 1,100 acres per year for each year of its 33-year acquisition history and falling more than 90,000 acres short of its already “modest” goal.²⁹ Critics say that, while the rate of farmland loss continues to increase, Connecticut’s commitment to farmland preservation is seen as lagging behind other northeastern states, with a cumulative total of \$24.20 per capita spent on the program between 1978 and 2005. In contrast, during this same period, New Jersey spent a cumulative total of \$43.26 per capita; Massachusetts and Maryland also outspent Connecticut.³⁰ While many states in the region have increased PDR program expenditures to combat rising land prices and increased development pressure, critics argue that Connecticut “has provided only minimal

²⁵ See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

²⁶ See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

²⁷ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands* (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

²⁸ Connecticut Department of Agriculture, *Farmland Preservation Program*, available at <http://www.ct.gov/doag/cwp/view.asp?a=3260&q=399016> (last visited June 12, 2012).

²⁹ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 3 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³⁰ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 4 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

and sporadic funding to the program despite some of the highest real estate values of the region.”³¹

Connecticut’s original process requiring the State Bond Commission’s advance approval of all acquisitions was widely criticized for its lengthy delays and the resultant loss of projects as landowners grew tired of waiting for a decision.³² This concern was addressed by the introduction of lump sum bonding in 2007, but some critics feel that the core problem of delays has been “exacerbated by a shortage of staff to initiate, negotiate and close acquisition projects and remain in contact with anxious landowners, as well as to monitor land that is already enrolled in the program.”³³ Other concerns include “the lack of opportunity for land trusts to participate in the program and . . . concerns about estate buyers and the continued affordability of land enrolled in the program.”³⁴ Some farmers also find the program difficult to access and complain that it does not pay enough.³⁵ Concerns that the \$10,000 per acre cap limited agricultural preservation spending power too severely were addressed by raising the cap to \$20,000 per acre in 2008, which farmland preservation advocates largely saw as a great success in helping the program keep pace with rising farm real estate values.³⁶

E. Connecticut’s Open Space and Watershed Land Acquisition Grants Program

Established in 1998,³⁷ the Connecticut Open Space and Watershed Land Acquisition Grants Program is a separate PDR program providing financial

³¹ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 18 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³² Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 18 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³³ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 19 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³⁴ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 19 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³⁵ Working Lands Alliance, *A Call to Farms!: A Mid-Decade Look at Connecticut’s Agricultural Lands*, at 19 (2005), available at <http://www.workinglandsalliance.org/pages/documents/ACALLTOFARMS.pdf> (last visited June 12, 2012).

³⁶ American Farmland Trust, *Connecticut Project Archive: Farmland Wins in 2008 Connecticut Legislative Session* (2009), available at <http://www.farmland.org/programs/states/ct/ct-project-update-archive.asp> (last visited June 12, 2012).

³⁷ See, *An Act Concerning Open Space and Watershed Land Acquisition*, Pub. Act 98-157 (1998), available at <http://www.cga.ct.gov/ps98/Act/pa/1998PA-00157-R00HB-05034-PA.htm> (last visited June 19, 2012).

assistance to towns, non-profit conservation organizations, and water companies looking to permanently protect important community lands, including local farmland.³⁸ The program is administered by the Connecticut Department of Environmental Protection, and can be used to fund either the purchase of farmland outright in fee or the purchase of development rights.³⁹ Landowners cannot apply directly to the program but must work with a sponsoring town, water company, or land conservation organization.⁴⁰ Applications are only accepted during specific grant rounds that are typically held one to two times per year depending on the availability of funding.⁴¹

In making grants, the Commissioner of Environmental Protection gives priority to land vulnerable to development, projects in compliance with any local or regional open space plans or plans of conservation and development in place, and land with diverse categories of natural resources.⁴² A 21-member Natural Heritage, Open Space and Watershed Land Acquisition Review Board assists and advises

³⁸ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 10 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

³⁹ See Conn. Gen. Stat. § 7-131d (2012) (“The program shall provide grants to municipalities and nonprofit land conservation organizations to acquire land or permanent interests in land for open space and watershed protection. . . . Grants may be made . . . to match funds for the purchase of land or permanent interests in land which . . . preserves local agricultural heritage. . . . Such grant shall be used for the acquisition of land, or easements, interests or rights therein . . . for purposes set forth in this section.”).

All land or interests in land acquired under this program shall be preserved in perpetuity predominantly in their natural scenic and open condition for the protection of natural resources.

⁴⁰ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 9 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

⁴¹ American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 9 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012).

⁴² American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf (last visited June 12, 2012). See Conn. Gen. Stat. § 7-131f (2012) (Considerations for Approving Grants from Funds Authorized Prior to July 1, 1998); Conn. Gen. Stat. § 7-131e(a) (2012) (“[A]dditional consideration shall be given to: (A) Protection of lands adjacent to and complementary to adjacent protected open space land . . . ; (B) equitable geographic distribution of the grants; (C) proximity of a property to urban areas with growth and development pressures or to areas with open space deficiencies and underserved populations; (D) protection of land particularly vulnerable to development incompatible with its natural resource values . . . ; (E) consistency with the state’s plan of conservation and development; [and] (F) multiple protection elements. . . .”).

the Commissioner in making grant award decisions.⁴³ Grants can be made to municipalities and nonprofit land conservation organizations for up to 65 percent of the fair market value of a parcel of land or development rights, or up to 75 percent for land located within “distressed municipalities or targeted investment communities.”⁴⁴ A permanent conservation easement must be executed at closing for any property purchased with grant funds, providing that the property will remain “predominantly in its natural and open condition for the specific conservation” purpose for which it was acquired in perpetuity.⁴⁵ The easement must generally also include a requirement that the general public is allowed access to the property for appropriate recreational purposes, but the Commissioner retains discretion to waive this provision where public access would be disruptive of agricultural activity occurring on the land.⁴⁶ Funding for this program comes from state bonds and the Community Investment Act.⁴⁷

One institutional author has offered several suggestions for states looking to replicate Connecticut’s Open Space and Watershed Land Acquisition Grants Program, based on some of the difficulties the program has experienced.⁴⁸ When the program first began, Connecticut used the Uniform Standards of Professional Appraisal Practice, a state pricing standard, to determine the value of property. This standard significantly raised the potential value of properties by considering

⁴³ Conn. Gen. Stat. § 7-131e(c) (2012).

⁴⁴ Conn. Gen. Stat. § 7-131g(b) (2012). A “distressed municipality” is defined as “any municipality in the state which, according to the United States Department of Housing and Urban Development meets the necessary number of quantitative physical and economic distress thresholds . . . , or any town within which is located an unconsolidated city or borough which meets such distress thresholds” Conn. Gen. Stat. § 32-9p(b) (2012). A “targeted investment community” is defined as “a municipality which contains an enterprise zone [as defined in the Connecticut General Statutes].” Conn. Gen. Stat. § 32-222(u) (2012).

⁴⁵ Conn. Gen. Stat. § 7-131d(e) (2012).

⁴⁶ Conn. Gen. Stat. § 7-131d(e) (2012).

⁴⁷ Conn. Gen. Stat. § 7-131e(e) (2012) (“There is established an open space and watershed land acquisition account within the General fund which shall consist of any funds required or allowed by law to be deposited into the account including, but not limited to, gifts or donations received for the purposes of [the grant program.]”); Conn. Dep’t of Agric., *The Community Investment Act: Investing in our Home, Heritage and Land* (2005), available at <http://www.ct.gov/doag/lib/doag/pdf/pa228printedversion.pdf> (last visited June 12, 2012) (“The Community Investment Act will provide up to \$5 million annually to provide increased funding to the CT Department of Environmental Protection for [the] Open Space and Watershed Land Acquisition Grant Program.”).

⁴⁸ New England Environmental Finance Center, *Policy Tools for Smart Growth in New England*, at 5 (November 2006), available at http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf (last visited June 12, 2012).

future value under other uses.⁴⁹ The state later adopted a federal pricing mechanism, the Uniform Appraisal Standards for Federal Land Acquisition, which determines property value based on current use.⁵⁰ Next, the ability of the program to negotiate a fair purchase price for properties has been adversely affected by some Connecticut communities paying above the appraised market value in an effort to quickly secure certain properties. To prevent this from happening, it is recommended that states consider either setting a maximum allowable percentage above the appraised market value for property purchased using program funds, or offer sellers a tax break on gains made from the sale in an effort to keep purchase prices closer to fair market value.⁵¹ Finally, in some cases, the program has seemingly become a tool of last resort, as many of the purchased properties were not considered until threatened by subdivision development. Purchase of property under the grant program is less expensive than expanding sewer, water, and school systems to new subdivisions, and is therefore more desirable to municipalities. To avoid this outcome, it is recommended that states consider including a requirement in comprehensive or open space plans that property be previously identified as desirable before it may be purchased.⁵²

III. OREGON – COMPREHENSIVE LAND USE PLANNING

A. Origins

The framework for Oregon’s current land use planning program was created in 1973. Instead of mandating a state plan, the legislation called for city and county land use plans and regulations to implement statewide planning goals. It also created the Land Conservation and Development Commission (LCDC), a seven-member volunteer citizen board staffed by a new Department of Land Conservation and Development (DLCD), the state’s primary land use planning and regulatory agency.⁵³

⁴⁹ New England Environmental Finance Center, *Policy Tools for Smart Growth in New England*, at 5 (November 2006), available at http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf (last visited June 12, 2012).

⁵⁰ New England Environmental Finance Center, *Policy Tools for Smart Growth in New England*, at 5 (November 2006), available at http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf (last visited June 12, 2012).

⁵¹ New England Environmental Finance Center, *Policy Tools for Smart Growth in New England*, at 5 (November 2006), available at http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf (last visited June 12, 2012).

⁵² New England Environmental Finance Center, *Policy Tools for Smart Growth in New England*, at 6 (November 2006), available at http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf (last visited June 12, 2012).

⁵³ See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315 (1998). The LCDC members are appointed to staggered four-year terms by the Governor and confirmed by the Senate.

The 1973 law tasked the LCDC with adopting statewide land use planning goals consistent with statutory requirements.⁵⁴ After conducting informal meetings and several public hearings, LCDC adopted 19 state planning goals attempting a compromise between development and conservation objectives.⁵⁵ These goals are designed to encourage confinement of development and redevelopment to urban areas already in existence, thus protecting natural resources and farm and forest lands from further urban sprawl.⁵⁶ A separate law also enacted in 1973 significantly strengthened the state's exclusive farm use (EFU) zoning statutes.⁵⁷

B. Structure

1. All city and county plans must meet statewide planning goals.

The 1973 law directs all cities and counties to prepare or amend their own comprehensive plans to achieve the statewide planning goals adopted by LCDC.⁵⁸ Such plans must generally include background inventories and technical information, policies regarding future land uses, and implementing measures such as zoning and subdivision control ordinances.⁵⁹

The LCDC issued guidelines to serve as suggestions about how the statewide planning goals should be applied in city and county comprehensive plans, but these guidelines were not mandatory.⁶⁰ The city and county comprehensive plans

⁵⁴ Or. Rev. Stat. § 197.040 (2012) (outlining duties and directing commission to “adopt rules that it considers necessary to carry out” the statutory requirements). In *Meyer v. Lord*, 586 P.2d 367 (Or. App. 1978), the statutory scheme establishing the LCDC and granting it authority to establish statewide land use planning goals was held not to delegate legislative power in violation of the Oregon Constitution.

⁵⁵ Oregon Department of Land Conservation and Development, *Statewide Planning Goals and Guidelines* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 13, 2012).

⁵⁶ Oregon Department of Land Conservation and Development, *Statewide Planning Goals and Guidelines* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 13, 2012).

⁵⁷ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 San Joaquin Agric. L. Rev. 1, 2-3 (2008-2009); see Or. Rev. Stat. §§ 215.203 – 215.311 (2012).

⁵⁸ Or. Rev. Stat. § 197.175 (2012).

⁵⁹ Oregon Department of Land Conservation and Development, *Planning for Natural Hazards: Key Elements of a Comprehensive Plan in Oregon's Statewide Land Use Planning Program* (July 2000), available at http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t (last visited June 12, 2012).

⁶⁰ Oregon Department of Land Conservation and Development, *Oregon's Statewide Planning Goals and Guidelines* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 12,

were required, however, to specify how they meet the statewide goals, either under the Commission’s guidelines or a specified alternative means.⁶¹ Consequently, although each plan had to comply with the mandatory statewide planning goals, cities and counties were able to incorporate the goals in a way that recognized and addressed unique local conditions.⁶² The Oregon Legislature has appropriated over \$25 million in planning grants to assist local governments with the cost of creating their comprehensive plans.⁶³

2. Plans must use exclusive farm use zoning to preserve agricultural lands.

Among the statewide goals adopted by LCDC was the preservation and maintenance of agricultural lands for farm use.⁶⁴ The farmland preservation goal included a detailed definition of “agricultural land” and required counties to adopt or revise their comprehensive plans and other land use regulations to protect those lands.⁶⁵ To this end, the goal required cities and counties to incorporate the

2012). The goals and guidelines were later incorporated into Oregon’s statutory framework and administrative rules.

⁶¹ Oregon Department of Land Conservation and Development, *Oregon’s Statewide Planning Goals and Guidelines*, Goal 2, Part III (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 12, 2012); Or. Rev. Stat. § 197.175 (2012) (directing cities and counties to adopt comprehensive plans).

⁶² See Oregon Department of Land Conservation and Development, *Oregon’s Land Use Planning Program: Providing Regional Solutions for a Diverse State* (May 14, 2008), available at www.lcd.state.or.us/LCD/docs/publications/regdiff.pdf (last visited June 13, 2012), for a full discussion of the ways the program recognizes local and regional differences.

⁶³ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 San Joaquin Agric. L. Rev. 1, 11 (2008-2009); see Or. Rev. Stat. §§ 215.203 – 215.311 (2012).

⁶⁴ Farmland protection also arises under others of the statewide goals, such as “Recreational Needs,” where development on sites with “50 or more contiguous acres of unique or prime farm land identified and mapped by the United States Natural Resources Conservation Service . . . or within three miles of a High-Value Crop Area” is prohibited. Generally speaking, a “High-Value Crop Area” means “an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of \$1,000 per acre per year. Oregon Department of Land Conservation and Development, *Oregon’s Statewide Planning Goals and Guidelines* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 12, 2012).

⁶⁵ The farmland preservation goal defined “agricultural land” differently for two defined regions of the state (East and West): those lands predominantly composed of Class I-IV soils in western Oregon and Class I-VI soils in eastern Oregon, as well as other lands “suitable for farm use” and other “lands necessary to permit farm practices” on adjacent or nearby lands. See Or. Admin. R. 660-015-0000(3) (1975) (amended 1993, 1995).

following into their plans: (1) an inventory and designation of agricultural lands; (2) the use of EFU zoning provisions to protect these lands; and (3) a standard for the use and development of minimum lot sizes in EFU zones.⁶⁶ Consequently, the farmland preservation goal adopted by the LCDC changed the use of statutory (EFU) zones from voluntary to mandatory and required EFU zoning for properties meeting the “agricultural lands” definition developed by the LCDC.⁶⁷

Subject to certain statutory exceptions, EFU land is to be used only for farming.⁶⁸ New farm and nonfarm dwellings are restricted, and minimum parcel sizes ensure that farmland is kept in parcels large enough to remain efficient for commercial production.⁶⁹ To limit speculative impacts on land values that affect farmers’ ability to afford farmland, as well as to serve as an incentive for keeping land in farm use, land in EFU zones is assessed for its farming value rather than development value.⁷⁰

3. Local governments must establish Urban Growth Boundaries to contain urban sprawl.

Another statewide goal sought to contain urban sprawl while providing for “... an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”⁷¹ To meet this goal, cities, counties, and regional governments were required to establish and maintain Urban Growth Boundaries (UGB) to provide for urban land needs, and designate urban and rural lands and areas that would eventually be urbanized.⁷²

⁶⁶ See Or. Admin. R. 660-015-0000(3) (1975) (amended 1993, 1995); Or. Admin. R. 660, Div. 33 (1993) (amended 1994). Note that, although the farmland preservation goal was amended between 1993–1995, “its basic form and substance remain the same.” Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 San Joaquin Agric. L. Rev. 1, 51 (2008-2009).

⁶⁷ Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 995 (1998).

⁶⁸ Or. Rev. Stat. § 215.203(1) (2012).

⁶⁹ Or. Rev. Stat. § 215.780 (2012).

⁷⁰ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 San Joaquin Agric. L. Rev. 1, 4 (2008-2009); see Or. Rev. Stat. §§ 215.203 – 215.311 (2012).

⁷¹ Oregon Department of Land Conservation and Development, *Oregon’s Statewide Planning Goals and Guidelines - Goal 14: Urbanization* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 13, 2012).

⁷² Oregon Department of Land Conservation and Development, *Oregon’s Statewide Planning Goals and Guidelines - Goal 14: Urbanization* (March 12, 2010), available at

Establishment and changes of these boundaries were supposed to be based on a “demonstrated need to accommodate long range urban population” and a “demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination” of these needs.⁷³ In addition to the existing urban core, the boundaries include undeveloped land sufficient to accommodate growth within the planning period, generally twenty to fifty years. Land included within the UGB carries a presumption that it will eventually be developed, while outside the UGB urban uses are prohibited.⁷⁴ Local governments must show that needs cannot reasonably be met within the existing UGB before it can be expanded.⁷⁵

4. LCDC reviews plans for consistency with statewide goals.

LCDC was given responsibility for reviewing local plans and assessing their consistency with the statewide goals. Citizens had the opportunity to participate at all phases of the process through open hearings where interested parties could voice concerns or share comments. Based on its own analysis and the public testimony, LCDC could then accept a plan and its accompanying regulations either wholesale or piecemeal, or even reject them altogether.⁷⁶ As agency “orders,” these decisions were appealable to the court of appeals.⁷⁷ Generally, a local plan required three reviews before receiving approval, referred to as “acknowledgement of compliance.”⁷⁸ The final local plan and regulations were

http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf
(last visited June 13, 2012).

⁷³ Oregon Department of Land Conservation and Development, *Oregon’s Statewide Planning Goals and Guidelines - Goal 14: Urbanization* (March 12, 2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf (last visited June 13, 2012).

⁷⁴ Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 317 (1998).

⁷⁵ Or. Rev. Stat. § 197.626 (2012) (“A local government shall submit for review and the Land Conservation and Development Commission shall review . . . [a]n amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary”); Or. Rev. Stat. § 197.766 (2012) (“A decision of a local government to expand an urban growth boundary shall comply with the provisions of ORS 197.296.”); Or. Rev. Stat. § 197.296 (2012) (detailing factors relevant to review of the comprehensive plan and urban growth boundary determinations).

⁷⁶ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 San Joaquin Agric. L. Rev. 1, 11 (2008-2009); see Or. Rev. Stat. §§ 215.203 – 215.311 (2012).

⁷⁷ See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315 (1998).

⁷⁸ See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315 (1998).

acknowledged in 1986. This “highly formal and public process of analyzing and reviewing plans, with clear opportunities for appeal” is considered a key feature of the Oregon program.⁷⁹

Now that all plans have been acknowledged, the statewide goals no longer apply. Land use decisions must instead comply with the plans in place.⁸⁰ However, when plans and regulations are amended, unacknowledged amendments are still expected to comply with the goals to prevent the gradual breakdown of state policy objectives.⁸¹ In addition to piecemeal amendments, a comprehensive “periodic review” of each plan is required every five to ten years to evaluate its performance, respond to changing laws and circumstances, and to coordinate with new state agency programs.⁸² LCDC or its staff generally oversees the review process.⁸³ The Commission has the power to take enforcement action against local governments that habitually violate their plans or fail to update through periodic review.⁸⁴ Citizens may also petition the LCDC for the adoption of an enforcement order against a local government under certain circumstances.⁸⁵

5. Citizens have an opportunity to contest land use decisions outside of the court system.

Procedural protections for participants in quasi-judicial land use proceedings are another key feature of the Oregon planning program.⁸⁶ These procedural guarantees are intended to provide all citizens either a hearing or some other opportunity to participate, and to assure that decisions are not made for improper

⁷⁹ Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315-16 (1998).

⁸⁰ Oregon Department of Land Conservation and Development, *Planning for Natural Hazards: Key Elements of a Comprehensive Plan in Oregon’s Statewide Land Use Planning Program*, Chapter 2-3 (July 2000), available at http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t (last visited June 12, 2012).

⁸¹ Or. Rev. Stat. § 197.175(2)(e) (2012).

⁸² Or. Rev. Stat. § 197.628 (2012).

⁸³ Oregon Department of Land Conservation and Development, *Planning for Natural Hazards: Key Elements of a Comprehensive Plan in Oregon’s Statewide Land Use Planning Program*, Chapter 2-3 (July 2000), available at http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t (last visited June 12, 2012).

⁸⁴ Or. Rev. Stat. § 197.320 (2012) (Power of Commission to Order Compliance with Goals and Plans). See also Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 316 (1998).

⁸⁵ Or. Rev. Stat. § 197.319 (2012) (Procedures Prior to Request of an Enforcement Order).

⁸⁶ Or. Rev. Stat. § 197.763 (2012).

reasons.⁸⁷ In 1979, the Land Use Board of Appeals (LUBA) was created to hear all appeals from local land use decisions, as well as some decisions made by state agencies.⁸⁸ The process of review by LUBA is intended to be much simpler and faster than that of the circuit courts.⁸⁹

C. Impact

A study performed between 1985 and 1989 displayed mixed success of the Urban Growth Boundaries (UGB) established under the plans, with more than half of all new residential units in Deschutes County built outside the UGBs at one extreme, but 95 - 99 percent of Portland development occurring within the UGB at the other.⁹⁰ Other study areas fell between these two extremes. One theory for this is that the “more dominant urban areas are in regional development control policy-making, the more likely the region’s decisions will be consistent with statewide planning goals.” The LCDC recognized that “some recalcitrance in local implementation of state growth management policies” can lead to erosion of statewide policies at the local level.⁹¹ Some comparisons between states also suggest that UGBs have helped curb the national trend of falling urban densities.⁹²

The Portland metropolitan area, located right on the state border, is technically made up of three Oregon counties and one Washington county. This created a natural “control group” by which to measure the success of Oregon’s urban containment effort in its three counties against the similarly situated Washington county not subject to Oregon’s laws. Comparisons revealed that the vast majority of land urbanized in Oregon between 1980 and 1994 took place within UGBs,

⁸⁷ 1000 Friends of Oregon, *The Citizen’s Guide to Land Use Appeals* (December 2009), available at http://www.friends.org/sites/friends.org/files/CitizensGuideToLUBA_Final.pdf (last visited June 14, 2011).

⁸⁸ State of Oregon, Land Use Board of Appeals, *Frequently Asked Questions*, available at <http://www.oregon.gov/luba/index.shtml> (last visited June 14, 2012).

⁸⁹ 1000 Friends of Oregon, *The Citizen’s Guide to Land Use Appeals*, at 3 (December 2009), available at http://www.friends.org/sites/friends.org/files/CitizensGuideToLUBA_Final.pdf (noting that the LUBA process “is designed to resolve land use appeals in roughly four months”) (last visited June 18, 2012).

⁹⁰ Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 317 (1998).

⁹¹ Arthur Nelson & Terry Moore, *Assessing Growth Management Policy Implementation: Case Study of the United States’ Leading Growth Management State*, 13 Land Use Policy 241, 253 (1996).

⁹² Arthur Nelson & Terry Moore, *Assessing Growth Management Policy Implementation: Case Study of the United States’ Leading Growth Management State*, 13 Land Use Policy 241, 253 (1996).

while the amount of very low-density development in Washington far exceeded the total amount of low-density sprawl in all three Oregon counties combined.⁹³

About 97 percent of all private land in Oregon located outside UGBs is zoned for farming, ranching, or forestry.⁹⁴ Farm or forest land falling within a UGB is generally designated for eventual development. An extensive literature review has revealed conflicting studies and opinions on the degree of success achieved by Oregon's land use planning program in conserving forest and farmland.⁹⁵ One category of studies examined historical land use trends to assess farm and forest loss to development, as well as fragmentation through parcelization. While the growing number of small farm and forest properties may not immediately signify a net loss of resource land, many are concerned that parcelization is resulting in greater costs for farm and forest operations that could ultimately lead to decline.⁹⁶ This concern stems from studies suggesting that "shadow conversion" can result from parcelizing land adjacent to working farms and forests, often for hobby uses, whereby the costs of doing business in a non-production-oriented atmosphere begin to outweigh economic benefits. A related concern is that the growing difference between what landowners can earn from forestry or farming and what they could earn by selling land for development, called the "rent gap," eventually induces some farm and forest landowners to sell.

One commentator attributes this growing rent gap to hobby farming, which he holds is the "primary threat to commercial agriculture in Oregon."⁹⁷ It has been speculated that the rise of hobby farming in Oregon may actually be a result of some elements of the land use planning program, namely the large minimum lot sizes.⁹⁸ While this regulation was intended to keep land in commercial farming, it can instead drive agricultural landowners to subdivide and market "hobby-

⁹³ Arthur Nelson & Terry Moore, *Assessing Growth Management Policy Implementation: Case Study of the United States' Leading Growth Management State*, 13 Land Use Policy 241, 253 (1996).

⁹⁴ Arthur Nelson & Terry Moore, *Assessing Growth Management Policy Implementation: Case Study of the United States' Leading Growth Management State*, 13 Land Use Policy 241, 253 (1996).

⁹⁵ Hannah Gosnell, *et al.*, *Is Oregon's Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185 (2011).

⁹⁶ Hannah Gosnell, *et al.*, *Is Oregon's Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185, 187 (2011).

⁹⁷ Hannah Gosnell, *et al.*, *Is Oregon's Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185, 187 (2011).

⁹⁸ Or. Rev. Stat. § 215.780 (2012) ("the following minimum lot or parcel sizes apply to all counties: (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres; (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and (c) For land designated forestland, at least 80 acres... . A county may adopt a lower minimum lot or parcel size than that described" in certain circumstances.).

sized” properties to noncommercial hobby farmers who contribute little or nothing to the state’s economy.⁹⁹

Several studies we examined pointed to the tension the program has created since its inception between those who believe it is necessary to the long-term conservation of forest and farmlands, and those who believe that the regulations unduly burden private landowners. The biggest complaints are that the program is “too prescriptive and inflexible, that it unfairly impinges on private property rights, and it does not reflect a changed economic and social environment since its adoption 35 years ago.”¹⁰⁰ It has also been suggested that, because the program does not include a mechanism for critically engaging new ideas, people become frustrated dealing with its seemingly overwhelming inertia.

While the literature review notes that, “whether Oregon land use planning has resulted in significant conservation of forest and farm land sufficient to declare the program a success is a question that will elicit different responses from different observers,” it ultimately concludes that the existing body of research does suggest a measurable degree of forest and farmland protection.¹⁰¹ However, as the effects of the program are largely incremental and occur over long periods of time, they are difficult to measure accurately. Additionally, many other factors can influence land use change and development; thus, the authors caution planners and policymakers to be skeptical of any analysis of planning conservation effects.¹⁰²

Another recognized threat to farmland is posed by non-farm development on land zoned for exclusive farm use.¹⁰³ While the law originally permitted only five nonfarm uses in EFU zones, the Oregon Legislature has considerably expanded the list over the years to include 47 permissible nonfarm uses.¹⁰⁴ Such statutory nonfarm uses result in the “internal conversion” of several thousand acres of farmland every year.¹⁰⁵ Arguably the largest development pressure has come not

⁹⁹ See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 367 (1998).

¹⁰⁰ Hannah Gosnell, *et al.*, *Is Oregon’s Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185, 186 (2011).

¹⁰¹ Hannah Gosnell, *et al.*, *Is Oregon’s Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185, 190 (2011).

¹⁰² Hannah Gosnell, *et al.*, *Is Oregon’s Land Use Planning Program Conserving Forest and Farm Land? A Review of the Evidence*, 28 Land Use Policy 185, 191 (2011).

¹⁰³ Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 997 (1998).

¹⁰⁴ Or. Rev. Stat. §§ 215.213; 215.283 (2012).

¹⁰⁵ Richard P. Benner, Remarks at the Oregon Land Use Symposium (February 27, 1998). Mr. Benner was the director of the Oregon Department of Land Conservation and Development at the time this speech was delivered.

from industry, but from individuals who wish to build a home in the open country.¹⁰⁶ Several types of homes are permitted in EFU zones under specified circumstances.¹⁰⁷ Despite LCDC's tightening of farm dwelling standards in 1994, almost a thousand new dwellings were approved in EFU zones each year between 1994 and 1998.¹⁰⁸ While the allowed uses in EFU zones are determined by the Legislature, permitting decisions are made at the local level.¹⁰⁹ However, on appeal, the permitting decisions are brought before either the Land Use Board of Appeals or Oregon's appellate courts. One commentator has observed that these courts tend to interpret the EFU statute as a barrier to dwellings and other nonfarm uses to the full extent allowed by the statutory text, thereby being as protective as possible of farmland.¹¹⁰

D. Backlash

While many Oregon residents approved of the results of the state's unique regulatory scheme, some became disillusioned about the means utilized in implementing it and felt that the government had overstepped its authority in prohibiting landowners' use of their land.¹¹¹ Failure of the Legislature to protect landowners through judicial remedies, inconsistent and sometimes harsh application of relevant law by the Oregon courts, and the courts' invalidation of a 2000 ballot measure to protect landowners from "regulatory takings" have all been blamed for the passage of another ballot measure in 2004 aimed at compensating landowners whose intended land uses are blocked by the plans.¹¹² Officially titled "Governments must pay owners, or forgo enforcement, when certain land-use restrictions reduce property value," the citizen-sponsored Measure 37 addressed Oregon voters' concern that, despite all of the good that

¹⁰⁶ Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 997 (1998).

¹⁰⁷ See Or. Rev. Stat. §§ 215.213 and 215.283 (2012) (farm dwellings); Or. Rev. Stat. § 215.277 (2012) (farmworker housing); Or. Rev. Stat. § 215.284 (2012) (nonfarm dwellings); Or. Rev. Stat. §§ 215.213(i) and 215.283(2)(1) (2012) (hardship dwellings); Or. Rev. Stat. § 215.705 (2012) (lot-of-record dwellings).

¹⁰⁸ Richard P. Benner, Remarks at the Oregon Land Use Symposium (February 27, 1998). Mr. Benner was the director of the Oregon Department of Land Conservation and Development at the time this speech was delivered.

¹⁰⁹ See, e.g., Or. Rev. Stat. § 197.665(3) (2012).

¹¹⁰ Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 998 (1998).

¹¹¹ Sara C. Galvan, *Gone Too Far: Oregon's Measure 37 and the Perils of Over-Regulating Land Use*, 23 Yale Law & Pol'y Rev. 587, 587 (2005).

¹¹² Sara C. Galvan, *Gone Too Far: Oregon's Measure 37 and the Perils of Over-Regulating Land Use*, 23 Yale Law & Pol'y Rev. 587, 587 (2005).

was accomplished by the land use system, the government had simply gone too far in prohibiting landowners from using their land as they pleased.¹¹³

The measure required that landowners whose property value had been reduced by land use regulations relative to its value when acquired either be given just compensation or have the regulation waived.¹¹⁴ A massive influx of claims ensued, with about 6,900 filed claims asserting a total loss from reduced property values of over \$19 billion. A significant portion of the acreage subject to these claims was located in farm, forest, and rural zones. Because the measure failed to provide funding for the required compensation, all of the approved claims instead received a waiver of the applicable land use regulations.¹¹⁵

The voters then realized that Measure 37 had gone further in undermining the land use planning than expected or desired. Unsatisfied by the notion of sprawling development as a result of the removal of such protections, voters attempted to mitigate these effects with the passage of another ballot measure in 2007. Ballot Measure 49 was a “significant attempt to scale back the widespread development proposals generated by the Measure 37 claims.”¹¹⁶ It is thought to be more fair than Measure 37 by allowing some development previously prohibited but limiting the more excessive claims, especially those on “high-value” farmland. Measure 49 modifies Measure 37 to give landowners with Measure 37 claims the right to build homes as compensation for land use restrictions imposed after they acquired their properties.¹¹⁷ Claimants may build up to three homes if they were allowed when the property was acquired, or four to ten homes if they can document property value reductions that justify additional homes. They may not, however, build more than three homes on high-value farmlands, forestlands, or groundwater-restricted lands. Such homebuilding rights are also transferable upon sale or transfer of property. While the measure does not necessarily constitute good land use policy, it did have the desired effect of mitigating the negative impacts associated with the development enabled by Measure 37.¹¹⁸ The full

¹¹³ Sara C. Galvan, *Gone Too Far: Oregon’s Measure 37 and the Perils of Over-Regulating Land Use*, 23 *Yale Law & Pol’y Rev.* 587, 587-88 (2005).

¹¹⁴ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 *San Joaquin Agric. L. Rev.* 1, 51 (2008-2009).

¹¹⁵ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 *San Joaquin Agric. L. Rev.* 1, 51 (2008-2009).

¹¹⁶ Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961-2009*, 18 *San Joaquin Agric. L. Rev.* 1, 52 (2008-2009).

¹¹⁷ Oregon Department of Land Conservation and Development, *History of Oregon’s Land Use Planning*, available at <http://www.oregon.gov/LCD/history.shtml> (last visited June 12, 2012).

¹¹⁸ Oregon Department of Land Conservation and Development, *History of Oregon’s Land Use Planning*, available at <http://www.oregon.gov/LCD/history.shtml> (last visited June 12, 2012).

impact of Measures 37 and 49 remains to be seen, but they will almost certainly lead to more development than would have previously been allowed on protected lands.

E. Lessons Learned

The former executive director of 1000 Friends of Oregon, a prominent nonprofit organization dealing with land use issues in the state, has made several recommendations for state and local officials designing or implementing growth management programs, based on the history of Oregon's planning program.¹¹⁹ First, as a matter of good politics and policy, the program should "address and reconcile a diversity of interests and objectives for the use and conservation of land." Second, implementation of a new planning framework is a long process, and interim measures should be put in place to govern development during this period in order to avoid continuing down the same path in the meantime. Third, while "broad public participation in adoption, implementation and execution of a new planning framework may add to the length and contentiousness of the effort," the improvement in the quality of decision-making and public appreciation of the program's goals more than justifies the costs.¹²⁰

IV. MARYLAND – PURCHASE OF DEVELOPMENT RIGHTS AND LIMITATION ON STATE-FINANCED PROJECTS

A. Origins

Established in 1977, the Maryland Agricultural Land Preservation Foundation (MALPF) is part of the Maryland Department of Agriculture and operates by purchasing agricultural preservation easements to protect prime farmland and woodland in perpetuity. The program is administered by a staff of seven and a thirteen-member Board of Trustees.¹²¹

In 1992, the Maryland Legislature passed the Economic Growth, Resource Protection, and Planning Act articulating the state's growth policy through enumerated visions focused on concentrating development in suitable areas, protecting sensitive areas, conserving resources, and establishing funding mechanisms to implement the visions.¹²² Local governments are required to address these visions in their comprehensive plans, which must be submitted to

¹¹⁹ Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env't 315, 368 (1998).

¹²⁰ Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env't 315, 369 (1998).

¹²¹ Md. Code, Dep't of Agric., § 2-503 (2012).

¹²² See Md. Code, State Fin. & Proc., § 5-7A (2012) (codifying the State Economic Growth, Resource Protection, and Planning Policy); Md. Code, Art. 66B, § 1.01 (2012) (detailing policy visions).

the Department of Planning.¹²³ In 1996, Governor Parris Glendening and his key staff conducted meetings and forums in all 23 Maryland counties and in Baltimore City to receive input from interested groups and citizens on crafting a wide-reaching package of legislation that would strengthen the state’s ability to direct growth and enhance areas with existing development.¹²⁴ The General Assembly approved a package of legislation designed in consideration of this feedback.

Recognizing that state funding can play a significant role in unmanaged growth, the Smart Growth Areas Act was passed in 1997 to provide a geographic focus for state investment in growth by prohibiting state funding for growth-related infrastructure outside Priority Funding Areas (PFAs).¹²⁵ The Rural Legacy Program was crafted as the rural counterpart to the urban planning effort of PFAs. The 1997 Rural Legacy initiative established a grant program to protect targeted rural greenbelts from sprawl through the purchase of easements and development rights in “Rural Legacy Areas.”¹²⁶ Conservation of these areas, defined as regions rich in a multiple of agriculture, forestry, natural and cultural resources, is designed to promote resource-based economies, protect greenbelts and greenways, and maintain the fabric of rural life.¹²⁷ In addition to acquisition of easements and fee estates from willing landowners, protection is provided by the supporting activities of local governments and Rural Legacy Sponsors – organizations such as land trusts who manage grant activity in their areas and develop and administer Rural Legacy Plans.¹²⁸

¹²³ Md. Code, State Fin. & Proc., § 5-502 (2012) (requiring each unit of state, regional, and local governments and each interstate agency to submit comprehensive plans to the Department).

¹²⁴ Maryland Dep’t of Planning, *Smart Growth and Neighborhood Conservation Initiatives*, at 7, available at <http://www.mdp.state.md.us/PDF/OurProducts/Publications/OtherPublications/smartgro.pdf> (last visited June 12, 2012).

¹²⁵ See Md. Code, State Fin. & Proc., § 5-7B (2012) (codifying the Priority Funding Areas Act). The State may provide funding for growth-related projects not in a PFA if the Board of Public Works either makes a determination of extraordinary circumstances or approves a specific kind of transportation project. Md. Code, State Fin. & Proc., § 5-7B-05 (2012) (detailing allowed funding of certain projects outside PFAs). The State may also provide funding for projects outside PFAs without approval of the Board of Public Works if they are required to protect public health and safety, involve federal funds, or are related to a commercial or industrial activity located away from other development due to its operational or physical characteristics. Md. Code, State Fin. & Proc., § 5-7B-06 (2012) (detailing allowed funding of certain projects outside PFAs without Board approval).

¹²⁶ See generally Md. Code, Nat. Res., § 5-9A (2012).

¹²⁷ See Md. Code, Nat. Res., § 5-9A-02(i) (2012) (defining “Rural Legacy Areas”).

¹²⁸ See Maryland Dep’t of Nat. Res., *Maryland’s Rural Legacy Program Contacts – Who to Call*, available at <http://www.dnr.state.md.us/land/rurallegacy/contacts.asp> (last visited June 14, 2012).

B. Structure

1. Maryland Agricultural Land Preservation Program

The Maryland Agricultural Land Preservation Program is based on a partnership between MALFP and local governments, which appoint advisory boards to assist in the administration process.¹²⁹ These local boards work with county governing authorities to establish agricultural districts and approve easement applications, develop local ranking systems, and review and make recommendations to the Foundation's Board regarding requests from program participants. Individual county review and approval is required before the state may purchase an easement.¹³⁰

To be eligible for an easement, property must include at least 50 contiguous acres,¹³¹ meet productivity standards as measured by the USDA's Land Classification System, fall outside the boundaries of ten-year water and sewer service area plans, have an approved soil conservation plan, and meet any additional or more stringent criteria imposed by the local government.¹³²

Landowners must generally submit applications to sell an easement to the county program administrator by the state's annual deadline.¹³³ The Foundation's Board of Trustees establishes a maximum number of applications that will be accepted each year, sometimes requiring counties to prioritize applications during the approval process due to funding limitations.¹³⁴ The county then reviews the applications and ranks them according to its own system approved under state ranking guidelines.

¹²⁹ Md. Code, Dep't of Agric., § 2-504 (2012) (detailing appointment, composition, terms, and duties of county agricultural preservation advisory boards).

¹³⁰ Md. Code, Dep't of Agric., § 2-510(e)(6) (2012) ("The board of trustees of the Foundation shall not approve any application to sell which has not been approved by the governing body of the county containing the subject land.").

¹³¹ Subject to Board approval, neighboring landowners can join together to apply if their land collectively totals at least 50 acres. Property contiguous to existing preserved acreage may likewise be eligible for an easement regardless of acreage. See Maryland Agric. Land Pres. Program, *Fact Sheet #1: Eligibility for the Easement Acquisition Program*, at 2 (December 19, 2008), available at <http://www.malpf.info/facts/fact01.pdf> (last visited June 12, 2012).

¹³² Md. Code, Dep't of Agric., § 2-509(d) (2012); Maryland Agric. Land Pres. Program, *Fact Sheet #1: Eligibility for the Easement Acquisition Program*, at 2-3 (December 19, 2008), available at <http://www.malpf.info/facts/fact01.pdf> (last visited June 12, 2012).

¹³³ Md. Code, Dep't of Agric., § 2-510(b) (2012).

¹³⁴ Md. Code, Dep't of Agric., § 2-510(c) (2012); Maryland Agric. Land Pres. Program, *Fact Sheet #1: Eligibility for the Easement Acquisition Program*, at 2 (December 19, 2008), available at <http://www.malpf.info/facts/fact01.pdf> (last visited June 12, 2012) (describing how the Board will limit applications in order to spend less money on appraisals and more on easement purchases in times of limited funding).

Offers are extended to applicants in the order the county has prioritized them until funds allocated to that county are fully committed.¹³⁵ Landowners may choose between three payment options: lump-sum payment of the full amount at closing, annual installment payments over two to ten years—typically used to spread the impact of this taxable event over a longer period, or an installment purchase agreement over ten to thirty years.¹³⁶ Under the final option, a two-part contract is executed between the landowner and the Maryland Agricultural and Resource Based Industry Development Corporation providing payment of the principal—the balance of the offer unpaid at closing—at the end of the period of the agreement and semi-annual interest payments for the duration of such period. Potential benefits of this arrangement to landowners include a predictable stream of tax-exempt income for the duration of the agreement, delayed payment of capital gains taxes, and an attractive inheritable financial instrument for estate planning.¹³⁷

At the time of easement application, landowners may choose either to request that certain lots or pre-existing residences be released from easement restrictions or to waive all lot rights altogether.¹³⁸ No lots may be released until formally approved by the Foundation. One option, allowing up to three family lots to be released, is intended to “encourage the continuation of the family farming unit and to facilitate the intergeneration transfer of the farming operation by allowing children involved in the farming operation with their parents to live on the property.”¹³⁹ Thus, rights to these lots cannot be transferred to subsequent owners. A second option allows exclusion of an unrestricted one-acre or smaller lot to develop a single dwelling, and is intended to provide greater flexibility in the disposition of the lot.¹⁴⁰ No restrictions are imposed on who may receive this

¹³⁵ Maryland Agric. Land Pres. Program, *Fact Sheet #2: The Easement Acquisition Process*, at 2 (December 19, 2008), available at <http://www.malpf.info/facts/fact02.pdf> (last visited June 12, 2012).

¹³⁶ Maryland Agric. Land Pres. Program, *Fact Sheet #4: Payment Options for Selling an Agricultural Preservation Easement*, at 1 (September 24, 2008), available at <http://www.malpf.info/facts/fact04.pdf> (last visited June 12, 2012).

¹³⁷ Maryland Agric. Land Pres. Program, *Fact Sheet #4: Payment Options for Selling an Agricultural Preservation Easement*, at 2 (September 24, 2008), available at <http://www.malpf.info/facts/fact04.pdf> (last visited June 12, 2012).

¹³⁸ Maryland Agric. Land Pres. Program, *Fact Sheet #6: Retained Residential Lot Options on Easement Properties*, at 1 (December 19, 2008), available at <http://www.malpf.info/facts/fact06.pdf> (last visited June 12, 2012).

¹³⁹ Maryland Agric. Land Pres. Program, *Fact Sheet #6: Retained Residential Lot Options on Easement Properties*, at 1 (December 19, 2008), available at <http://www.malpf.info/facts/fact06.pdf> (last visited June 12, 2012); Md. Code, Dep’t of Agric., § 2-513(b)(2) (detailing release of family lots from easement restrictions).

¹⁴⁰ Maryland Agric. Land Pres. Program, *Fact Sheet #6: Retained Residential Lot Options on Easement Properties*, at 2 (December 19, 2008), available at <http://www.malpf.info/>

dwelling, and so it may be freely passed to subsequent owners. Finally, waiver of all lot rights can be used to maximize the value of an offer and potentially receive tax benefits from the charitable donation.¹⁴¹ Housing for tenants fully engaged in operation of the farm may also be constructed on easement property upon meeting certain criteria and receiving approval of the MALPF Board.¹⁴² Similarly, with Board approval, easement property may be agriculturally subdivided when a clear agricultural purpose for such subdivision exists.

MALPF and the Department of Planning were also directed to establish a Critical Farms Program in order to “provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses.”¹⁴³ Counties are responsible for determining whether a property qualifies for the program, using specified criteria.¹⁴⁴ The program strives to provide an incentive for keeping the land in agricultural production by targeting properties that are already being sold and are in danger of being converted to nonagricultural uses. It provides cash for the purchase of farmland by experienced farmers who agree to preserve the farm. The county provides cash at settlement to reduce the price for the farmer-purchaser, but in return the farmer must agree to actively pursue sale of an easement to MALPF for a five-year period.¹⁴⁵ If the farm is accepted into one of the programs, the county is effectively reimbursed for the investment it made at settlement, thereby replenishing the revolving fund, which can then be used to help another farmer purchase a farm. If the farmer is not able to obtain funding within the five-year period, the farmer can repay the county in order to retain development rights or keep the money with no additional payment in exchange for the county acquiring a development rights easement.

2. Smart Growth Areas Act

There are no limitations under the Act on the ability of local governments to develop outside of Priority Funding Areas; rather, state funding is used as a fiscal

[facts/fact06.pdf](#) (last visited June 12, 2012); Md. Code, Dep’t of Agric., § 2-513(b)(3) (2012) (detailing release of an unrestricted lot from easement restrictions).

¹⁴¹ Maryland Agric. Land Pres. Program, *Fact Sheet #6: Retained Residential Lot Options on Easement Properties*, at 3 (December 19, 2008), available <http://www.malpf.info/facts/fact06.pdf> (last visited June 12, 2012).

¹⁴² Md. Code, Dep’t of Agric., § 2-513(b)(4) and (5) (2012).

¹⁴³ Md. Code, Dep’t of Agric., § 2-517(a)(2) (2012).

¹⁴⁴ Md. Code, Dep’t of Agric., § 2-517(b) (2012).

¹⁴⁵ Frederick County Gov’t, *Summary of Elements of the Critical Farms Program*, at 1, available at <http://www.frederickcountymd.gov/DocumentView.asp?DID=1293> (last visited June 12, 2012).

incentive to encourage the concentration of development.¹⁴⁶ Focusing state spending on PFAs is designed to “provide the most efficient and effective use of taxpayer dollars, avoid higher taxes which would be necessary to fund infrastructure for sprawl development, and reduce the pressure for sprawl into agricultural and other natural resource areas.”¹⁴⁷

Most state programs that encourage growth and development are considered growth-related projects under the Act, including highways, sewer and water construction, economic development assistance, and state leases or construction of new office facilities. PFAs generally include existing communities, neighborhood revitalization areas, enterprise zones, heritage areas, and planned growth areas designated by counties.¹⁴⁸ The Act also specifically identifies certain areas as PFAs, including municipalities, Baltimore City, areas inside the Baltimore and Capital Beltways, and neighborhoods designated by the Department of Housing and Community Development.¹⁴⁹ It also establishes criteria for local PFA designations, such as permitted residential density, water and sewer availability, and designation as a growth area in the comprehensive plan.¹⁵⁰

3. Rural Legacy Program

The Rural Legacy Board, consisting of the Secretaries of the Department of Natural Resources, Department of Agriculture, and Department of Planning, administers the Rural Legacy Program with assistance and advice from the Rural Legacy Advisory Committee and staff provided by the Department of Natural Resources.¹⁵¹ Local governments and private land trusts are encouraged to

¹⁴⁶ Ed Bolen, *et al.*, *Smart Growth*, 8 *Hastings W.-N.W. J. Env. L. & Pol’y* 145, 173 (2002).

¹⁴⁷ Maryland Dep’t of Planning, *Smart Growth and Neighborhood Conservation Initiatives*, at 8, available at <http://www.mdp.state.md.us/PDF/OurProducts/Publications/OtherPublications/smartgro.pdf> (last visited June 12, 2012).

¹⁴⁸ Md. Code, State Fin. & Proc., § 5-7B-02 (2012) (detailing areas considered Priority Funding Areas).

¹⁴⁹ Md. Code, State Fin. & Proc., § 5-7B-02 (2012) (detailing areas considered Priority Funding Areas).

¹⁵⁰ Md. Code, State Fin. & Proc., § 5-7B-03 (2012) (detailing designation of Priority Funding Areas).

¹⁵¹ Md. Code, Nat. Res., § 5-9A-03 (2012) (establishing the Rural Legacy Board and describing its purpose, composition, Chairman, and staff); Md. Code, Nat. Res., § 5-9A-08 (2012) (establishing the Advisory Committee and describing its purpose, composition, appointment procedures, length of tenure, Chairperson, and staff). Committee members are appointed to three-year, staggered terms, with no more than two terms allowed consecutively, by the Governor with the advice and consent of the Senate. The eleven members of the Committee include: (1) a trustee of the Maryland Agricultural Land Preservation Foundation; (2) a trustee of the Maryland Environmental Trust; (3) a

identify and sponsor potential Rural Legacy Areas, and then competitively apply to the Rural Legacy Board for official designation and funds to either complement existing land conservation efforts or create new ones.¹⁵² The Board reviews applications using criteria such as significance and extent of agricultural, forestry, natural, and cultural resources proposed for protection, the threat to resources from development pressure and landscape changes, and the economic value of the resource-based industries or services proposed for protection through land conservation, such as agriculture, forestry, tourism, and recreation.¹⁵³

Additionally, applications are evaluated on their overall quality and completeness, the strength and quality of partnerships created for land conservation, the extent of matching funds, and the sponsor's ability to carry out both the proposed Rural Legacy Plan and the objectives of the Program overall.

The Rural Legacy Advisory committee initially reviews all applications and makes recommendations to the Rural Legacy Board, which in turn reviews applications each spring and makes recommendations to the Governor and Board of Public Works regarding which Rural Legacy Areas to designate and fund. The Board of Public Works ultimately designates the Areas and approves the grants for Rural Legacy funding.¹⁵⁴ While local jurisdictions also contribute money for a variety of land preservation efforts within Rural Legacy Areas, state-level funding for the Rural Legacy Program comes from a combination of general obligation bonds from the state's capital budget and Maryland's Program Open Space dollars.¹⁵⁵

representative of the agriculture industry; (4) a representative of a nonprofit land conservation organization; (5) a representative of a nonprofit environmental organization; (6) a representative of the forest industry; (7) a representative of a county government department of parks and recreation; (8) a representative of a business organization; (9) a private land owner; (10) a representative of the mineral resources industry; and (11) a representative of a municipal corporation.

¹⁵² See Md. Code, Nat. Res., § 5-9A-05 (2012) (describing application process for designation of a Rural Legacy Area and evaluation criteria to be used).

¹⁵³ Md. Code, Nat. Res., § 5-9A-05(c) (2012).

¹⁵⁴ See Md. Code, Nat. Res., § 5-9A-06 (2012) (explaining that the Rural Legacy Board may designate a Rural Legacy Area and award a grant to a sponsor subject to approval of the Board of Public Works).

¹⁵⁵ See Md. Code, Nat. Res., § 5-9A-01 (2012) (mandating that the program be funded pursuant to § 13-209 of the Tax – Property Article and § 5-903(a)(2)(iii) and by the proceeds from the sale of general obligation bonds); Md. Code, Tax – Prop., § 13-209(b) (2012) (allowing up to three percent of revenues from the state transfer tax to be used for Program Open Space under Title 5, Subtitle 9 of the Natural Resources Article); Md. Code, Nat. Res., § 5-903(a)(2)(iii) (2012) (allowing up to \$8 million of the funds provided by the state transfer tax to Program Open Space to be used for the Rural Legacy Program).

C. Impact

1. Maryland Agricultural Land Preservation Program

In 2001, the Task Force to Study the Maryland Agricultural Land Preservation Foundation recognized that the viability of agricultural resources generally requires preservation of large, contiguous tracts of land relatively free from the intrusive impacts of development.¹⁵⁶ As success depends on limiting the amount of development that occurs between and around preserved land, certain provisions of the Agricultural Stewardship Act of 2006 require counties with state-certified agricultural land preservation programs to stabilize land use through zoning and other land use tools in their priority preservation areas. The Task Force recognized that patches of farms surrounded by residential subdivisions and dissected by congested roads are becoming increasingly common in areas designated for preservation by local governments and the state, despite representing a poor return on public investment in conservation.

A 2009 report by the Maryland Department of Planning identified two of the largest problems plaguing the MALPF program and other state land preservation efforts. First, many of the programs “are not designed to invest strategically in response to what local zoning and land use management tools are doing to encourage or limit the development market in an area and what, in turn the development market is doing to the landscape.”¹⁵⁷ Given that preservation programs cannot compete with the raised land values resulting from intensifying development markets, the report concluded that the programs’ failure to target protection efforts to areas with existing land use tools limiting development “is a fatal flaw, in terms of cost and return, in areas where land use tools do not protect conservation investment.”¹⁵⁸ Second, “the amount of public funding needed for conservation and recreation far exceeds estimated funding for the foreseeable future.”¹⁵⁹ Further, when MALPF cannot afford to acquire easements on farmland

¹⁵⁶ Maryland Dep’t of Planning, *Maryland Land Preservation, Parks & Recreation Plan 2009*, at 10 (2009), available at http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf (last visited June 12, 2012).

¹⁵⁷ Maryland Dep’t of Planning, *Maryland Land Preservation, Parks & Recreation Plan 2009*, at 11 (2009), available at http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf (last visited June 12, 2012).

¹⁵⁸ Maryland Dep’t of Planning, *Maryland Land Preservation, Parks & Recreation Plan 2009*, at 11 (2009), available at http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf (last visited June 12, 2012).

¹⁵⁹ Maryland Dep’t of Planning, *Maryland Land Preservation, Parks & Recreation Plan 2009*, at 11 (2009), available at http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf (last visited June 12, 2012). A 2003 inquiry by the American Farmland Trust similarly found that MALPF required a significant increase in state funding and additional staff to process applications and monitor easements. American Farmland Trust, *25 Years of Protecting Farmland: An Evaluation of the Maryland Agricultural Land Preservation Foundation*, at 28 (October 2003),

due to insufficient funding, the effectiveness of the Critical Farms Program also suffers as county revolving account funds are not replenished.

To address these problems, the Department recommended that the Board of Public Works consider the degree to which surrounding land is being protected by local zoning and land use management authority when deciding whether to make a purchase or easement acquisition. The Department additionally suggested more cautious state investment when local land use management is lacking.

2. Smart Growth Areas Act

From its inception, Maryland's Smart Growth initiative received national acclaim for recognizing the connection between the decline in urban areas and sprawl into rural areas and attempting to address both issues simultaneously.¹⁶⁰ Despite early widespread plaudits from academics for the initiative theoretically, it has been sharply criticized for its lack of practical effectiveness as shown through empirical studies.

One author has identified four theoretical limitations to the effectiveness of PFAs.¹⁶¹ First, although the state refuses to subsidize development outside PFAs, the legislation does nothing to prevent sprawl where developers disregard state financial support and instead obtain funding from private or local government sources. Second, some critics contend that density requirements are too low, and that PFA criteria and thresholds focused on density were based not on concrete analysis of density and service efficiency but rather political compromise.¹⁶² Furthermore, these criteria exclusively focus on density at the expense of other considerations that address development quality, such as efficient land use, mixed-use environments, minimization of automobile dependency, housing choices that provide socioeconomic diversity, or projects with regional impact. Third, because PFA designation is determined by the governor and agency officials, the decisions could change depending upon the subjective judgment and preferences of those holding such high government positions.¹⁶³ Finally, and

available at www.farmlandinfo.org/documents/36291/MALPF_Final_report_10-28.pdf (last visited June 12, 2012).

¹⁶⁰ John W. Frece, *Smart Growth Prioritizing State Investments*, 15 Nat'l Res. & Env't 236, 276 (Spring 2001).

¹⁶¹ J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 415 (2004). See also James R. Cohen, *Maryland's "Smart Growth": Using Incentives to Combat Sprawl*, in *Urban Sprawl: Causes, Consequences, and Policy Responses 3* (Urban Institute Press 2002) (discussing similar shortcomings of the PFA program).

¹⁶² J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 415-16 (2004).

¹⁶³ J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 416 (2004).

along the same lines, the allowance of certain discretionary development outside PFAs weakens the program’s effectiveness.¹⁶⁴

Another empirical study confirms that policymakers, planners, and academics alike agree that the theoretical effects of the program should be as intended, but measured indicators “suggest” that Maryland has not made substantial progress toward improving performance in many areas pertaining to smart growth.¹⁶⁵ Considering the extent to which growth actually occurs in PFAs—a key measure of the performance of Smart Growth—one of the indicators examined by the study was the pattern of development in Maryland with respect to PFAs. Despite its status as an already highly urbanized state, the share of developed land in Maryland increased by 14 percent between 1990 and 2000.¹⁶⁶ In the same period, only 11 percent of population growth occurred in areas previously urbanized, while 50 percent occurred in areas newly considered urbanized between 1990 and 2000, and 39 percent occurred in areas still considered rural. Of eight states examined, Maryland experienced the highest share of growth in newly urbanized areas, and only one state experienced a lower share of growth in those areas already urbanized by 1990.¹⁶⁷ The authors of the study conclude this data suggests that the predominant form of urban development in Maryland, before and after adoption of the Smart Growth program, remains suburban. Furthermore, data showing that about three-fourths of new single-family acres were developed outside PFAs and the share of parcels developed in such areas continues to rise “strongly suggest that PFAs have not served as effective urban containment instruments.”¹⁶⁸

Another indicator focused on by this study was natural areas, including farmland, being protected or converted to development. It found that Maryland shares in the steadily downward trends for acres of farmland and forest land experienced by the U.S. overall. Thus, the authors decided to focus on the rate of loss as an indicator

¹⁶⁴ J. Celeste Sakowicz, *Urban Sprawl: Florida’s and Maryland’s Approaches*, 19 J. Land Use & Envtl. L. 377, 416 (2004).

¹⁶⁵ Nat’l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland* (February 28, 2012), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁶⁶ Nat’l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 39 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁶⁷ Nat’l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 39 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁶⁸ Nat’l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 43 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

of the success of Maryland's preservation efforts.¹⁶⁹ The study found the data to suggest that the rate is decreasing, as supported by evidence that much land in Maryland is protected from development. The authors attribute this trend to both market factors, such as a dwindling supply of farmland with enough proximity to metropolitan areas to be worth converting, and to public policy efforts such as outright protection and requirements for urban levels of service for new development, which can increase development costs.¹⁷⁰ However, despite this trend, the substantial amount of land still unprotected—roughly 60 percent of Maryland's land remains unprotected and as yet undeveloped—leaves a significant danger of future urbanization.¹⁷¹ The study ultimately concluded that the Smart Growth program has not made substantial progress toward reaching its goals. It qualified this conclusion, however, by acknowledging an inability to prove that the program did not prevent many indicators from getting worse, and that changes in land use and development trends may require more time before their efficacy can be accurately evaluated, as they happen slowly.¹⁷²

3. Rural Legacy Program

In 2004, the Department of Planning prepared a report examining “how well the State's rural landscapes are being protected by Maryland's principal rural conservation efforts, and what is likely to happen if development trends and land preservation strategies continue unchanged.”¹⁷³ Specifically regarding the Rural Legacy Program, the study found that the return on investment of taxpayer dollars was limited by the lack of good supporting programs.¹⁷⁴ Although significant conservation money and effort are being concentrated in Rural Legacy Areas,

¹⁶⁹ Nat'l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 53-54 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁷⁰ Nat'l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 50 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁷¹ Nat'l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 54 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁷² Nat'l Ctr. for Smart Growth Research & Educ. at the Univ. of Maryland, *Indicators of Smart Growth in Maryland*, at 57 (January 2011), available at <http://smartgrowth.umd.edu/indicatorsofsmartgrowthinmaryland.html> (last visited June 14, 2012).

¹⁷³ Joseph Tassone, *et al.*, Maryland Dep't of Planning, *Maximizing Return on Public Investment in Maryland's Rural Land Preservation Programs*, at ii (October 2004), available at http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf (last visited June 14, 2012).

¹⁷⁴ Joseph Tassone, *et al.*, Maryland Dep't of Planning, *Maximizing Return on Public Investment in Maryland's Rural Land Preservation Programs*, at 55 (October 2004), available at http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf (last visited June 14, 2012).

they are suffering from comparably high “levels of development pressure, subdivision, conversion of resource lands, high easement acquisition costs, and compromised ability of preservation to compete with development,” as land preserved by the Maryland Agricultural Land Preservation Foundation.¹⁷⁵ The authors of the study contend that, although higher percentages of land may in some cases be preserved by the Rural Legacy Program, the greater concentration of funds without better supporting programs is not enough to ultimately ensure success. Furthermore, while Rural Legacy Program legislation allows considerable administrative discretion in allocation of funds, the authors believe an investment strategy and requirements for public disclosure should be specified in the law to ensure objectivity and consistency with legislative intent.¹⁷⁶

V. WISCONSIN – OVERHAULING A DECADES-OLD PROGRAM FOR A NEW CENTURY

A. Origins

Wisconsin first enacted farmland preservation laws in 1977.¹⁷⁷ The goals of the 1977 Farmland Preservation Act¹⁷⁸ were to: preserve farmland; provide tax relief to farmers; promote sound local planning and zoning; promote compliance with soil and water conservation standards; and minimize land use conflicts. Though the original farmland preservation program was innovative in the 1970s,¹⁷⁹ it was

¹⁷⁵ Joseph Tassone, *et al.*, Maryland Dep’t of Planning, *Maximizing Return on Public Investment in Maryland’s Rural Land Preservation Programs*, at 55 (October 2004), available at http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf (last visited June 14, 2012).

¹⁷⁶ Joseph Tassone, *et al.*, Maryland Dep’t of Planning, *Maximizing Return on Public Investment in Maryland’s Rural Land Preservation Programs*, at 55 (October 2004), available at http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf (last visited June 14, 2012).

¹⁷⁷ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 14 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁷⁸ An interesting overview of that legislation is available here: http://www.farmlandinfo.org/documents/29562/THE_WISCONSIN_FARMLAND_PRESERVATION_PROGRAM_SEPT-OCT_1978.pdf (last visited June 12, 2012).

¹⁷⁹ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at ix (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

not updated to reflect changes in the state's land use needs.¹⁸⁰ Participation in that program peaked in the early 1990s and has declined markedly since.¹⁸¹

According to the Department of Agriculture, Trade and Consumer Protection (DATCP), the preservation process was difficult to administer and was not always of much benefit to farmers.¹⁸² Lack of profitability, combined with increasing property values, fueled both the loss of farmlands and concentrated farm ownership among fewer farmers, meaning there were fewer farms, and those remaining were generally larger in size. The Department noted that the 1977 law was “excessively detailed” and involved a “complex and timely” certification process.¹⁸³ Additionally, in the years following the Act, inconsistencies between newly enacted Smart Growth planning requirements¹⁸⁴ and the Farmland Preservation Act weakened the existing legislation. By the turn of the last century, the 1977 law was largely considered cumbersome and ineffective.¹⁸⁵

To address the limitations imposed by the existing law, the DATCP Secretary appointed a Working Lands Steering Committee in July of 2005.¹⁸⁶ The Committee was made up of Wisconsin residents representing “agriculture, local government, forestry, various private sector businesses, the University of Wisconsin System, and non-profit organizations.”¹⁸⁷ The purpose of the committee was to assess the tools available for farmland preservation and make

¹⁸⁰ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at ix (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸¹ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 14 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸² Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 15 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸³ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 15 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸⁴ Wis. Stat. § 66.1001 (2011).

¹⁸⁵ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 15 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸⁶ Working Lands Steering Committee, *Wisconsin Working Lands Initiative*, at iv (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸⁷ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at iv (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

recommendations for how those tools might be updated and expanded.¹⁸⁸ In 2006, the committee issued its recommendations in a report to the DATCP Secretary.¹⁸⁹ A subcommittee was created in order to assess the 1977 farmland preservation program and make suggestions for change. This subcommittee met throughout 2006 in order to review reports issued by DATCP.¹⁹⁰ The subcommittee also surveyed towns and counties across Wisconsin in order to gauge support for exclusive agricultural zoning (the subcommittee found “strong community support” for such zoning).¹⁹¹ Based upon its evaluation of those surveys, the subcommittee developed a set of recommendations to retain and improve the Farmland Preservation Program.¹⁹²

The steering committee identified objectives for farmland preservation and agricultural development. Among these objectives were the desire to preserve forests, waters and farmland; to stimulate growth within the forestry and agricultural sectors; and to “counteract fragmentation and parcelization of forest and agriculture land while allowing local economic development and promoting protection of Wisconsin’s critical mass of farmland.”¹⁹³

The committee cited community collaboration as a key strategy in its plan for preservation and development.¹⁹⁴ In its Final Report, the Working Lands Steering

¹⁸⁸ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at iv (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁸⁹ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at viii (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹⁰ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 16 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹¹ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 16 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹² Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 16 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹³ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at xi (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹⁴ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 34 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

Committee notes that, “fostering regional economic cluster activity and greater intergovernmental cooperation” is a critical component of success.¹⁹⁵

In June 2009, the Wisconsin Legislature approved funding for the Working Lands Initiative in its biennial budget act, establishing the framework and funding for the current farmland preservation program. The Initiative aims to promote intergovernmental cooperation, streamline the administrative processes that can hinder farmers’ access to land preservation tools, and to prevent further fragmentation and loss of working farms.

B. Structure

There are two primary tenets of the Working Lands Initiative: (1) a grant program for the Purchase of Agricultural Conservation Easement, and (2) an Agricultural Enterprise Area program. The initiative also modifies the state’s approach to zoning, planning, and tax credits.

Under the new law, DATCP can work with a nonprofit conservation organization or local government in order to purchase conservation easements from landowners.¹⁹⁶ These easements prohibit “development that would make the land unavailable or unsuitable for agricultural use.”¹⁹⁷ DATCP is authorized to pay half of the fair market value of the easement plus reasonable transaction costs related to the purchase.¹⁹⁸ In order to qualify, “Landowners must be willing to relinquish the easement or development rights, and . . . proposed easements must protect or enhance waters of the state or other public assets.”¹⁹⁹

The new law attempts to streamline the certification process for local land use plans. It requires counties to revise outdated land use plans and penalizes those that do not.²⁰⁰ In an effort to curb unwanted development where it is most likely

¹⁹⁵ Working Lands Steering Committee, *Wisconsin Working Lands Initiative Report*, at 2 (2006), available at <http://datcp.wi.gov/uploads/Environment/pdf/FinalRptWLISteeringCommittee.pdf> (last visited June 12, 2012).

¹⁹⁶ Wis. Stat. § 93.73 (2011).

¹⁹⁷ James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 43 (December 2009).

¹⁹⁸ Wis. Stat. § 93.73 (2)(a) (2011).

¹⁹⁹ The Walworth County Land Conservation Committee, *2010 Land & Water Resource Management Plan, PACE: Purchasing Agricultural Conservation Easements*, App. H at 2 (July 2009), available at <http://www.co.walworth.wi.us/Government%20Center/Land%20Use%20and%20Resource%20Management/pdfs/2010%20LWRMP/Appendix%20H.pdf> (last visited June 12, 2012).

²⁰⁰ James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 6 n.20 (December 2009) (stating, “Farmers may claim tax credits if they are covered by a certified ordinance at the end of the tax year to which their claims apply (see Wis. Stat. § 71.613), even if the certification was in effect for only part of the year.

to occur, counties with the highest rates of population growth are required to renew their plans first.²⁰¹ Certified plans must meet state standards and must be consistent with the county’s comprehensive plan.

The new law does not create additional zoning authority.²⁰² DATCP reviews county and local zoning ordinances and certifies those that meet or exceed state standards as defined by statute.²⁰³ Certification does not render an ordinance legally valid (and uncertified ordinances are not invalid), but it does determine whether farmers are eligible for tax credits, discussed below. Plans can be certified for up to ten years, after which point the county must renew. Farmers living in counties whose certification expires are not eligible to receive tax credits.

A controversial element of the initiative was the imposition of a rezoning conversion fee. As enacted in 2009, a town was required to make certain statutory findings and collect a rezoning “conversion fee” before an individual parcel could be removed from a certified farmland preservation zoning district.²⁰⁴ In order to discourage the sale of farmland for conversion to non-agricultural purposes, the conversion fee was “equal to three times the per acre value of the highest class of tillable ag land present in the municipality” and was to be collected from whomever requested the rezoning. The conversion fee was repealed in 2011.²⁰⁵

Preservation tax credits related to the program include “enhanced tax credits for farmers whose land is protected for agricultural use and who adopt sound environmental practices.”²⁰⁶ To qualify for the new credits, farmers must live in Wisconsin and own a farm that is covered by a farmland preservation agreement or a certified farmland preservation zoning ordinance (or both). The credit is

If an ordinance certification expires before the end of a tax year, farmers lose tax-credit eligibility for that year.”).

²⁰¹ Wis. Stat. § 91.14 (2011).

²⁰² James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

²⁰³ Wis. Stat. § 91.36(8) (2011); James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

²⁰⁴ Wis. Stat. § 91.30 (2011); James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

²⁰⁵ 2011 Wis. Act. 32 stating: “SECTION 2279. 91.04 (2) (j) of the statutes is amended to read: 91.04 (2) (j) Rezoning of land out of farmland preservation zoning districts under s. 91.48, including the amounts of conversion fees paid to political subdivisions under s. 91.48 (1) (b),” available at <https://docs.legis.wisconsin.gov/2011/related/acts/32.pdf> (last visited June 12, 2012).

²⁰⁶ Wis. Stat. § 91.80 (2011) states that, “An owner claiming farmland preservation tax credits under § 71.613 shall comply with applicable land and water conservation standards promulgated by the department under Wis. Stat. §§ 92.05(3)(c) and (k), 92.14(8), and 281.16(3)(b) and (c) (2011).

calculated on a per-acre basis. An eligible farm must be devoted to agricultural use; however, the credit can be applied to the entire farm, not just acreage in production.²⁰⁷

The new law also allows farmers to voluntarily petition DATCP to designate land as an Agricultural Enterprise Area (AEA). In order for a petition to be valid, it must be supported by at least five farmers and must be signed by “all [of] the counties, towns, and municipalities in which the area is located.”²⁰⁸ To qualify for AEA designation, all of the parcels must be contiguous (unless separated by only a lake, stream, or right of way), the land must be located within a farmland preservation area as identified in a certified farmland preservation plan, and the land must be used primarily for agricultural purposes.²⁰⁹ The AEA is not a zoning ordinance. It is an area targeted for agricultural preservation and development; designation allows landowners within the AEA to enter into farmland preservation agreements with DATCP.²¹⁰ Entering into such an agreement allows a landowner to receive higher tax credits. Landowners whose land falls within a farmland preservation zoning district *and* is subject to a farmland preservation agreement are eligible for higher tax credits than landowners whose land is either in a preservation zoning district *or* is part of a preservation agreement.²¹¹

Many of these changes have been structured to encourage intergovernmental cooperation between state and local government. The Working Lands Initiative aims to promote consistency, streamline the farmland preservation process, and “foster innovative partnerships among public and private entities and develop a policy toolkit for state and local governments to protect working lands for agriculture, forestry, tourism and recreational use.”²¹²

C. Impact

DATCP has worked to promote the Working Lands Initiative and to increase public awareness and support of farmland preservation. Various websites still advertise public forums in which the proposed legislation was discussed. Based on press releases and local articles, community members appear to have rallied to

²⁰⁷ See *qualifying acres* definition in Wis. Stat. § 71.613(1)(h) (2011) and *farm* definition in Wis. Stat. §§ 71.613(1)(d) and 91.01(13) (2011); James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 44 (December 2009).

²⁰⁸ James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 40 (December 2009).

²⁰⁹ Wis. Stat. § 91.84 (2011).

²¹⁰ Wis. Stat. § 91.84 (2011).

²¹¹ Wis. Stat. § 71.613(2)(a) and (c) (2011).

²¹² UW Center for Land Use Education, *The Land Use Tracker, Wisconsin Working Lands Initiative*, at 3 (Spring 2007), available at http://www4.uwsp.edu/cnr/landcenter/tracker/spring2007/working_lands.html (last visited June 12, 2012).

keep the purchase of agricultural conservation easement (PACE) portion of the farmland preservation program alive during the 2011 budget hearings.²¹³ Outreach and education remain an integral part of the initiative. New materials are available on the DATCP website to assist counties with farmland preservation plan updates.

The Working Lands Initiative was significantly modified by Wisconsin’s 2011 biennial budget act. That act cuts funding for any future PACE programming,²¹⁴ reduces bonding authority for Working Lands by \$12 million,²¹⁵ and requires DATCP to conduct a year-long study of the program before any more funding is approved.²¹⁶ DATCP must also “include options to replace PACE with a less costly and more efficient program for preserving farmland and report its findings to the State Joint Financing Committee and the standing agricultural committees.”²¹⁷ While the legislation is still intact, it is not currently funded. PACE is not currently accepting new applications, although the sixteen PACE easements granted in 2010 will be honored.²¹⁸

As mentioned above, the 2011 Act also eliminated the rezoning conversion fee.²¹⁹ Some Working Lands supporters felt that the conversion fee gave much-needed “teeth” to the legislation. The president of the Wisconsin Farmers Union notes that, “Without the conversion fee, we’ve lost the most important disincentive for

²¹³ The Dunn County News, *Wisconsin Farmers Union Applauds Preservation of PACE Program, Buy Local, Buy Wisconsin Program*, June 3, 2011, available at http://chippewa.com/dunnconnect/agriculture/article_6d8c66c2-8e2b-11e0-8784-001cc4c002e0.html (last visited June 12, 2012).

²¹⁴ Bonding authority for PACE was initially authorized by Wis. Stat. § 20.866(2)(wg), regarding the public debt. That statute has since been repealed.

²¹⁵ Scott Walker, *Governor’s Veto Message, 2011 Wisconsin Act 32*, at x (June 26, 2011), available at <http://budget.wisc.edu/wp-content/uploads/2011/06/Read-the-governors-veto-message.pdf> (last visited June 12, 2012).

²¹⁶ Gathering Waters Conservancy, *Governor Signs State Budget*, June 30, 2011, available at <http://www.gatheringwaters.org/conservation-policy/working-lands-initiative/governor-signs-state-budget/> (last visited June 12, 2012).

²¹⁷ Title I: Introduction and Background. *A Multi-jurisdictional Comprehensive Plan for Washington County: 2035, A Farmland Preservation Plan for Washington County*, App. T at 3 n.3 (2008), available at <http://www.co.washington.wi.us/uploads/docs/chpt1introbackground.pdf> (last visited June 12, 2012).

²¹⁸ Title I: Introduction and Background. *A Multi-jurisdictional Comprehensive Plan for Washington County: 2035, A Farmland Preservation Plan for Washington County*, App. T at 3 n.3 (2008), available at <http://www.co.washington.wi.us/uploads/docs/chpt1introbackground.pdf> (last visited June 12, 2012).

²¹⁹ 2011 Wis. Act. 32 stating: SECTION 2279. 91.04 (2) (j) of the statutes is amended to read: 91.04 (2) (j) Rezoning of land out of farmland preservation zoning districts under s. 91.48, including the amounts of conversion fees paid to political subdivisions under s. 91.48 (1) (b), available at <https://docs.legis.wisconsin.gov/2011/related/acts/32.pdf> (last visited June 12, 2012).

converting our prime farmland to other uses.”²²⁰ Opposition was reported to have come largely from developers and those confused about the impact the fees may have on farmers.²²¹

At this juncture, with the PACE program on hold and the conversion fee repealed, it is difficult to assess how effective the initiative will be at slowing the loss of farmland across the state. The initiative does simplify the tax credit system and is set up to encourage consistency between state and municipal land use goals. The Working Lands Initiative also takes a measured approach to addressing development; it acknowledges a growing need for both housing and working farms and tries to create a context in which both needs can be met. The Initiative has served to educate and mobilize Wisconsin residents around the issue of farmland preservation and is set up to foster further support for the issue in years to come.

VI. LOCAL FOOD PURCHASING LAWS AS INDIRECT FARMLAND PRESERVATION

In addition to statutes and regulations adopted explicitly for protection of farmland or farming operations, many states have adopted laws and policies that indirectly protect farmland from conversion to other land uses by enhancing the economic opportunities for farmers, and thereby reducing pressure on the landowner to sell or take the land out of production. One category of such policies that can have a significant benefit for the most vulnerable farmland parcels—i.e., smaller parcels located near population centers—is promotion of local agriculture, chiefly local food production.

States have taken different approaches to promoting local agriculture, including changing state procurement laws, setting state purchasing goals, and encouraging private economic development through state grants. An unanswered legal question in this arena is whether these laws violate the dormant commerce clause, which limits states’ abilities to restrict interstate commerce. Many of the local agriculture laws have been enacted recently, so the economic and social impacts of these varying approaches have not been broadly analyzed. Nonetheless, Minnesota can gain valuable insight from an analysis of other states’ efforts.

²²⁰ The Dunn County News, *Wisconsin Farmers Union Applauds Preservation of PACE Program, Buy Local, Buy Wisconsin Program*, June 3, 2011, available at http://chippewa.com/dunnconnect/agriculture/article_6d8c66c2-8e2b-11e0-8784-001cc4c002e0.html (last visited June 12, 2012).

²²¹ Gathering Waters Conservancy, *Proposed Bill Would Kill PACE, Conversion Fees*, February 10, 2011, available at <http://www.gatheringwaters.org/conservation-policy/working-lands-initiative/proposed-bill-would-kill-pace-conversion-fees/> (last visited June 12, 2012).

A. Threshold Issue: Not Running Afoul of the Dormant Commerce Clause

Local food purchasing laws may be vulnerable to constitutional challenges under the dormant commerce clause (DCC) doctrine. However, if designed with the specific constraints of the DCC in mind, these laws should withstand, and hopefully prevent, any DCC challenges.²²²

The DCC, also known as the negative commerce clause, is a legal doctrine that U.S. courts inferred from the commerce clause in Article I, Section 8 of the Constitution. Under the DCC, states are limited in their abilities to discriminate against out-of-state goods and services. In evaluating state laws under the DCC, courts apply different tests to laws that explicitly discriminate against interstate transactions and those that burden the transactions only incidentally without a discriminatory purpose.²²³ In either case, discrimination against out-of-state goods and services is allowed if a federal statute clearly allows states to discriminate against interstate commerce in the particular arena, or if the state itself is acting as a market participant.²²⁴

Federal laws can explicitly grant states exceptions to DCC restrictions. For example, the National School Lunch Act allows state school nutrition programs to provide a geographic preference for unprocessed locally grown or locally raised agricultural products.²²⁵ According to USDA’s rules and guidance documents, schools may define the size of the geographic preference area and how the preference is awarded.

The market participant exception to DCC restrictions is very important for local food purchasing laws, because it allows a state government to discriminate between in-state and out-of-state products when the state itself is acting as a market participant by directly buying or selling goods.²²⁶ For example, under this

²²² Brandon P. Denning, *et al.*, *Laws to require purchase of locally grown food and constitutional limits on state and local government: Suggestions for policymakers and advocates*, 1 *Journal of Agriculture, Food Systems, and Community Development* 139, 139 (2010).

²²³ *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

²²⁴ If a state law explicitly discriminates against out-of-state goods or services, the state has the burden of proving the law serves a legitimate non-discriminatory goal—such as health and safety—and there are no less discriminatory alternatives to achieve the goal. This high burden means that, in practice, facially discriminatory laws are almost always invalidated. A facially neutral law—one that does not explicitly reference the geographic origin of goods or services—may still be subject to strict scrutiny if a court finds that the law was passed with a discriminatory purpose or is discriminatory in its effects. *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

²²⁵ Program Requirements, 42 U.S.C. § 1758(j)(3) (2006).

²²⁶ In *Smith Setzer*, the Fourth Circuit upheld a South Carolina law that gave a preference to in-state products and vendors in the state procurement bidding process because the state was acting as a market participant, not as a market regulator.

exception, a state could require all state entities to purchase 20 percent in-state agricultural products. It could not, however, require all private grocery stores to purchase 20 percent of their food from in-state producers. Note that when a state uses its taxation power or exempts parties from taxes, it does not act as a market participant. Thus, a state tax exemption for in-state agricultural products and not for out-of-state products would not fall under the market participant exception. However, a state would likely be able to distinguish between in- and out-of-state products if it did so in the form of subsidies from the general fund.²²⁷

B. State Procurement Preference Laws

The most common policy that states have enacted to encourage local food purchasing is through changes to state public procurement policies. State procurement preference policies are not at a high risk of DCC challenges because they fall under the market participant exception. In addition, the federal government provided permission for state school food programs, in particular, to provide a geographic preference for unprocessed agricultural products under the National School Lunch Act.²²⁸

So-called reciprocal laws have been enacted in over 30 states in response to a variety of protectionist laws that provide procurement preferences to resident bidders or in-state supplies for state contracts.²²⁹ The specific language and approach of each reciprocal law varies by state but, in general, these laws provide a preference to in-state bidders or supplies when competing against a bidder from a state that provides a preference to its resident bidders or in-state supplies.²³⁰

²²⁷ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Note that if a law is facially neutral and its purpose and effects are not discriminatory, then courts will evaluate its local benefits compared with the burdens it imposes on interstate commerce. Under the balancing test, a law is likely to be found constitutional “unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” If the law is facially discriminatory or has a discriminatory effect, it will be analyzed under the harder to satisfy strict scrutiny standard.

²²⁸ National School Lunch Program, 7 C.F.R. § 210.21(g) (2011).

²²⁹ For lists of states with reciprocal laws, see the following reports compiled by state procurement offices: Oregon State Procurement Office, *Reciprocal Preference Information*, available at http://www.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml (last visited June 12, 2012); Texas Comptroller of Public Accounts, *Reciprocity and Resident Bidder Preference Chart*, available at http://www.window.state.tx.us/procurement/pub/manual/Resident_Bidder_Citation_Chart2009.pdf (last visited June 12, 2012); University of Georgia Facility Advisory Board, *Preference Laws*, available at <http://www.usg.edu/ref/about/fab/2010/PreferenceChart.pdf> (last visited June 12, 2012).

²³⁰ Reciprocal laws are triggered when an out-of-state bidder from a state that has enacted a relevant preference law competes for a state contract. A state with a reciprocal law will provide the same preference to its in-state bidders or supplies that the state with the preference law provides. Many states maintain an updated list of relevant preference laws by state for public entities to refer to during the competitive bid process. In addition,

There is still much uncertainty about how reciprocal laws will affect procurement preference laws that facilitate the purchasing of local agricultural products.

Many states have enacted or proposed preferences for local food purchasing through changes to their competitive low-bid procurement requirements for state purchases.²³¹ While these bills generally have the same goal in mind—to support local agriculture—they differ in their approaches to achieving this goal. Some of the key variables in these procurement bills are: whether the preferences are optional or required; the definition of local products; the level of preference given to local products; whether additional funding is available for local food purchases; and if any economic impact studies were used to inform the policy.

1. Laws that require preference for foods produced within state boundaries: Alaska and Colorado

Both Alaska and Colorado require the purchase of certain in-state products, provided certain requirements are met.

- Alaska’s procurement preference law requires municipalities to purchase only in-state agricultural and fisheries products “whenever priced no more than 7% above products harvested outside the state” if they are available and of like quality. This language is more direct and specific than some of the other state procurement laws, but the scope of products it covers is also

states may require out-of-state bidders to provide information about preference laws in their home state in order to compete for a contract.

For example, suppose state X has a preference law that mandates a five percent bid preference to resident bidders, and State Y has a reciprocal law that penalizes out-of-state bidders in an amount equal to any preference provided to resident bidders in their home state. Company 1 from state X provides the lowest bid of \$100,000 to complete a construction contract in state Y, while Company 2 from state Y offers the second-lowest bid of \$104,000 to complete the same project. State Y requires all out-of-state bidders to include information about any preference laws for resident bidders in their home state in their bid, so Company 1 provides information about State X’s preference law with its bid. State Y adds a five percent penalty to Company 1’s bid, bringing its total to \$105,000, and awards the contract to Company 2 as the lowest-bidder. Oregon State Procurement Office, *Reciprocal Preference Law*, available at <http://www.oregon.gov/DAS/SSD/SPO/reciprocal.shtml> (last visited June 12, 2012).

²³¹ In addition to the state laws discussed in more depth in this report, the following states have also enacted procurement laws that facilitate local food purchases with similar provisions: Georgia, S.B. 44; Iowa, Iowa Code 8A.311; Kentucky, H.B. 669 and 484; Maryland, H.B. 883; Massachusetts, H.B. 4919; Michigan, H.B. 6365, 6366, and 6368; North Carolina, H.B. 1832; New York, S.B. 6024; and Washington, S.B. 6483. See Farm to School Network, *State Farm to School Legislation*, November 2010 Update, available at http://www.farmtoschool.org/files/publications_382.pdf (last visited June 12, 2012).

narrower—the definition of agricultural products only includes dairy products, timber, and lumber.²³²

- Colorado’s Preference for State Agricultural Products law requires state governmental bodies to purchase from resident bidders who grow, raise, or process agricultural products in Colorado, subject to certain conditions. In particular, the local products must be of equal quality to out-of-state products, suitable for the particular use required, and available in sufficient quantity. The price of the local products must either not exceed or only reasonably exceed, as determined by the head of the governmental body, the lowest out-of-state bid, and the local products must be paid for out of the governmental body’s existing budget without supplemental funds. This law is unique among the local food preference bills because it specifically refers to resident bidders of the products, not just the products themselves like other statutes.²³³ Because Colorado’s law explicitly requires a resident bidder to supply the in-state agricultural products, it is much more likely to trigger reciprocity laws in other states.

2. Laws that allow, but do not require the purchase of foods grown within state boundaries: Montana and Oregon

Both Montana and Oregon seek to promote local food purchases through laws that allow, but do not require, the purchase of food grown within state boundaries.

- Montana’s law facilitates the direct purchase of Montana-produced foods—foods “planted, cultivated, grown, harvested, raised, collected, processed, or manufactured” in Montana—by giving public institutions more flexibility to buy these foods under procurement laws.²³⁴ The law is *optional* and only applies to direct purchases of foods, as opposed to through a distributor. The law allows Montana-produced food to be procured by direct purchase if the products are “substantially equivalent” in quality to out-of-state products and are available in sufficient quantity. The price of the local products must either not exceed or only *reasonably exceed*, as determined by the person with the duty to purchase food products for a governmental body, the lowest out-of-state bid, and the local products must be paid for out of the governmental body’s existing

²³² This law was challenged and upheld in 1992 in *Big Country Foods*. The Ninth Circuit ruled that Alaska’s law giving a seven percent bidding preference to Alaska milk producers for school district contracts was not a violation of the dormant commerce clause because the state was acting as a market participant, not as a market regulator. *Big Country Foods, Inc. v. Board of Education of the Anchorage School District*, 952 F.2d 1173 (1992).

²³³ Colo. Rev. Stat. § 8-18-103 (2012).

²³⁴ Mont. Code Ann. 18-4-132 (2011).

budget without supplemental funds.²³⁵ Montana’s law could trigger reciprocity laws in other states because it only applies to direct purchases of local foods, which may be interpreted as a resident bidder preference as opposed to just an in-state supply preference. However, since Montana’s law is optional, it may not trigger as many reciprocal laws, depending on how other states view optional preference statutes.

- Oregon’s procurement law allows, but does not require, public agencies to buy agricultural products that were “produced and transported entirely within the state” at a premium of up to ten percent more than out-of-state products.²³⁶ A public agency may set a higher percentage if it finds good cause to do so and explains the reasons and evidence in a written order. The definition of local products included in this bill is narrower than many of the other procurement laws, as it only applies the preference to products produced *and* transported entirely within the state. This definition may be preferable for local-foods advocates who intend for the benefits of these provisions to only apply to entirely locally produced foods. On the other hand, it limits the scope of the preference because a product that was grown in Oregon but processed in Washington would not benefit from this bill.

3. Changes to Small Purchasing Thresholds

Rather than promoting local food purchases through percentage-based procurement preferences, some states have opted to instead change small purchase thresholds. This approach reduces the hassle of the bidding process and allows purchasers to not worry about minor differences in prices for small purchases. Procurement laws that raise the small purchasing threshold do not raise reciprocity concerns because they do not provide a specific preference to in-state bidders.

For example, Michigan’s legislative changes to its procurement laws in 2008 raised the small purchase exemption from the bidding process for public schools from \$20,000 to \$100,000, which gave school food purchasers more flexibility to make larger local food purchases without going through the formal competitive bidding process.²³⁷ This legislation was limited to school purchasing, and thus does not have as large of an impact as legislation covering all state agencies. Michigan’s legislation had broad support and little opposition because it is optional and did not raise reciprocity concerns.

²³⁵ Derrick Braaten and Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. of Agric. Law 9, 30 (Spring 2010).

²³⁶ Or. Rev. Stat. § 279A.128 (2012).

²³⁷ H.B. 6365, 94th Leg. Reg. Sess. (Mich. 2008); H.B. 6366, 94th Leg. Reg. Sess. (Mich. 2008).

4. Minnesota's Current Procurement Laws

Minnesota's procurement laws currently provide some support for and flexibility to procure local foods, but could be changed to more effectively promote local agriculture.

Minnesota has an agricultural procurement preference law that is very general: "The commissioner shall encourage and make a reasonable attempt to identify and purchase food products that are grown in the state."²³⁸ Compared with other state procurement preferences, this is vague and does not require or facilitate meaningful changes in procurement practices.

In addition, Minnesota has a reciprocal law, stating: "a resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor."²³⁹ This reciprocal law only refers to preferences for *vendors*, and thus under a literal interpretation should not be triggered by another state's preference for in-state agricultural *products*.

Under Minnesota procurement laws, state purchases over \$50,000 require a formal solicitation process, and purchases for less than this amount require an informal solicitation process, as defined in the statute. These contracts may be awarded based on "best value," which includes price in addition to "environmental considerations, quality, and vendor performance. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors."²⁴⁰ Best value could be a tool for purchasers to choose local agricultural products based on quality and environmental factors even if they cost a bit more. Further research is necessary, however, to determine how easy it is for purchasers to use best value in practice, and to understand how it is currently used in awarding contracts.

Exceptions to the solicitation process include purchases less than \$2,500 and purchases of "farm and garden products," defined as perishables, such as fresh fruits and vegetables, purchased at the prevailing market price.²⁴¹ The farm and garden products exception could be another tool for purchasers to buy perishable local agricultural products, if they are at the market price. In addition, Minnesota law allows for *direct* purchases of perishable food items, except milk for school

²³⁸ Agricultural Food Products Grown in State, Minn. Stat. § 16C.12 (2011).

²³⁹ Acquisitions: Other States with Resident Preference, Minn. Stat. § 16C.06(7) (2011).

²⁴⁰ Acquisitions, Minn. Stat. § 16C.06 (2011).

²⁴¹ Exceptions to the Solicitation Process, Minn. Stat. § 16C.10 (2011); Admin Minnesota's Materials Management Division, *Authority for Local Purchase (ALP) Manual*, available at <http://www.mmd.admin.state.mn.us/alpsection3.htm> (last visited June 12, 2012).

lunches, by public school districts.²⁴² This gives school districts more flexibility to buy local agricultural products directly from producers.

C. State Policies: Government Purchasing Goals

Combined with tools that facilitate local food purchasing, government purchasing goals may provide motivation and a common vision for state purchasing entities. However, if the goals are optional, not mandatory, their impact will depend on the resources and attention devoted to implementing them.

1. Illinois

The Illinois Local Food, Farms and Jobs Act of 2009 established local food purchasing goals of 20 percent for state agencies and 10 percent for state-funded entities such as public schools and hospitals by 2020.²⁴³ Local food and farm products are defined as products “grown, processed, packaged, and distributed by Illinois citizens or businesses located wholly within the borders of Illinois.” This is a strict definition of local foods—the entire food chain must occur within Illinois, and all the businesses involved must be in-state. As a consequence, if Illinois agencies and state-funded entities meet these goals, it would likely have a large impact on the state economy since an estimated four percent of food eaten in Illinois currently comes from within the state. The Illinois Task Force estimated that a 20 percent increase in local production, processing, and purchasing will generate \$20 to \$30 billion of new economic activity annually within the state’s borders.²⁴⁴ However, the law sets goals, not mandates, so the impact of the law may not be this great. Illinois’ purchasing goals do not raise DCC concerns because they only apply to state institutions, and thus fall under the market participant exception.

One tool the 2009 Act provides to implement these goals is a procurement bid preference for local food and farm products if the cost “is not more than 10% greater than the cost included in a bid that is not for local farm or food products.”²⁴⁵ This provides more flexibility for interested state buyers to procure

²⁴² Minn. Stat. § 123B.52, subd. 1 (2011); Public Health Law Center, *Legal Issues Impacting Farm to School and School Garden Programs in Minnesota* (June 2011), available at <http://publichealthlawcenter.org/sites/default/files/resources/ship-f2s-school%20garden%20legal%20issues-2011.pdf> (last visited June 14, 2012).

²⁴³ Local Food, Farms and Jobs Act, 30 Ill. Comp. Stat. 595 (2009).

²⁴⁴ Brooke Jarvis, *Can a Farm State Feed Itself?*, Yes! Magazine, September 4, 2009, available at <http://www.yesmagazine.org/new-economy/eating-in> (last visited June 12, 2012).

²⁴⁵ Note the bill language does not say 10 percent greater than the *lowest* bid, and thus leaves open the possibility for a buyer to give a preference to local food products if the bid is not more than 10 percent greater than *any* bid. This technicality is unlikely to make a large difference, however, since state buyers are not given any extra money to purchase local products, so they must remain within their existing budgets when providing a

local products, but is likely limited in its effect because it does not allocate additional money to enable more expensive purchases.

The 2009 Act also created a new Local Food, Farms and Jobs Council to facilitate the growth of the local food economy, promote economic development and job creation, increase access to fresh foods, and ensure a safe supply of food in the case of an emergency. The Act does not provide initial funding for a director of the council or for any implementation of its initiatives. It merely allows the Council to seek public or private funds to hire staff. Thus, its potential impact is greatly reduced because it adds additional work without creating any new resources.

The Act also requires the Illinois Department of Agriculture to establish and publish an electronic database to facilitate the purchase of local food products by schools. However, the Act did not provide funding for this database, and only requires its implementation if the Department solicits funding for it. The lack of funding is a major shortcoming of this section of the law.

Without additional public or private resources to implement the new Council and purchasing goals, this legislation is unlikely to create widespread structural changes.

D. State Policies: Economic Development

Another approach that a few states have proposed or enacted to promote local food and agriculture is through economic development. This approach includes economic incentives, such as tax credits or subsidies, and grants for local agricultural production and distribution. This type of legislation will likely face greater opposition than the previous approaches because it requires new funding and has the potential to affect a larger group of stakeholders than government purchasing entities.

1. Iowa (proposed)²⁴⁶

The proposed, but not enacted, Iowa Local Farmer and Food Security Act would provide tax credits of 20 percent to Iowa grocers who source and sell local farm products under contract with local growers. Local farm products are defined as minimally processed fruits, vegetables, grains, and meats for sale within 150 miles of the grocer, including any areas outside of the state of Iowa. This act is unique in that it provides economic incentives to private businesses, as opposed to public entities, to buy from local growers. In addition, it excludes highly processed farm products to encourage the sale of healthier foods and requires the

preference to local products. Local Food, Farms and Jobs Act, 30 Ill. Comp. Stat 595 § 10(c) (2009).

²⁴⁶ Iowa Local Farmer and Food Security Act, S.S.B. 3236, 83rd Gen. Assemb. (Iowa 2010).

sales to be under contract to encourage long-term relationships. The 150-mile radius also differs from other local food purchasing laws since it may include growers from neighboring states. The author of the bill, Rob Marqusee, Director of Rural Economic Development in Woodbury County, Iowa, justifies the 150-mile limit compared to an Iowa-only limit because it provides regional economic benefits depending on the location of the grocer, reduces transportation costs, and encourages consumers to get to know the farmer growing the food.²⁴⁷ Although this is an innovative approach to promoting economic development in Iowa, the Act raises DCC concerns because it does not fall under the market participant exception.²⁴⁸

Iowa would likely avert a DCC challenge if its law provided subsidies from the general fund instead of the current tax exemption to grocers. This approach may garner less political support than the tax exemption because it would be competing with other potential uses of general funds, but it would be less vulnerable to DCC challenges.

2. Vermont²⁴⁹

Vermont’s 2011 Economic Development Act built upon previous legislation to encourage economic development by supporting the state’s food and agriculture system. First, it funded competitive matching grants to increase in-state slaughterhouse and meat processing facility capacity (\$50,000 in FY 2012) and to assist producers who are required to obtain good agricultural practices (GAP) certification (\$100,000 in FY 2012). It created a new local food coordinator position in the state agricultural agency to improve Vermont producers’ access to private and public markets and to administer a local foods grant program (\$125,000 for position and grant program in FY 2012).

The act also provided funding for continuing implementation of Vermont’s Farm-to-Plate Investment Program (\$100,000 in FY 2012), which was created in 2009 as part of the Vermont Sustainable Jobs Fund (VSJF).²⁵⁰ In January 2011, the Farm-to-Plate Strategic Plan Executive Summary was released, detailing 33 goals

²⁴⁷ Iowa Local Farmer and Food Security Act, Analysis Section, S.S.B. 3236, 83rd Gen. Assemb. (Iowa 2010).

²⁴⁸ Since the definition of local foods in the bill is 150 miles and explicitly extends beyond the Iowa border, it is technically facially neutral. However, if the court determined that few out-of-state producers would benefit from the law, it could be deemed discriminatory and evaluated under the strict scrutiny test. If the law was not deemed discriminatory, then the court would weigh the costs to interstate commerce with the local benefits under the balancing test. Either way, this law is vulnerable to DCC challenges, which would be costly to defend.

²⁴⁹ Economic Development—Agriculture, H. 287, 2011-2012 Legis. Sess. (Vt. 2011).

²⁵⁰ Appropriations and Allocations—The farm-to-plate investment program, 10 Vt. Stat. § 330 (2011).

aimed to spur new economic development in Vermont over ten years.²⁵¹ The Plan created the Farm-to-Plate Network, a collaborative group that will coordinate action among organizations to accomplish these goals.²⁵² The Plan predicted that every five percent increase in consumption of food produced in the state would create 1,500 new jobs.²⁵³ Since the Plan was released, Vermont's food system added approximately 500 private sector jobs and approximately 110 establishments.²⁵⁴ In 2011, the Farm-to-Plate Investment Program provided grants to five local food infrastructure projects, including a mobile composting screener, a multi-farm local food aggregation and distribution hub, a local meat processing facility, a cool storage unit for local foods, and a job training program for low-income Vermont residents.²⁵⁵ Considerable progress was also made in the meat industry by encouraging collaborative funding of projects. The Farm-to-Plate 2011 Annual Report indicates that "\$3.9 million in public funds helped leverage over \$6 million in private investment" in projects supporting the meat industry.²⁵⁶ Over \$200,000 in requests and over \$2 million in total project costs were received in the first year of offering matching grants to increase capacity at slaughter and processing facilities.²⁵⁷

The Act also re-wrote the statutory language for procurement of food and agricultural products to generally encourage local food purchases. When procuring agricultural products, state agencies "shall consider the interests of the state" in terms of transportation, economy and job creation. In addition, state agencies "shall, other considerations being equal and considering the results of

²⁵¹ Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 4 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

²⁵² Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 15 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

²⁵³ Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 4 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

²⁵⁴ Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 3 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

²⁵⁵ Vermont Sustainable Jobs Fund, *Grantee Profiles*, available at <http://www.vsjf.org/project-details/6/grantee-profiles> (last visited June 12, 2012).

²⁵⁶ Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 13 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

²⁵⁷ Vermont Sustainable Jobs Fund, *Farm to Plate 2011 Report*, at 13 (December 31, 2011), available at http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf (last visited June 18, 2012).

any econometric analysis conducted, purchase products grown or produced in Vermont when available.”²⁵⁸

By appropriating funds for a variety of programs, Vermont provided more significant support for local agriculture than bills in other states that merely support local agriculture through goals, resolutions, or new committees alone. The ultimate effectiveness of these programs in stimulating economic development is presently unknown, but the combination of additional capacity and funding is among the strongest nationwide.

E. Conclusion Regarding Local Food Purchasing Laws

A combination of approaches to support local agriculture—including reducing procurement barriers, setting purchasing goals, and providing economic incentives for development of local agriculture infrastructure—will achieve the most success because the approaches complement each other. Passing comprehensive legislation that includes various approaches, such as Vermont’s 2011 Economic Development Act, is the ideal goal, but the policies can also be passed separately as the political and financial circumstances allow.



²⁵⁸ State purchase of food and agricultural products, Vt. Stat. 29 § 909 (2012).

Appendix D

State Land Use Planning and Policies

I. INTRODUCTION

One of the ways in which a state can address farmland preservation is through land use planning laws. Minnesota's land use planning framework fails to adequately address farmland preservation and does little to ensure that this valuable and finite resource is cared for or protected.

II. MINNESOTA'S LAND USE PLANNING FRAMEWORK

Minnesota law currently guides land use planning differently depending on whether the land is in the seven-county metropolitan region or is outside of that region. The Metropolitan Land Planning Act (MLPA), adopted in 1976, governs metropolitan county comprehensive planning, and gives the Metropolitan Council (Met Council) oversight authority over that planning.¹ Generally speaking, the MLPA requires comprehensive planning by local governments in the seven-county Minneapolis-St. Paul area, defines what must be in a local comprehensive plan, and requires local plans to be consistent with regional policies developed by the Met Council. The Met Council reviews local comprehensive plans and ordinances for consistency with regional policy and has the authority to modify local plans if they conflict.

Land use planning for counties outside of the seven-county metropolitan area is governed by a separate statutory scheme, which allows the Board of County Commissioners in each county to adopt a comprehensive plan, although counties are not required to do so.² If a county has adopted a comprehensive plan, the

¹ Minn. Stat. §§ 473.851-473.871 (2011). The Metropolitan Council is comprised of 17 members appointed by the governor, 16 of whom represent geographic districts approximately equal in population. The Council chair is the 17th member and serves at large. Minn. Stat. § 473.853 (2011); Metropolitan Council, Pub. No. 14-11-009, *Metropolitan Council: What It Is and What It Does* (2011), available at <http://www.metrocouncil.org/about/facts/WhatIsMetCouncil.pdf> (last visited June 7, 2012). The Council was developed to “provide a regional perspective and work toward a regional consensus on issues facing the metropolitan area.” *Id.*; see also Minn. Stat. § 473.851 (2011) (noting the need for a regional approach to planning to achieve orderly development between the seven counties).

² Minn. Stat. §§ 394.21-394.23 (2011).

township official controls must not be “inconsistent with or less restrictive” than the county’s official controls.³ The county’s plan therefore provides the minimum standard that must be met.

The direction given to the counties regarding comprehensive plans differs based on whether they are in the metropolitan region or in outstate Minnesota. Counties in the metropolitan region generally have more proscriptions (dictated to them by the Met Council by virtue of its authority granted in the enabling legislation) than counties in outstate Minnesota. In neither case are local governments required to address farmland preservation issues in their plans.

A. Land Use Planning in the Metropolitan Region

For the counties in the seven-county metropolitan region, the Met Council is required by statute to prepare a Development Guide, which “shall recognize and encompass physical, social, or economic needs of the metropolitan area and those future developments which will have an impact on the entire area, including but not limited to such matters as land use, parks and open space land needs, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools, and other public buildings.”⁴ The Development Guide includes the Regional Development Framework and system plans for water resources management, parks, and transportation.⁵

The MLPA authorizes the Met Council to regulate development through the review and approval of comprehensive plans, which occur every ten years.⁶ Each local government unit⁷ preparing a comprehensive plan receives a metropolitan system statement from the Council with information about that local government unit (LGU), including demographic assumptions on which to make planning decisions.⁸ The Met Council reviews comprehensive plans to ensure conformity with the metropolitan system plans.⁹ After the Council approves the LGU’s comprehensive plan, each plan is implemented through adoption of official

³ Minn. Stat. § 394.33 (2011).

⁴ Minn. Stat. § 473.145 (2011).

⁵ Metropolitan Council, Pub. No. 780-05-059, *Local Planning Handbook*, 1-3 (2008) [hereinafter *Planning Handbook*], available at <http://www.metrocouncil.org/planning/lph/handbook.htm> (last visited June 7, 2012).

⁶ Minn. Stat. § 473.856 (2011).

⁷ A local government unit is a city, county, or town within the metropolitan area. Minn. Stat. § 473.852, subd. 7 (2011).

⁸ *Planning Handbook*, 1-8.

⁹ Minn. Stat. § 473.175 (2011).

controls, such as ordinances and rules, which are included and described within the plan.¹⁰

The MLPA requires comprehensive plans to have specific content.¹¹ All municipalities and towns within all seven metropolitan counties are required to include a land use plan in their comprehensive plan, unless the metropolitan system statement specifies otherwise for a town.¹²

In addition, Washington, Scott and Carver counties are required to include a land use plan for the unincorporated areas of those counties.¹³ The MLPA requires that the land use plans address four specific categories: (1) water management; (2) protection for historic sites and access to sunlight for solar energy; (3) housing to accommodate projected population growth in the area; and (4) where a land use plan is adopted or amended in relation to aggregate,¹⁴ it must state the local government's "goals, intentions, and priorities concerning aggregate and other natural resources, transportation infrastructure, land use compatibility, habitat, agricultural preservation, and other planning priorities."¹⁵ Nothing else in the statutory section governing the content of comprehensive plans requires comprehensive plans in the metropolitan area to specifically address farmland preservation.¹⁶

¹⁰ Minn. Stat. § 473.865, subd. 1 (2011).

¹¹ All plans must include a Foundation element consisting of the following sections: Background and Purpose; Policies and Objective Requirements; Regional Planning Designation Requirements and Growth Forecast Requirements; Planning Handbook; a Public Facilities element addressing transportation, water resources, and parks and open spaces; and an Implementation Program, which lays out local official controls to implement the comprehensive plan in the community. Planning Handbook, 1-7 to 1-8; 2-1 to 2-2. Some plans must include a Land Use element, described in more detail in the text of this section of the report.

¹² Minn. Stat. §§ 473.86; 473.861 (2011).

¹³ Minn. Stat. § 473.862, subd. 1(a) (2011).

¹⁴ Aggregate is "hard inert materials (such as sand, gravel, or crushed rock) used for mixing with cement to form concrete." *Planning Handbook, Glossary*, at 1.

¹⁵ Minn. Stat. §§ 473.859, subd. 2(d); 473.859, subd. 2(a) (2011).

¹⁶ Minn. Stat. § 473.859 (2011) requires comprehensive plans to "contain objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and waters within the jurisdiction of the local governmental unit through 1990 and may extend through any year thereafter which is evenly divisible by five. Each plan shall specify expected industrial and commercial development, planned population distribution, and local public facility capacities upon which the plan is based."

B. Land Use Planning in Greater Minnesota

As noted above, counties outside of the seven-county metro region may adopt comprehensive plans, but are not required to do so.¹⁷ A comprehensive plan is defined as the “policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities including recommendations for plan execution, documented in texts, ordinances and maps which constitute the guide for the future development of the county or any portion of the county.”¹⁸ If “natural heritage” data from the county’s biological survey is available, the commissioner of natural resources must give it to each county to assist them in their comprehensive planning. Each county’s board of commissioners is required to consider this data when adopting its plan.¹⁹

When adopting or updating a comprehensive plan, most counties outside of the seven-county metro area must “consider adopting goals and objectives that will protect open space and the environment.”²⁰ The goals and objectives that this group of counties must consider include “preservation of agricultural, forest wildlife, and open space land, and minimizing development in sensitive shoreland areas.”²¹ The statute also sets forth specific goals that must be considered. These goals include minimizing fragmentation of agricultural lands and encouraging development in commercial, school, mass transit, and employment areas.²² The counties are not, however, required to adopt farmland preservation goals and objectives; they merely have to consider these issues during the development of the comprehensive plan. Note also that, unlike the metropolitan region, there is no review process for Greater Minnesota comprehensive plans, nor is coordination among the counties or local governments required.²³

¹⁷ Minn. Stat. §§ 394.21-394.23 (2011).

¹⁸ Minn. Stat. § 394.22, subd. 9 (2011).

¹⁹ Minn. Stat. § 394.23 (2011).

²⁰ Minn. Stat. §§ 394.23; 394.231 (2011). This provision applies to Greater Minnesota counties that are “80 percent area” or less. A county is “80 percent area” if 80 percent or more of the presettlement wetland acreage is intact and at least ten percent of the current land area is wetland or more than 50 percent of the current land area is state or federal land. Minn. Stat. § 103G.005 (2011). There are approximately 18 counties that are defined as 80 percent area; they are primarily located in Northcentral and Northeastern Minnesota. See Association of Minnesota Counties, *Wetland Protection and Drainage Development* (revised July 2002), available at <http://www.mncounties.org/Publications/FYIs/PDF/Wetlands08.pdf> (last visited June 7, 2012).

²¹ Minn. Stat. § 394.231 (2011).

²² Minn. Stat. § 394.231 (2011).

²³ Previously, Greater Minnesota counties that chose to participate in a voluntary community-based planning process had their plans reviewed by the Office of Strategic and Long-Range Planning. Minn. Stat. § 394.232, subd. 4 (2011). The review was intended to ensure the plans were consistent with the planning goals set forth in the



(c) Farmers' Legal Action Group, Inc.

community-based planning guidelines; the statute setting forth those goals (Minn. Stat. § 4A.08) was repealed in 1999. See Laws of Minnesota, 1999 Regular Session, Chapter 250, House File No. 878, Article I, Section 115; Minn. Stat. § 394.232, subd. 4 (2011).

Appendix E

Minnesota's Agricultural Land Preservation Programs

I. INTRODUCTION

For decades, Minnesota has recognized the value of its farmland to local and statewide economies, and has put in place certain policy measures to try to preserve it. During the 1980s, the state enacted two separate but similar programs specifically intended to preserve agricultural land. One program is the Metropolitan Agricultural Preserves Program (Metro Program), which applies to the seven-county metropolitan area. Six of the seven metropolitan area counties have land enrolled in this program; Ramsey County does not.¹ The second program is the Minnesota Agricultural Land Preservation Program, which applies in Greater Minnesota (Greater Minnesota Program). Three counties—Waseca, Winona, and Wright—have land enrolled in the Greater Minnesota Program.²

II. THE METROPOLITAN AREA AGRICULTURAL PRESERVES PROGRAM

A. Background

Passed in 1980, the Metropolitan Agricultural Preserves Act (MAP) established the Metro Program.³ The policy and purpose section of the MAP clearly lays out its goal of preserving farmland located within the seven-county metropolitan area:

¹ Metropolitan Council, *Metropolitan Agricultural Preserves Program Status Report* (2011), at 7, available at http://councilmeetings.metc.state.mn.us/community_dev/2012/050712/2011%20metro%20ag%20preseres%20program%20-%20info%201.pdf (last visited May 24, 2012); Minnesota Department of Agriculture, *Minnesota Agricultural Land Preservation Program Status Report* (2011), at 4, available at <http://www.mda.state.mn.us/en/news/government/~media/Files/news/govrelations/aglandstatus2011.ashx> (last visited May 24, 2012); Office of the Legislative Auditor, Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs (February 2008), at 13, available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited May 24, 2012), hereafter referred to as the OLA Report.

² OLA Report, at 16, 20.

³ Laws of Minnesota 1980, chapter 566. The seven-county metropolitan area includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

“It is the policy of the state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of [the Metropolitan Agricultural Preserves Act] to provide an orderly means by which lands in the metropolitan area designated for long-term agricultural use through the local and regional planning processes will be taxed in an equitable manner reflecting the long-term singular use of the property, protected from unreasonably restrictive local and state regulation of normal farm practices, protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, protected from the imposition of unnecessary special assessments, and given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.”⁴

B. Requirements for Program Participation

The MAP requires both local governments and landowners to take specific actions in order to participate in the program. The state does not have a role in or oversee this process.

1. Local government requirements

Local governments containing land within their boundaries that is classified as “agricultural” for property tax purposes are required to certify which lands, if any, are eligible for designation as agriculture preserves.⁵ At least two weeks before formally designating the agricultural preserve areas, the local government must publish maps showing the proposed agricultural preserve areas in a local newspaper.⁶ Thereafter, the local government may adopt a resolution certifying the designated areas as agricultural preserve areas.⁷ Finally, the local government’s comprehensive plan and zoning must be updated to reflect

⁴ Minn. Stat. § 473H.01, subd. 2 (2011). The Minnesota Court of Appeals recently confirmed this reading of the legislative purpose behind the statute. In *Fischer Sand & Aggregate, Inc. v. County of Dakota*, the court looked to the statutory purposes of the MAPA in interpreting when the eight-year agricultural preserve expiration period commenced. While the appellant landowner argued that the purpose of MAPA was to protect and benefit landowners who enroll in the program, the court disagreed. Instead, the court indicated that “[t]he legislature enacted MAPA to encourage the long-term use and improvement of agricultural lands in the metropolitan area.” 771 N.W.2d 890, 893 (Minn. Ct. App. 2009).

⁵ Minn. Stat. § 473H.04, subd. 1 (2011). The local planning and zoning authority may be a township or city, or a county that has an agreement with local townships to do land use planning on behalf of the townships. See Minn. Stat. § 473H.02, subd. 4 (defining “authority”).

⁶ Minn. Stat. § 473H.04, subd. 1 (2011).

⁷ Minn. Stat. § 473H.04, subd. 1 (2011).

designated agricultural preserve areas that are set aside for long-term agricultural use.⁸ Zoning controls must restrict non-farm uses in agricultural preserve areas, and limit residential dwellings to one for every 40 acres.⁹

2. Property and landowner requirements

To qualify for enrollment in the Metro Program, land must be located within a designated agricultural preserve area.¹⁰ In addition, the parcel of property generally must be at least 40 acres and be zoned for only one residential structure per 40 acres.¹¹

To enroll in the Metro Program, farmers within an agricultural preserve area must sign a covenant to use the property for agricultural use only.¹² The minimum duration for the covenant is eight years.¹³ The restriction must be reflected on the land's certificate of title.¹⁴ Commercial and industrial uses are generally not

⁸ Minn. Stat. § 473H.04, subd. 1 (2011). See also, Minn. Stat. § 473H.02, subd. 7 (defining “long-term agricultural land” to mean land designated for agricultural use in local or county comprehensive plans and which “has been zoned specifically for agricultural use permitting a maximum density of not more than one unit per quarter/quarter.”).

⁹ Minn. Stat. § 473H.02, subd. 7 (2011).

¹⁰ Minn. Stat. §§ 437H.05; 473.02, subd. 2 (2011).

¹¹ Minn. Stat. § 473H.03 (2011). 35-acre parcels are eligible for enrollment “provided the land is a single quarter/quarter parcel and the amount less than 40 acres is due to a public road right-of-way or a perturbation in the rectangular survey system resulting in a quarter/quarter of less than 40 acres.” Minn. Stat. § 473H.03, subd. 3 (2011). 20-acre parcels are eligible for enrollment provided there are: (1) 20 contiguous acres within the preserve area; (2) the parcel is “surrounded by eligible land on at least two sides;” and (3) the local government with zoning and planning authority over the parcel “by resolution determines that: (i) the land area predominantly comprises Class I, II, III, or irrigated Class IV land according to the Land Capability Classification Systems of the Soil Conservation Service and the county soil survey; (ii) the land area is considered by the authority to be an essential part of the agricultural region; and (iii) the parcel was a parcel of record prior to January 1, 1980, or the land was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.” Minn. Stat. § 473H.03, subd. 4 (2011).

¹² Minn. Stat. § 473H.05, subd. 1 (2011). Agricultural use is defined as “the production for sale of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, or bees and apiary products.” Wetlands, pasture, and woodlands are also considered agricultural use when those lands are “accompanying land in agricultural use.” Minn. Stat. § 473H.02, subd. 3 (2011).

¹³ Minn. Stat. § 473H.08, subd. 2 (2011).

¹⁴ Minn. Stat. § 473H.06, subd. 2 (2011).

permitted in an agricultural preserve.¹⁵ The local zoning and planning authority is responsible for enforcing the land use restrictions.¹⁶

Once land is enrolled in an agricultural preserve, it must be “farmed and otherwise managed according to sound soil and water conservation management practices.”¹⁷ Practices are not sound if they result in “wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota Technical Guide.”¹⁸

The local zoning and planning authority for the area where the enrolled land is located has responsibility for enforcing the Metro Program’s conservation provisions.¹⁹ Enforcement is supposed to be carried out in consultation with the county soil and water conservation district.²⁰ The zoning and planning authority is authorized to require owners to take corrective actions and may fine them up to \$1,000 for failing to do so.²¹ Landowners can also be required to pay costs incurred by the zoning and planning authority in enforcing the conservation provisions.²²

C. Landowner Benefits

To achieve its goal of long-term farmland protection, the Metro Program provides a package of benefits and incentives to landowners so that they will enroll in the program. The landowner benefits include:

¹⁵ Minn. Stat. § 473H.17, subd. 1 (2011). The following commercial and industrial uses are allowed: (1) “small on-farm commercial or industrial operations normally associated with and important to farming in the agricultural preserve area; (2) storage use of existing [as of 1987] farm buildings that does not disrupt the integrity of the agricultural preserve; and (3) small commercial use of existing [as of 1987] farm buildings for trades not disruptive to the integrity of the agricultural preserve such as a carpentry shop, small scale mechanics shop, and similar activities that a farm operator might conduct.” Minn. Stat. § 473H.17, subd. 1(a) (2011).

¹⁶ Minn. Stat. § 473H.17, subd. 1 (2011).

¹⁷ Minn. Stat. § 473H.16, subd. 1 (2011).

¹⁸ Minn. Stat. § 473H.16, subd. 1 (2011).

¹⁹ Minn. Stat. §§ 473.16, subd. 2; 473.02, subd. 4 (2011) (defining “authority”).

²⁰ Minn. Stat. § 473.16, subd. 2 (2011).

²¹ Minn. Stat. § 473H.16, subds. 2 and 3.

²² Minn. Stat. § 473H.16, subds. 3 and 4.

1. Tax benefits

a. Taxable value of enrolled property is the agricultural use value

Property owned by a Metro Program participant is assessed at its agricultural use values.²³ No additional value from nonagricultural factors may be considered in setting the land's taxable value.²⁴ The lower taxable value translates into lower property taxes owed by program participants. This benefit is designed to assist farmers located in areas subject to development pressure by assuring their property tax rates are consistent with the actual use of the land for agricultural purposes and are comparable to farmers located in other areas of the state.²⁵ Unlike the Green Acres Program, there is no requirement for repayment of deferred taxes when land is withdrawn from the program.²⁶

b. Property tax credit for enrolled acres

Landowners enrolled in the Metro Program also receive a conservation credit of at least \$1.50 for every acre in the agricultural preserve.²⁷ To determine the amount of the conservation credit, counties compute taxes on enrolled properties in two different ways. In one computation, the auditor multiplies the tax rate and the taxable value of the land then subtracts \$1.50 per acre from the total.²⁸ In the

²³ Minn. Stat. § 473H.10, subd. 2 (2011); Minnesota Department of Revenue, Auditor/Treasurer Manual, Property Tax Administration at 04.08-9 and 06.06-17 (revised November 2011), available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx (last visited June 6, 2012). Note that the residence and garage are not taxed at the agricultural use value.

²⁴ Minn. Stat. § 473H.10, subd. 2 (2011).

²⁵ Resource Management Consultants, Inc., *Evaluation of Minnesota Agricultural Land Preservation Programs* (prepared for the Minnesota Department of Agriculture) at IV-6, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnaip.pdf> (July 1999) (last visited May 24, 2012), hereafter referred to as 1999 MDA Report.

²⁶ Minnesota Department of Revenue, Auditor/Treasurer Manual, Property Tax Administration at 04.08-8 and 04.08-10 (revised November, 2011), available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx (last visited June 6, 2012).

²⁷ At the time of its enactment, the MAPA did not contain a minimum tax credit provision. In 1992, the Legislature amended the MAPA to include the \$1.50 per acre minimum tax credit because it found that in years where the statewide township rate which was used to determine the amount of the tax credit increased, the conservation credit dropped significantly, creating less of an economic incentive for farmers to participate in the program. 1999 MDA Report, at IV-10-IV-11. The guaranteed minimum conservation credit has led to a greater number of acres being enrolled in the program. 1999 MDA Report, at IV-11.

²⁸ Minn. Stat. § 473H.10, subd. 3(c).

second, the auditor multiplies 105 percent of the previous year’s statewide average local tax rate for township properties by the enrolled land’s taxable value.²⁹ The county uses whichever formulation results in a greater conservation credit for the landowner, with a minimum savings of at least \$1.50 per acre.³⁰

2. Limitations on public projects and assessments

Public water and sewer systems are prohibited in agricultural preserves.³¹ Public improvements, including roads, in the vicinity of the preserve are deemed to be of no benefit to the land in the preserve, meaning that land in an agricultural preserve cannot generally be assessed for benefits from nearby public projects.³²

3. Protection for normal farm practices

The Metro Program prohibits local governments from enacting ordinances or other regulations restricting normal agricultural practices.³³

4. Procedural protections related to annexation and eminent domain

The Program places some limits on the power to annex enrolled lands.³⁴ It also includes procedural protections that apply to the acquisition of enrolled land via eminent domain.³⁵ These protections are generally procedural in nature.

a. Annexation protections

There can be a great deal of pressure for municipal annexation, particularly on the urban fringe where cities and townships border one another. Thus, the Metro Program seeks to limit the circumstances in which a municipality may annex agricultural preserve land.³⁶

The program provides that agricultural preserve land located within a township may only be annexed to a municipality if the chief administrative law judge of the state Office of Administrative Hearings makes specific findings which justify the

²⁹ Minn. Stat. § 473H.10, subd. 3(d); OLA Report, at 14.

³⁰ Metropolitan Council, 2009 Metropolitan Agricultural Preserves Program Status Report (May 2010), at 2, available at <http://www.metrocouncil.org/planning/landuse/AgPreservesReport2009.pdf> (last visited May 29, 2012).

³¹ Minn. Stat. § 473H.11 (2011).

³² An enrolled landowner may be assessed if the project is required to serve land primarily in agricultural use, or if the owner of the land chooses to use and benefit from the project.

³³ Minn. Stat. § 473H.12 (2011).

³⁴ Minn. Stat. § 473H.14 (2011).

³⁵ Minn. Stat. § 473H.15 (2011).

³⁶ Minn. Stat. § 473H.14 (2011).

annexation. Specifically, the chief administrative law judge must find that: (1) the expiration or termination of the agricultural preserve has been initiated; (2) the township due to size, tax base, population, or other relevant factors would not be able to provide normal governmental functions and services; or (3) the agricultural preserve would be completely surrounded by lands within a municipality.³⁷ The establishment of any one of these findings allows for an annexation of agricultural preserve land to proceed. These same annexation protections also apply to land enrolled in the Greater Minnesota Program³⁸; that program is described in section III, below.

b. Eminent Domain Protections

Generally speaking, the agricultural preserve designation triggers heightened procedural requirements when an entity with the power to acquire land through eminent domain (e.g., state agencies, county or other local units of government, and public benefit corporations) seeks to use the eminent domain power to acquire more than ten acres of agricultural preserve land.³⁹ The Metro Program additionally requires that these procedures be followed before a government unit can advance funds for the construction of dwellings; commercial or industrial facilities; or water or sewer facilities that could be used to serve nonfarm structures within agricultural preserves.⁴⁰

In that case, the entity must provide notice to the State Environmental Quality Board (EQB) which is authorized (but not required) to hold a hearing and may delay the eminent domain action for up to one year.⁴¹ Note that the Greater

³⁷ Minn. Stat. § 473H.14 (2011). Note that these limitations do not apply to annexation proceedings that were approved before the land in question was designated an agricultural preserve.

³⁸ Minn. Stat. § 40A.121 (2011).

³⁹ Minn. Stat. § 473H.15, subd. 1 (2011). Similarly, the Greater Minnesota Program requires that the procedures be used when funds are advanced for the construction of dwellings; commercial or industrial facilities; or water or sewer facilities that could be used to serve structures located outside of an agricultural preserve area, but which require the acquisition of land or an easement in an exclusive agricultural zone. See Minn. Stat. § 40A.122, subd. 1 (2011).

⁴⁰ Minn. Stat. § 473H.15 subd. 1 (2011).

⁴¹ Minn. Stat. § 473H.15 (2011). The procedures are as follows:

- (1) Sixty (60) days prior to the covered action, notice must be provided to the EQB. The notice must describe the proposed action and evaluate alternatives which would not require acquisition within an agricultural preserve or affect agricultural preserve lands.
- (2) The EQB reviews the proposed action and makes a determination as to whether it would have an “unreasonable effect” on an agricultural preserve.

Minnesota Program exempts public utilities from these heightened procedural requirements; no such exemption exists in the Metro Program.⁴² Otherwise, the eminent domain provisions of the two programs are substantially the same.

D. Expiration of the Agricultural Preserve

An agricultural preserve continues until: (1) the owner or the local government authority initiates the expiration process; (2) the preserve is terminated by executive order of the Governor; or (3) the land is acquired by eminent domain.⁴³

If a landowner decides to remove property from the Agricultural Preserves Program, the landowner may initiate expiration by notifying the local government authority of the landowner’s intent to remove the land from the program.⁴⁴ For a local government to remove land from the agricultural preserve program, the government must amend its comprehensive plan to remove zoning for the long-term agricultural area and notify affected landowners by letter.⁴⁵ Removal of land from the program may not occur for at least eight years from the date that the landowner or the government announces the intent to remove land from the program.⁴⁶

E. Funding Mechanism

Funding for the Metro Program property tax credits comes through a \$5.00 fee on all mortgage registration and deed transfers.⁴⁷ Counties in the seven-county

If the EQB determines that the proposed action might have such an effect, it should issue an order for the party to postpone any action for an additional 60-day period.

- (3) During the additional 60-day period, the EQB should hold a public hearing regarding the proposed action.

If the EQB determines that a proposed action of eminent domain is contrary to the purposes of MAPA, and finds that less harmful alternatives exist, it can suspend the action for up to one year. The statutes do not explicitly address what happens at the end of that one-year period. Minn. Stat. § 473H.15 (2011). See also, Minn. Stat. § 40A.122 (2011) (setting forth the same set of procedures for the Greater Minnesota Program).

⁴² Minn. Stat. §§ 40A.122, subd. 1; 473H.15 (2011).

⁴³ Minn. Stat. §§ 473H.08; 473H.09 (2011) (allowing for early termination of an agricultural preserve by executive order in the event of a public emergency); Minn. Stat. § 473H.15 (2011) (allowing for termination of an agricultural preserve when land is acquired by eminent domain and required procedures are followed).

⁴⁴ Minn. Stat. § 473H.08, subd. 2 (2011).

⁴⁵ Minn. Stat. § 473H.08, subds. 3 and 4 (2011).

⁴⁶ Minn. Stat. § 473H.08, subds. 2 and 3 (2011).

⁴⁷ Minn. Stat. § 40A.152, subd. 1 (2011).

metropolitan area are required to impose the fee, regardless of how much or little of their land has been designated as an agricultural preserve.⁴⁸

The counties retain a \$2.50 share of the fee from each transaction to support local preservation efforts; these funds are deposited into a county conservation account.⁴⁹ The remaining balance is forwarded to the state conservation fund and to the state general fund, split equally.⁵⁰ Counties use their \$2.50 share to pay the conservation credits and the agricultural use valuation for agricultural preserves by reimbursing taxing jurisdictions for annual revenues lost due to these program benefits.⁵¹

If necessary, metro area counties may draw from the state conservation fund if the county share is not sufficient to pay the conservation credits.⁵² In addition, if the amount available in the state conservation fund is insufficient to cover the costs of program benefits, a county may be reimbursed from the state general fund.⁵³ According to the Department of Revenue, the State Conservation Fund has always been “more than sufficient” to cover the cost of the conservation credit and no General Fund revenues have been used.⁵⁴

In cases where the county fund has money left after program benefits have been covered, unspent funds may be used by the counties for conservation planning and implementation.⁵⁵ Funds not spent within the year must be returned to the state for deposit into the state conservation and general funds, with the proceeds split equally between the two funds.⁵⁶ According to personnel at the Department

⁴⁸ Minn. Stat. § 40A.152, subd. 1 (2011). In Greater Minnesota, only the three counties participating in the Agricultural Land Preservation Program charge the fee.

⁴⁹ Minn. Stat. § 40A.152, subd. 1 (2011).

⁵⁰ Minn. Stat. § 40A.151, subd. 1 (2011).

⁵¹ Minn. Stat. §§ 40A.151, subd. 2; 273.119, subd. 2 (2011).

⁵² Minn. Stat. § 473H.10, subd. 3(e) (2011).

⁵³ Minn. Stat. § 473H.10, subd. 3(e) (2011).

⁵⁴ Minnesota Department of Revenue, Auditor/Treasurer Manual, Property Tax Administration at 06.06-21 (revised November 2011) (stating the balance of the state conservation fund “has always been more than sufficient” to pay the Metro and Greater Minnesota Agricultural Preserves tax credits), available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx (last visited June 6, 2012).

⁵⁵ The Program statutes limit spending of the conservation account money to agricultural land preservation and conservation planning; soil conservation; incentives for landowners who create exclusive agricultural land zones; and payments to municipalities for any of these purposes. Minn. Stat. § 40A.152, subd. 2 (2011). As of 2008, no funds were used for the latter two purposes. Instead, counties have generally used the conservation account dollars to help fund their natural resource management entities, such as soil and water conservation districts. OLA Report, at 64, 65.

⁵⁶ Minn. Stat. § 40A.152, subs. 2-3 (2011); Metropolitan Council, 2009 Metropolitan Agricultural Preserves Program Status Report (May 2010) at 2.

of Revenue, no county funds have been returned to the State General Fund since 2002.⁵⁷

III. THE GREATER MINNESOTA AGRICULTURAL PRESERVES PROGRAM

A. Background

The Greater Minnesota Program was established with the passage of the Agricultural Land Preservation Policy Act of 1984.⁵⁸ It applies to all counties except those located in the seven-county metro area. The statewide program is modeled after the Metropolitan Agricultural Preserves Act, but has some significant differences.

The Greater Minnesota Program has three enumerated goals: “(1) preserve and conserve agricultural land, including forest land, for long-term agricultural use in order to protect the productive natural resources of the state, maintain the farm and farm-related economy of the state, and assure continued production of food and timber and agricultural uses; (2) preserve and conserve soil and water resources; and (3) encourage the orderly development of rural and urban land uses.”⁵⁹ Additionally, the Program “is intended to protect farmland for future generations and to help farmers feel more confident in making long-term decisions. It is also intended to help in avoiding some of the problems associated with uncontrolled development of farm and forest lands. Limiting nonfarm rural development helps keep down public service costs paid by all taxpayers for such things as increased road maintenance, school transportation, and police and fire protection. Controlling such development also decreases the likelihood of conflicts between farmers and nonfarm residents over noise, dust, and odors produced by farming operations.”⁶⁰

The Agricultural Land Preservation Policy Act establishing the Greater Minnesota Program included an appropriation of \$300,000 for grants to help counties implement the program.⁶¹ Since its inception, only three counties—Waseca, Winona, and Wright—have chosen to participate in the Program.⁶²

⁵⁷ We were unable to obtain Department of Revenue data regarding remitted funds for the years preceding 2002.

⁵⁸ Laws of Minnesota 1984, chapter 654, art. 3, sec. 31-47.

⁵⁹ Minn. Stat. § 40A.01, subd. 1 (2011).

⁶⁰ Minnesota Department of Agriculture, Becky Balk, Minnesota Agricultural Land Preservation Program Status Report 2008 & 2009 (March 2010), at 2, available at <http://archive.leg.state.mn.us/docs/2010/mandated/100631.pdf> (last visited June 6, 2012).

⁶¹ OLA Report, at 17. According to the report, some of the money went unused and was returned to the state treasury.

⁶² OLA Report, at 16.

B. Program Requirements

Like the Metro Program, the Greater Minnesota Program requires both local governments and landowners to take specific actions in order to participate in the program.

1. Local government requirements

Counties that wish to participate in the Greater Minnesota Program must develop an agricultural land preservation plan for review and approval from the commissioner of the Minnesota Department of Agriculture.⁶³ An agricultural land preservation plan must designate land for long-term agricultural use, while also providing for expected growth around urbanized areas.⁶⁴ These designations must be incorporated into the county's comprehensive plan and official controls.⁶⁵ Note that, unlike the Metro Program, the Greater Minnesota Program does not require that zoning be one dwelling unit per 40 acres as a prerequisite for county participation in the program.⁶⁶

2. Property and landowner requirements

The only statutory eligibility requirement for the Agricultural Land Preservation Program is that the land be located in an area designated for “exclusive long-term agricultural use.”⁶⁷ In contrast to the Metro Program, there is no minimum parcel size requirement.⁶⁸ Like the Metro Program, the Greater Minnesota Program requires that landowners place a restrictive covenant on their use of the enrolled property. The covenant must restrict the land's use to only agricultural uses and must be recorded on the land's certificate of title.⁶⁹

⁶³ Minn. Stat. §§ 40A.04; 40A.05 (2011).

⁶⁴ OLA Report, at 16.

⁶⁵ Minn. Stat. §§ 40A.04; 40A.05 (2011). Official controls are land use regulations, usually zoning and subdivision provisions, that restrict uses to agriculture and require low residential densities in areas designated for long-term agricultural use. Minnesota Department of Agriculture, Becky Balk, Minnesota Agricultural Land Preservation Program Status Report 2008 & 2009 (March 2010), at 2, available at <http://archive.leg.state.mn.us/docs/2010/mandated/100631.pdf> (last visited June 6, 2012).

⁶⁶ 1999 MDA Report, at IV-16.

⁶⁷ Minn. Stat. § 40A.09 (2011).

⁶⁸ 1999 MDA Report, at IV-16, 17.

⁶⁹ Minn. Stat. § 40A.10, subd. 1(c) (2011). “Agricultural use” means “the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products.” It also includes “wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land.” Minn. Stat. § 40A.02, subd. 3 (2011). This definition differs from the Metro Program definition of “agricultural use” in

Land that is enrolled in the Greater Minnesota Program must be managed “with sound soil conservation practices that prevent excessive soil loss” or reduce soil loss “to the most practicable extent.”⁷⁰

C. Landowner Benefits

As with the Metro Program, farmers with land enrolled in the Greater Minnesota Program receive certain tax benefits and protections against interference with their farming operations.

1. Property tax credit

Owners of enrolled land receive a property tax credit of \$1.50 per acre per year in return for agreeing to preserve their farms for long-term agricultural use.⁷¹ Unlike the Metro Program, the Greater Minnesota Program does not set a minimum conservation credit; the credit is a flat, non-adjustable rate of \$1.50 per acre. In addition, in contrast to the Metro Program, the Greater Minnesota Program does not reduce land’s taxable value to the agricultural use value. Consequently, there is no corresponding decrease in property taxes as part of the Greater Minnesota Program.

2. Limitations on public projects and assessments

Like the Metro Program, the Greater Minnesota Program provides enrolled land with some protection from assessments. Construction projects for public sanitary sewer, water, and drainage systems are prohibited in agricultural preserve zones.⁷²

3. Protection for normal farm practices

The Greater Minnesota Program prohibits local governments from enacting ordinances or regulations restricting normal agricultural practices within an

two significant respects: (1) the Metro Program requires that agricultural products be produced “for sale” in order to qualify as an agricultural use; the Greater Minnesota Program considers the production of agricultural products to be an agricultural use regardless of whether the products are produced for sale or not; and (2) the Greater Minnesota Program’s definition of agricultural use includes forest and wildlife land; the Metro Program definition does not (although it does include woodlands). The Greater Minnesota Program statutes define forest land to include “at least ten percent stocked by trees of any size and capable of producing timber, or of exerting an influence on the climate or on the water regime; land that the trees described above have been removed from to less than ten percent stocking and that has not been developed for other use; and afforested areas.” Minn. Stat. § 40A.02, subd. 11 (2011).

⁷⁰ Minn. Stat. § 40A.13 (2011).

⁷¹ Minn. Stat. § 273.119, subd. 1 (2011).

⁷² Minn. Stat. § 40A.123 (2011).

agricultural preserve unless the restriction “has a direct relationship to public health and safety.”⁷³

4. Procedural protections related to annexation and eminent domain

Like the Metro Program, the Greater Minnesota Program also limits the power to annex land enrolled in the program and restricts the ability to acquire enrolled lands through use of the eminent domain power.⁷⁴ The annexation and eminent domain provisions applicable to the Greater Minnesota Program are substantially the same as those for the Metro Program.

D. Expiration of the Agricultural Preserve

Termination of the agricultural preserve may be initiated when landowners notify counties of their intent to terminate the preserve or vice versa, but the expiration does not actually occur until at least eight years after official notice is given.⁷⁵ As with the Metro Program, agricultural preserves can also be terminated by the governor’s executive order or if enrolled land is acquired through eminent domain.⁷⁶

Note that, unlike the Metro Program, once a farmer enrolled in the Greater Minnesota Program initiates expiration of the agricultural preserve by filing the required notice, the farmer immediately loses the \$1.50 per acre conservation credit even though the preserve itself does not expire for eight years.⁷⁷ If the county initiates the action to terminate the preserve, it must first amend its plans and zoning ordinances removing the designation for long-term agricultural uses, and the state’s commissioner of agriculture must approve the amendments.⁷⁸ The statutes do not state that the farmer loses the conservation credit upon notice of termination when it is the county that has initiated the termination of the preserve.⁷⁹

E. Funding Mechanism

Like the Metro Program, funding for the property tax credit comes from the \$5.00 fee on mortgage registrations and deed transfers. Unlike the Metro Program, there

⁷³ Minn. Stat. § 40A.12 (2011). Note that the Metro Program provides narrower protection; it only prohibits provisions which would “unreasonably restrict or regulate” normal farm practices. See Minn. Stat. §§ 473H.12 (2011).

⁷⁴ Minn. Stat. §§ 40A.121; 40A.122 (2011).

⁷⁵ Minn. Stat. § 40A.11, subd. 1 (2011).

⁷⁶ Minn. Stat. §§ 40A.11, subd. 5; 40A.122, subd. 7 (2011).

⁷⁷ Minn. Stat. § 273.119, subd. 1 (2011).

⁷⁸ Minn. Stat. § 40A.11, subd. 3 (2011).

⁷⁹ Minn. Stat. §§ 273.119, subd. 1; 40A.11, subd. 2 (2011).

is no guarantee that counties participating in the Greater Minnesota Program will receive money from the state general fund to cover a shortfall should the county and state conservation funds fall short of funds.⁸⁰ The lack of a guarantee has been cited as a significant factor in counties’ decisions not to participate in the Greater Minnesota Program.⁸¹



⁸⁰ Minn. Stat. § 273.119, subd. 2 (2011) (stating that counties may be reimbursed for Program benefits first from the county conservation fund, and, if necessary from the state conservation fund).

⁸¹ 1999 MDA Report, at IV-18.

Appendix F

The Green Acres Program

I. INTRODUCTION

In 1967, the Minnesota Legislature created a property tax program named the Minnesota Agricultural Property Tax Law, commonly known as the “Green Acres Program.”¹ At that time, “development appeared to be swallowing up agricultural property in the seven-county metropolitan area, driving up the market values used to calculate property taxes.”² The Legislature thus “recognized that urban sprawl was causing valuation and tax increases that had the potential of forcing farmers off their land in certain situations.”³

Consequently, the Legislature enacted the Green Acres Program to equalize taxes on agricultural land.⁴

Less clear over the years was whether the program was also intended to preserve agricultural land. The Department of Revenue and the Office of the Legislative Auditor issued reports about the Green Acres Program in 2006 and 2008, respectively. Both reports urged the Legislature to clarify whether farmland preservation is a purpose of the program.

¹ Laws of Minnesota, 1967 Extra Session, Chapter 60.

² Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, at 1 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012).

³ Minnesota Department of Revenue, *Property Tax Fact Sheet Five, Green Acres (Minnesota Agricultural Property Tax Law)* (Revised January 2012), available at http://www.revenue.state.mn.us/propertytax/factsheets/factsheet_05.pdf (last visited June 5, 2012).

⁴ Minn. Stat. § 273.111, subd. 2, contains a statement of public policy from the 1967 law emphasizing the program’s intent to equalize taxes on agricultural land. It reads:

“The present general system of ad valorem property taxation in the state of Minnesota does not provide an equitable basis for the taxation of certain agricultural real property and has resulted in inadequate taxes on some lands and excessive taxes on others. Therefore, it is hereby declared to be the public policy of this state that the public interest would best be served by equalizing tax burdens upon agricultural property within this state through appropriate taxing measures.”

Legislation passed in 2011 explicitly affirmed that farmland preservation is indeed one of the program’s purposes. The legislation added a purpose section to the Green Acres Program statute. As the new purpose section states, “it is in the interest of the state to encourage and preserve farms by mitigating the property tax impact of increasing land values due to nonagricultural economic forces.”⁵ Consequently, the program now has two enumerated goals: (1) to equalize tax burdens on agricultural land; and (2) to preserve farmland.

Generally speaking, the Green Acres Program seeks to meet these goals by equalizing tax burdens on farmland located in areas where nonagricultural influences such as development pressure drive up land values and therefore property taxes. The increase in property values in these areas routinely results in higher taxes and increased assessments for farmers, making it unaffordable for them to continue farming.⁶ The Green Acres Program strives to ameliorate this problem by making farmers’ property taxes consistent with their actual use of their land for agricultural purposes.

The Green Acres Program has been especially beneficial within the seven-county metropolitan area, where consistent development pressure and an attendant rise in property taxes can make farming unaffordable. Indeed, in its 2008 report, the Legislative Auditor found that without the benefits provided by the Green Acres Program, many farmers in these areas would likely sell their farms to developers.⁷

II. PROGRAM ADMINISTRATION AND IMPLEMENTATION

The Green Acres Program is implemented and administered at the county level, with oversight and guidance from the Minnesota Department of Revenue, as needed. County assessors are tasked with the day-to-day administration of the program, including accepting Green Acres Program applications, determining whether applicants qualify for the program, and assigning values to properties

⁵ Minn. Stat. § 273.111, subd. 2(a) (2011).

⁶ Office of the Legislative Auditor, Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs, at 7-8, available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 5, 2012).

⁷ Office of the Legislative Auditor, Evaluation Report, “Green Acres” and Agricultural Land Preservation Programs, at 7-8, 30-31, available at <http://www.auditor.leg.state.mn.us/ped/2008/greenacres.htm> (last visited June 5, 2012). In recent years, however, agricultural land values have steadily increased, while other land values have not. As the difference between the agricultural and other land values lessens, so do the benefits of being enrolled in the program. Consequently, some farmers have recently opted to instead enroll in the Metropolitan Agricultural Preserves Program. See Pioneer Press, *Minnesota farmers wrestle with one consequence of rising land values: higher property taxes*, October 4, 2011.

enrolled in the program.⁸ Pursuant to legislation passed during the 2008-2009 legislative session, all counties are now required to implement the Green Acres Program; previously a county could choose whether or not to do so.⁹

For its part, the Department of Revenue is authorized to prescribe the application form that landowners must complete to enroll in the Green Acres Program and provides assessors with information clarifying how the statutory criteria should be interpreted and applied. It also has a role in the determination of taxable values for Green Acres purposes.¹⁰ Additionally, the Commissioner of the Department of Revenue is responsible for general supervision of assessors and the overall administration of property tax laws to ensure the tax system is just and that assessments are fair and consistent.¹¹ The Commissioner is also authorized to handle complaints of improper assessments and may change local assessment decisions to ensure property values throughout the state are fair and equitable.¹²

III. ELIGIBILITY CRITERIA

To obtain the tax and assessment deferment benefits offered by the Green Acres Program, landowners must be determined eligible for the program. Currently, eligibility is determined based on specific statutory criteria regarding parcel size, use, and ownership.¹³

Minnesota Statutes, Section 273.111 sets forth the eligibility criteria for the Green Acres Program. Minnesota Statutes, Section 273.13 (the property tax classification statute) provides the definition of agricultural land. Land must be classified as agricultural pursuant to that definition to be eligible for the Green Acres Program.

A. Parcel Size and Use Requirements: Property Must Be at Least Ten Acres and Be Used to Produce Agricultural Products for Sale

Generally speaking, to be eligible for the Green Acres Program, property must consist of at least ten contiguous acres of agricultural land and be used to produce agricultural products for sale or be enrolled in a conservation program.¹⁴ In

⁸ Minn. Stat. § 273.111, subds. 4, 5, and 8 (2011).

⁹ Minn. Stat. § 273.111, subd. 16 (2011).

¹⁰ See Stat. § 273.111, subd. 4(a) (2011).

¹¹ Minn. Stat. § 270C.85, subd. 1 (2011).

¹² Minn. Stat. §§ 270C.85, subd. 2(f); 270C.92, subd. 1; and 270.12, subds. 2 and 5 (2011).

¹³ Minn. Stat. § 273.111, subds. 3 and 6 (2011). Previously, the eligibility criteria also included an income requirement; the Legislature eliminated that requirement during the 2007-2008 legislative session.

¹⁴ Minn. Stat. § 273.111, subd. 3(a) (2011) (requiring ten acres of class 2a land for Green Acres Program eligibility); Minn. Stat. § 273.13, subd. 23(b) (2011) (defining class 2a

addition, the property must be “primarily devoted to” agricultural use to qualify for the Green Acres Program.¹⁵

1. Ten acres of class 2a agricultural land required

For state property tax purposes, all land is classified according to its use. Land must be classified as class 2a agricultural land to be eligible for the Green Acres Program.

Land is classified as class 2a agricultural land if it is:

- Ten or more contiguous acres,¹⁶
- Used during the preceding year to produce agricultural products for sale,¹⁷ or
- Enrolled in a conservation program such as the Conservation Reserve Program, the Reinvest in Minnesota program, or “other similar programs.”¹⁸

land as “agricultural land” and buildings); Minn. Stat. § 273.13, subd. 23(e) (2011) (defining “agricultural land” to mean “contiguous acreage of ten acres or more, used during the preceding year for agricultural purposes.” “Agricultural purposes” includes raising agricultural products for sale or enrollment in a conservation program).

¹⁵ Minn. Stat. § 273.111, subd. 3(a) (2011).

¹⁶ Note that real estate of less than ten acres in size may qualify for the 2a agricultural classification under Minn. Stat. § 273.13, subd. 23 paragraph (f) (2011), if it is used exclusively for agricultural purposes, or if it is improved with a residential structure and is used intensively for one of the following purposes:

“(i) for drying or storage of grain or storage of machinery or equipment used to support agricultural activities on other parcels of property operated by the same farming entity;

(ii) as a nursery, provided that only those acres used to produce nursery stock are considered agricultural land;

(iii) for livestock or poultry confinement, provided that land that is used only for pasturing and grazing does not qualify; or

(iv) for market farming; for purposes of this paragraph, “market farming” means the cultivation of one or more fruits or vegetables or production of animal or other agricultural products for sale to local markets by the farmer or an organization with which the farmer is affiliated.”

Although a property less than ten acres in size would qualify for the 2a agricultural classification under the above criteria, it would not qualify for Green Acres deferral. It would, however, be taxed at the class rate applicable to agricultural land, which is lower than the rate for residential or commercial properties.

¹⁷ The term “agricultural products” is defined so as to include a broad array of products. Examples include: livestock; dairy; poultry; fur-bearing animals; horticultural and nursery stock; fruit; vegetables; bees; fish bred for sale and consumption; commercial horse boarding; game birds and water fowl; maple syrup; and trees grown for sale. See Minn. Stat. § 273.13, subd. 23(i) (2011).

a. Class 2b land is generally not eligible for the Green Acres Program

During the 2007-2008 legislative session, the Legislature created a distinction between class 2a agricultural land and class 2b rural vacant land. Land that is not used for agricultural purposes, not improved with a structure, and rural in character is typically defined as class 2b rural vacant land. Class 2b land is not eligible for enrollment in the Green Acres Program except in statutorily defined circumstances.¹⁹ Class 2b land is, however, eligible for enrollment in the Rural Preserve Property Tax Program; that program is described below in section VIII.²⁰

b. Circumstances under which class 2b land is eligible for the Green Acres Program

Under specified circumstances, property that would regularly be classified as class 2b land must instead be classified as class 2a land and is then eligible for enrollment in the Green Acres Program. Under state law, class 2a land “must also include any property that would otherwise be classified as 2b, but is interspersed with class 2a property, including but not limited to sloughs, wooded wind shelters, acreage abutting ditches, ravines, rock piles, land subject to a setback requirement, and other similar land that is impractical for the assessor to value separately from the rest of the property or that is unlikely to be able to be sold separately from the rest of the property.”²¹

The Minnesota Department of Revenue has provided assessors with written guidance about how to interpret the statutory requirement that certain class 2b lands are “impractical to separate” and must therefore be considered as class 2a land.²² According to the Department, class 2b land masses that are more than ten contiguous acres are generally considered “practical to separate” and therefore are not eligible for enrollment in the Green Acres Program. In contrast, class 2b land masses of less than ten acres are typically considered “impractical to separate” and therefore may be eligible for enrollment in the Green Acres Program.²³

¹⁸ Minn. Stat. § 273.13, subd. 23(e) (2011).

¹⁹ Minn. Stat. § 273.13, subd. 23(b) (2011).

²⁰ Minn. Stat. § 273.114 (2011).

²¹ Minn. Stat. § 273.13, subd. 23(b) (2011).

²² See Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands* (September 24, 2009).

²³ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 2-3 (September 24, 2009). The Department has taken the position that certain types of class 2b land should not be considered when determining whether there are ten acres of class 2b land. Generally speaking, this includes land that “is not physically possible to farm or that is an integral part of the farm.” *Id.* at 5. The types of land the Department includes in this category are: sloughs,

The Department has noted that there may be exceptions to the general rule described above, and has authorized assessors to deviate from the rule. It has provided assessors with a list of factors to consider in determining if class 2b land should be considered “impractical to separate.”²⁴ The factors assessors may consider are:

- How interspersed the class 2b land is with the class 2a land;
- If it would be possible to convert the class 2b land to agricultural use;
- Whether there are setback requirements that prevent the class 2b land from being farmed; and
- If it is likely the land could be sold separately, given market conditions, and the size, shape, and location of the land.²⁵

The Department has stressed that this last factor (i.e., whether the land is likely to be sold separately) should be given the least weight of all of the factors.²⁶ It does not appear that the Department has provided any other direction about how the factors should be weighed or applied.

c. Where class 2b land breaks up the contiguity of class 2a land, neither is eligible for the Green Acres Program

The Department of Revenue has generally taken the position that where interspersed class 2b land breaks up the contiguity of class 2a land so that there are less than ten contiguous acres of class 2a land, then neither the class 2b or 2a land is eligible for enrollment in the Green Acres Program.²⁷ For example, where a 20-acre farm includes 18 acres of class 2a land with two acres of 2b land dividing the 2a land so that there are nine acres of 2a land on each side of the 2b land, it is likely an assessor would find the property does not qualify for the Green Acres Program because it does not have ten contiguous acres of class 2a land.

wooded wind shelters, acreage abutting ditches, ravines, rock piles, land subject to a setback requirement, waterways, pivot points, terraces, sink holes, pot holes, and fence lines. Thus, when these types of land are interspersed with class 2a land, they should be considered “impractical to separate” and should therefore be classified as class 2a land. Land not in these categories and not used for agricultural production, which is not “integral to the farm,” should be counted toward the ten-acre requirement, as would class 2b land that is not interspersed with the class 2a land. *Id* at 5-6.

²⁴ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 3 (September 24, 2009).

²⁵ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 3-4 (September 24, 2009).

²⁶ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 4 (September 24, 2009).

²⁷ Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands* at 6 (September 24, 2009).

2. Property must be “primarily devoted to” agricultural use

In addition to requiring ten contiguous acres of class 2a land, the Green Acres Program statute requires that the property be “primarily devoted to” agricultural uses in order to qualify for the program.²⁸ The statutes governing the Green Acres Program do not provide a definition of the term “primarily devoted to.” The Minnesota Department of Revenue has provided written guidance to county assessors about how to interpret and apply the “primarily devoted to” requirements.

In determining whether a property is “primarily devoted to” agricultural use, the Department directs assessors to consider a list of specified factors:

- The physical characteristics of the property (e.g., number of acres used agriculturally compared to total acres);
- Its valuation (e.g., agricultural use value compared to other use values);
- Income from the farming operation; and
- The “occupation or ‘farming’ intent” of the owner (e.g., whether the owner states he or she is a farmer on tax returns, and the owner’s knowledge of farming activity).²⁹

B. Ownership Requirements: Property Must Be Owned by a Qualifying Individual or Entity

The Green Acres Program statute sets forth ownership requirements regulating the types of individuals and entities that are eligible for the Green Acres Program.

Eligible individuals include:

- An owner who homesteads the land or whose spouse, child, or sibling homesteads the land;
- An owner who has been in possession of the property for at least seven years prior to applying for the Green Acres Program or whose spouse, parent, or sibling (or any combination of those people) was in possession of the property for that period of time; and

²⁸ Minn. Stat. § 273.111, subd. 3(a) (2011). Note that this requirement was previously contained in the property tax classification statute (Minn. Stat. § 273.13). This criterion was removed from the classification statute during the 1997 legislative session, and is now found in the Green Acres statute (Minn. Stat. § 273.111). It thus remains applicable for determining Green Acres eligibility, but not for determining agricultural classification for property tax purposes.

²⁹ Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, Appendix D (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012).

- An owner who owns (or whose spouse, parent, or sibling owns) other qualifying property which is farmed with the subject property and is located within “four townships or cities or combination thereof from” the subject property, provided that the other qualifying property has been in the possession of the owner, or the owner’s spouse, parent, or sibling (or any combination of those people) for at least seven years prior to applying for the Green Acres Program.³⁰

Eligible entities include:

- “A family farm entity or authorized farm entity regulated under section 500.24 [i.e., the Minnesota Corporate Farm Law];
- “An entity, not regulated under section 500.24, in which the majority of the members, partners, or shareholders are related and at least one of the members, partners, or shareholders either resides on the land or actively operates the land;” and
- “Corporations that derive 80 percent or more of their gross receipts from the wholesale or retail sale of horticultural or nursery stock.”³¹

An owner of land used for a nursery or greenhouse operation is also eligible for the Green Acres Program.³² The owner may be an individual proprietor, a partnership, or a corporation.

While the Green Acres Program statute does allow the above-described entities to be eligible for the program, it only does so if the property is the homestead of “an individual who is part of” the organization. The statutes do not define what types of individuals are considered to be “part of” an organization, nor has there been any litigation on this issue. However, the property tax classification statutes state that agricultural property owned by or leased to a family farm corporation, joint family farm venture, or a limited liability company or partnership which operates a family farm may also qualify for homestead treatment.³³ To qualify, the homestead must be “occupied by a shareholder, member, or partner who is residing on the land, and actively engaged in farming of the land.”³⁴ Thus, it seems likely that if an entity’s shareholder, member, or partner resided on a

³⁰ Minn. Stat. § 273.111, subd. 3(a)(1)-(2) (2011).

³¹ Minn. Stat. § 273.111, subs. 3(a)(3) and 3(b) (2011).

³² Minn. Stat. § 273.111, subd. 3(a)(4) (2011). Note that owners qualifying under this category may only receive Green Acres benefits for the acres used to produce nursery stock.

³³ Minn. Stat. § 273.124, subd. 8(a) (2011).

³⁴ Minn. Stat. § 273.124, subd. 8(a) (2011).

property and was actively involved in the day-to-day operation of the farm, the property might qualify for homestead treatment.³⁵

A property may continue to be enrolled in the Green Acres Program after a change in ownership provided the property continues to meet the eligibility criteria and the new owner submits an application for continued enrollment within 30 days from the date of the sale or transfer of the property.³⁶

IV. LANDOWNER BENEFITS

During the time period they are enrolled in the program, landowners benefit from reduced property taxes and deferred special assessments. The Green Acres Program requires assessors to look at property in two ways. First, the assessor must value the property according to its estimated market value based on its “highest and best use.”³⁷ Next, the assessor must determine the agricultural value

³⁵ For purposes of determining if the agricultural homestead treatment applies when an entity owns land, the terms “family farm corporation,” “family farm,” and “partnership operating a family farm” have the meanings given in the Minnesota Corporate Farm Law, except that the number of allowable shareholders, members, or partners under this subdivision shall not exceed 12. “Limited liability company” has the meaning contained in sections 322B.03, subdivision 28, and 500.24, subdivision 2, paragraphs (l) and (m). “Joint family farm venture” means a cooperative agreement among two or more farm enterprises authorized to operate a family farm under the Minnesota Corporate Farm Law. Minn. Stat. § 273.124, subd. 8(a) (2011). Agricultural property owned by a member, partner, or shareholder of one of these entity types and leased to the entity may also qualify for agricultural homestead treatment provided that the owner resides on the property, “and is actually engaged in farming the land on behalf of that corporation, joint farm venture, limited liability company, or partnership.” Minn. Stat. § 273.124, subd. 8(c) (2011).

³⁶ Minn. Stat. § 273.111, subd. 11(a) (2011). Note that certain transfers are not considered a change in ownership and do not trigger the requirement that the new owner submit an application for continued enrollment in the program. These include: “(1) death of a property owner when a surviving owner retains ownership of the property thereafter; (2) divorce of a married couple when one of the spouses retains ownership of the property thereafter; (3) marriage of a single property owner when that owner retains ownership of the property in whole or in part thereafter; (4) organization into or reorganization of a farm entity ownership under section 500.24, if all owners maintain the same beneficial interest both before and after the organizational changes; and (5) placement of the property in trust provided that the individual owners of the property are the grantors of the trust and they maintain the same beneficial interest both before and after placement of the property in trust.” Minn. Stat. § 273.111, subd. 11(b) (2011).

³⁷ Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, at 3 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012). Generally speaking, the highest and best use for farmland is residential or commercial use. See Minnesota Department of Revenue, *Property Tax Fact Sheet Five, Green Acres (Minnesota Agricultural Property Tax Law)* (Revised January 2012), available at

of the property. If this agricultural value is less than the highest and best use value, the assessor must use the lower agricultural value for tax purposes.³⁸ During this process, the assessor must consult with the DOR to determine the appropriate agricultural value.³⁹ Use of the lower value translates to fewer property taxes owed by enrolled farmers. As a result, landowners enrolled in the Green Acres Program will pay lower taxes than they would otherwise. In addition, while their land remains enrolled in the program, landowners are entitled to defer payment of all special assessments.⁴⁰

V. PAYBACK PROVISION

Once land is removed from the Green Acres Program or no longer qualifies for enrollment, the landowner must pay back a portion of the deferred taxes, along with all special assessments, plus interest. The landowner is required to pay back taxes for the difference between the taxes that would have been paid at the market rate value versus the Green Acres Program agricultural use rate value. A three-year payback period applies for properties enrolled in the program before May 1, 2012.⁴¹ Taxes deferred earlier than the most recent three years do not need to be repaid.⁴² All deferred assessments must be repaid.

Note that when land enrolled in the Green Acres Program is transferred to the Metropolitan or Greater Minnesota Agricultural Preserves Programs or the Rural Preserve Property Tax Program, no deferred taxes or assessments are due.⁴³

VI. LANDOWNER RESPONSIBILITIES

Other than submitting their initial Green Acres Program application, landowners are not subject to any ongoing responsibilities in order to maintain their enrollment in the program. Previously, some counties required landowners to submit annual applications in order to monitor the then-existing income requirements.⁴⁴ The income requirements were eliminated by legislation passed

http://www.revenue.state.mn.us/propertytax/factsheets/factsheet_05.pdf (last visited June 05, 2012).

³⁸ Minn. Stat. § 273.111, subs. 4 and 5 (2011).

³⁹ Minn. Stat. § 273.111, subd. 4 (2011).

⁴⁰ Minn. Stat. § 273.111, subd. 11 (2011).

⁴¹ Minn. Stat. § 273.111, subd. 9 (2011).

⁴² Minn. Stat. § 273.111, subd. 3(c) (2011).

⁴³ Minnesota Department of Revenue, Auditor/Treasurer Manual, Property Tax Administration at 04.08-5, 04.08-11-12 (revised November 2011), available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx.

⁴⁴ Minnesota Department of Revenue, *Assessment and Classification Practices Report, Agricultural land including land enrolled in the green acres program*, at 5 (April 12, 2006), available at

during the 2007-2008 legislative session; the statute now clarifies that the initial application remains in effect for subsequent years until the property no longer qualifies for enrollment.⁴⁵ Consequently, landowners should not be required to submit annual applications.

The Green Acres Program statute requires enrolled landowners to comply with agricultural chemical and water laws. Noncomplying enrolled landowners can be subjected to a property tax penalty of up to three years' worth of deferred taxes if the landowner has two or more administrative, civil, or criminal penalties (other than a verbal or written warning) for violating agricultural chemical and water laws.⁴⁶

VII. GREEN ACRES PROGRAM VALUATION METHODOLOGY

Determining the agricultural use value of property enrolled in the Green Acres Program has been a longstanding problem in the program's administration. A 2005 review of the valuation methodology used by the counties showed widespread variances in the methodologies they used.⁴⁷ At that time, the law stated an assessor should determine the agricultural value by using agricultural sales outside the seven-county metropolitan region.⁴⁸ The committee reviewing the program found that "it is increasingly difficult to identify *true* agricultural sales," and concluded that the "limited number of agricultural-to-agricultural sales in many parts of the state contributes to a lack of uniformity in assessment practices."⁴⁹

As the result of work by a 2007 Green Acres Committee comprised of "members of the assessment community and the Department of Revenue," a new method for

http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf (last visited June 5, 2012).

⁴⁵ Minn. Stat. § 273.111, subd. 8 (2011).

⁴⁶ Minn. Stat. § 273.111, subd. 9(a) (2011).

⁴⁷ Minnesota Department of Revenue, *Assessment and Classification Practices Report, Agricultural land including land enrolled in the green acres program*, Figure 2 (April 12, 2006), available at http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf (last visited June 5, 2012).

⁴⁸ Minnesota Department of Revenue, *Assessment and Classification Practices Report, Agricultural land including land enrolled in the green acres program*, at 14 (April 12, 2006), available at http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf (last visited June 5, 2012).

⁴⁹ Minnesota Department of Revenue, *Assessment and Classification Practices Report, Agricultural land including land enrolled in the green acres program*, at 14 (April 12, 2006), available at http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf (last visited June 5, 2012).

valuation was developed.⁵⁰ The new method sought to determine agricultural values based on farmland sales in a group of five southwestern counties—Lyon, Murray, Nobles, Pipestone, and Rock—during the time period from 1990-1996. That time period was chosen because it is the “most recent period in time when the non-agricultural influences on farmland sales were either minimal or non-existent throughout the state, with the exception of the seven-county metropolitan area.”⁵¹ While the “base counties are used to help define the current agricultural economy in general,” each county’s individual agricultural value is determined based on how it “differs from the norm” established by the base counties.⁵² Each county thus has an assigned factor indicating its relationship to the base counties. This factor helps to determine the county’s agricultural value for purposes of the Green Acres Program.⁵³ The end result is supposed to be “a projection of what the current agricultural value of land would be in the absence of the current non-agricultural market influences.”⁵⁴

The valuation methodology used to determine the agricultural use value of land enrolled in the Green Acres Program was most recently reviewed in 2011. Legislation passed during the 2010-2011 legislative session requires the Department of Revenue to “explore alternative methods for determining the taxable value of tillable and nontillable land enrolled in the green acres program under Minnesota Statutes, section 273.111, and the rural preserves program under Minnesota Statutes, section 273.114.” The legislation directed the department to conduct its study “in consultation with the Minnesota Association of Assessing Officers, the Department of Applied Economics at the University of Minnesota,

⁵⁰ Minnesota Department of Revenue, *Assessment and Classification Practices Report, Agricultural land including land enrolled in the green acres program*, at 3 (April 12, 2006), available at http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf (last visited June 5, 2012).

⁵¹ Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, at 3 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012).

⁵² Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 2 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

⁵³ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 2 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

⁵⁴ Minnesota Department of Revenue, *Assessment and Classification Practices Report, The Agricultural Property Tax Program, Class 2a Agricultural Property, and Class 2b Rural Vacant Land Property*, at 5 (March 1, 2011), available at <http://archive.leg.state.mn.us/docs/2011/mandated/110314.pdf> (last visited June 5, 2012).

and representatives of major farm groups within the state of Minnesota.”⁵⁵ The report regarding the results of this study was released on February 14, 2012. A full copy of the report can be found on the Department of Revenue’s website at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf>.

With respect to the Green Acres Program, the report reviewed various possible methodologies for valuing class 2a agricultural land, both tillable and non-tillable. According to the report, there was “not clearly a methodology which would yield ‘truer’ agricultural land prices” than the current methodology.⁵⁶ The report thus recommended its continued use.⁵⁷ The report states that going forward, the Department of Revenue will use the current methodology; continue to assign different values for land based on land type (tillable or non-tillable), not land use; and allow for the base rates to be altered by using potential modifiers, including the Crop Productivity Index, crop yields, or “other factors that may be applicable.”⁵⁸ The group involved in the study and report intends to continue meeting in order to explore whether it can identify improvements that should be made to the valuation methodology.

For the 2012 assessment year, tillable land values range from \$1,040 to \$6,760 per acre. Non-tillable lands range from \$936 to \$2,704 per acre.⁵⁹

VIII. THE RURAL PRESERVE PROPERTY TAX PROGRAM

While the Rural Preserve Property Tax Program has tax benefits similar to the Green Acres Program, it has differing eligibility requirements.

A. Background Regarding Program Origin and Intent

⁵⁵ Laws of Minnesota, 2011 Regular Session, Chapter 13, Sec. 7.

⁵⁶ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 1, 15 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

⁵⁷ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 17 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

⁵⁸ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 17 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

⁵⁹ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 17 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

The Legislature created the Rural Preserve Program in 2009. The program was a response to criticism of the distinction the Legislature devised between class 2a and class 2b land during the 2007-2008 legislative session, which made class 2b land ineligible for the Green Acres Program.

In response to complaints about those changes, the Legislature developed the Rural Preserve Program. The program was created primarily for larger tracts of class 2b land previously enrolled in the Green Acres Program and was designed to provide owners of these types of land a tax benefit similar to that provided by the Green Acres Program. Lands enrolled in the Rural Preserve Program are taxed at a value consistent with their use as a rural preserve.⁶⁰

As originally conceived, the program required landowners to sign eight-year covenants promising to keep the land as a rural preserve and to form conservation plans for enrolled land. Legislation signed into law on April 15, 2011, removed the covenant and conservation plan requirements and made some changes to the eligibility requirements.⁶¹

B. Current Eligibility Requirements

There are two categories of land that are generally eligible for the Rural Preserve Program:

- (1) Class 2b land that was “properly enrolled” in the Green Acres Program for taxes payable in 2008, and
- (2) Class 2b land that is part of an agricultural homestead, provided that a portion of the homesteaded property is enrolled in the Green Acres Program.⁶²

In addition, to qualify for the Rural Preserve Program, the following requirements must be met:

- The eligible class 2b land must be contiguous to class 2a land that is enrolled in the Green Acres Program;
- The class 2b and class 2a lands must have the same owner;
- There must be no delinquent property taxes against the land; and
- The land must not also be enrolled in the Green Acres Program, the Open Space Property Tax Program, the Sustainable Forest Incentive Act, or be subject to a recorded conservation easement resulting in an adjusted valuation which takes the easement into account.⁶³

⁶⁰ Minn. Stat. § 273.114, subd. 3 (2011).

⁶¹ Laws of Minnesota, 2011 Regular Session, Chapter 13.

⁶² Minn. Stat. § 273.114, subd. 2 (2011).

⁶³ Minn. Stat. § 273.114, subd. 2 (2011).

C. Payback Provision

When property is withdrawn from or no longer qualifies for the Rural Preserve Program, all deferred assessments plus interest must be paid. Three years' worth of deferred taxes must also be paid.⁶⁴

D. Valuation Methodology

Land enrolled in the Rural Preserve Program may include tillable land; non-tillable land; and unusable wasteland (the land must not be used for agricultural purposes). The same valuation issues endemic to the Green Acres Program also arise in the context of the Rural Preserve Program. The Department of Revenue's report dated February 14, 2012 (described in detail in section VII of this report regarding the Green Acres Program), states that, like the Green Acres Program, land enrolled in the Rural Preserve Program shall be valued according to land type, rather than uses. Thus, the tillable and non-tillable values used for the Green Acres Program will also be used for the Rural Preserve Program. Wasteland is not eligible for the Green Acres Program, and thus has no established value for purposes of that program. According to the Department of Revenue's report, there "are few cases where wasteland would require a separate, lower value than its estimated market value." The report states that in those rare instances where "a separate value is necessary, perhaps due to recreational influences, 50% of the lower non-tillable value seems appropriate."⁶⁵

⁶⁴ Minn. Stat. § 273.114, subd. 6 (2011).

⁶⁵ Minnesota Department of Revenue, *Alternative Methods of Valuing Agricultural and Rural Vacant Land*, at 16 (February 14, 2012), available at <http://www.revenue.state.mn.us/propertytax/reports/alternative-methods-valuing-agricultural-rural-vacant-land.pdf> (last visited June 5, 2012).

Appendix G

County Farmland Preservation Programs

I. INTRODUCTION

In 1985, the Minnesota Legislature adopted enabling legislation authorizing the purchase of conservation easements.¹ Legislation that allowed local governments to develop and use Transfer of Development Rights (TDR) programs was adopted in 1997.² This chapter provides an overview of currently existing county-level Purchase of Agricultural Conservation Easement (PACE) and TDR programs formed pursuant to the enabling legislation.

II. DAKOTA COUNTY'S FARMLAND AND NATURAL AREAS PROGRAM

Dakota County preserves farmland through its Farmland and Natural Areas Program (FNAP). The goal of the program is to “protect large, contiguous agricultural areas, and to protect and connect priority natural areas.”³ The program is also intended to protect water quality. It does so by requiring that preserved farms be located near streams or rivers, requiring enrolled farmers to install permanent vegetated buffers between cultivated land and waterways, cleaning up old farm dumps, ensuring that septic systems are operating correctly, sealing unused wells, and requiring enrolled farmers to have stewardship plans for their farms. Through those requirements, the FNAP effectively links farmland protection with water quality.

The FNAP uses permanent easements to protect farmland. Pursuant to the easements, landowners retain ownership of the land, but are no longer able to develop it for other purposes. The easements allow agricultural activities to

¹ Laws of Minnesota 1985, Chapter 232, codified in Minnesota Statutes, Chapter 84C. Sections 394.25 and 462.357 of the Minnesota Statutes specifically authorize local governments to use conservation easements for preservation purposes.

² Laws of Minnesota 1997, Chapter 200, codified in Minn. Stat. §§ 394.25 (county planning and zoning) and 462.357 (municipal planning and zoning).

³ Dakota County, *Farmland and Natural Areas Program, Program Summary and Overview* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+Summary+and+Overview.htm> (last visited June 5, 2012).

continue on designated portions of the property. To acquire conservation easements, Dakota County works with willing landowners who voluntarily agree to sell or donate the easements.

A. Program History and Funding

Development of the FNAP began in 1999 in response to “citizen concern about the changing Dakota County landscape, primarily due to rapid population growth and associated development.”⁴ The County received initial funding from the Legislative-Citizen Commission on Minnesota Resources (LCCMR) to develop a plan to protect farmland and natural areas. That funding allowed the County to lay the groundwork for the program by inventorying farmland and natural areas and prioritizing lands to be protected. Through this process, the County ultimately identified 42,000 acres of farmland and 36,000 acres of natural areas for protection.⁵

In 2002, the FNAP was funded by a \$20 million bond referendum approved by Dakota County voters in November of 2002, and a second phase LCCMR grant was used to develop program guidelines. Ten million dollars was allocated toward farmland protection, and the other \$10 million was directed toward natural area protection. Since 2003, USDA’s Farm and Ranch Land Protection Program has provided \$10.7 million of matching funds, and landowners have donated more than \$3.8 million in easement value.

B. Eligibility Criteria

The FNAP’s eligibility criteria focus on the size and location of the land; use of the land; soil quality; financial considerations (i.e., how much the easement will cost); and the landowner’s commitment to farming.

To be eligible for the program, farmland must generally be at least 40 acres.⁶ It must also be located within a rural area of the county, outside of the Metropolitan Council’s 2040 Municipal Urban Services Area, and be within a half-mile of a

⁴ Dakota County, *Farmland and Natural Areas Program, Program Summary and Overview* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+Summary+and+Overview.htm> (last visited June 5, 2012).

⁵ Dakota County, *Farmland and Natural Areas Program, Program Summary and Overview* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+Summary+and+Overview.htm> (last visited June 5, 2012).

⁶ Smaller areas may be considered for eligibility if they “are shown to contribute to a contiguous greenway or farming area.” Dakota County, *Farmland and Natural Areas Program, Eligibility Criteria* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+History.htm> (last visited June 5, 2012).

Department of Natural Resources (DNR) designated protected stream, river, or lake. Farmland not within one-half mile of these identified waterways is still eligible for the program if it is adjacent to land that is already protected.

To qualify for the program, at least one-half of the property must be in active agricultural use—for example, crops or animal pastures. In addition, a majority of the property must be classified as agricultural by the county assessor. Moreover, at least 75 percent of the portion of the farm that is in agricultural use “must be classified as category 1 or 2 soils by the Natural Resource Conservation Service soils survey, or have irrigation infrastructure, or a combination.”⁷

In applying the eligibility criteria, certain factors may be given more weight than others. For example, because of the program’s focus on preserving large contiguous blocks of farmland, properties located adjacent to already protected areas are more likely to be prioritized for protection.⁸ Eligibility was previously weighted very heavily on financial considerations when land prices and development rights were very expensive. That focus allowed the County to extend its funding so that more land could be protected at a lower public cost, but also resulted in projects that were not as focused as the County wished. The County revised its evaluation criteria in late 2011 as part of a comprehensive Dakota County Land Conservation Vision. The new system places more focus on location, including prioritizing of land located adjacent to water, lands located in designated agricultural or natural area conservation zones, open space corridors, and adjacency to already protected land.

C. Program Oversight and Administration

Landowners who wish to participate in FNAP submit a pre-application form. County staff review the pre-application forms for completeness and to ensure the properties are eligible for inclusion in FNAP. Thereafter, staff meet with eligible landowners to discuss the FNAP selection criteria, conduct an initial site assessment, and discuss the application process.

From 2003 until 2011, the FNAP was overseen by a citizen advisory committee. After a landowner’s pre-application is reviewed and the applicant is determined eligible for FNAP, the landowner submits an application. In turn, County staff provided application information to the advisory committee. The committee reviewed the applications, applied the program’s eligibility and prioritization

⁷ Dakota County, *Farmland and Natural Areas Program, Eligibility Criteria* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+History.htm> (last visited June 5, 2012). Category 1 soils have “slight limitations that restrict their use.” Category 2 soils “have moderate limitations that reduce the choice of plants or require moderate conservation practices.” See United States Department of Agriculture, Natural Resources Conservation Service, *National Soil Survey Handbook*, Part 622, Section 622.02.

⁸ January 9, 2011, interview with Dakota County Land Conservation Manager, Al Singer.

criteria, scored and ranked the proposed projects, and recommended the top-ranked projects to the County Board for consideration.⁹ In 2012, with the Board adoption of more objective project selection criteria, the near-depletion of original bond funds, and the planned consolidation of remaining advisory committee functions into a restructured County Planning Commission, the FNAP advisory committee was dissolved.

The County Board reviews the recommended projects and, through its approval, authorizes staff to appraise, conduct, and negotiate with landowners and project partners to develop final projects. Thereafter, the County Board must approve the final projects, including the cost.

Once a final project is approved by the County Board, the County and landowner jointly develop a stewardship plan for the farmland; this plan is finalized through a contract with the local Soil and Water Conservation District and specifies the conservation measures that must be undertaken and maintained by the landowner. Thereafter, the easement is signed by the landowner and the easement holders, and is recorded.¹⁰

The easements are structured so that the County and the United States Department of Agriculture (USDA) are both parties to the easement. The County is responsible for monitoring and enforcing compliance with the terms of the easement. If the County fails to uphold its obligations under the easement, the easement reverts to USDA. The County produces an annual monitoring report for each easement. It estimates that it costs approximately \$160 per year to monitor each easement.¹¹

D. Program Success

The FNAP has been widely cited as a model for farmland and natural areas conservation and preservation. The program has also received numerous awards from land use planning, conservation, and other organizations.¹²

As of June 2012, the County had completed 45 farmland preservation projects, totaling approximately 5,312 acres of preserved farmland. Fourteen projects

⁹ Dakota County, *Application Process, Step-by-Step Process* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+History.htm> (last visited June 5, 2012).

¹⁰ Dakota County, *Application Process, Step-by-Step Process* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+History.htm> (last visited June 5, 2012).

¹¹ January 9, 2011, interview with Dakota County Land Conservation Manager, Al Singer.

¹² Dakota County, *Farmland and Natural Areas Program* (July 2, 2010), available at <http://www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+History.htm> (last visited June 5, 2012).

totaling another 1,661 acres are nearing completion. Eight new projects totaling 694 acres have been preliminarily approved.¹³

As noted by Dakota County's Land Conservation Manager, Al Singer, in *American Farmland*, landowner interest in the program has continued to grow with each year of the program. "What this program has done is give farmers another option. . . . Instead of selling out, they could reinvest money in their operations, deal with estate issues or reduce their debt."¹⁴ In addition, stripping the development value from the land with the conservation easement makes the land more affordable for new farmers seeking to buy land, thus helping to facilitate the transfer of farmland from one generation of farmers to the next.¹⁵

E. Moving Ahead and Looking Forward

As the funding for FNAP winds down (as of June 2012, the program has approximately \$8 million of farmland protection funding left), Dakota County officials continue to proactively plan for farmland preservation. As noted above, the County has revised their evaluation criteria to more heavily weigh locational factors. In turn, this will allow Dakota County to structure projects so that they provide multiple public benefits. As also noted by Al Singer in *American Farmland*,

"We have a new economic reality that changes the landscape for farmland protection. . . . In order for this to be financially and politically viable, we have to look at the multiple public benefits of protecting private farmland. As our funding winds down and we look to the future, we need to ask: what's going to happen with conventional agriculture as fossil fuel becomes more expensive? How do we deal with that transition, aging farmers and the costs of transporting food? Can we position ourselves to take advantage of our rich, protected farmland in proximity to millions of people? We need to protect our land options for the future because we don't know what the future holds."¹⁶

¹³ January 2012 Dakota County Board Power Point presentation by Dakota County Land Conservation Manager, Al Singer.

¹⁴ American Farmland, *The Changing Landscape for Farmland Protection*, at 2 (Spring 2011), available at http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf (last visited June 5, 2012).

¹⁵ January 9, 2011, interview with Dakota County Land Conservation Manager, Al Singer.

¹⁶ American Farmland, *The Changing Landscape for Farmland Protection*, at 2 (Spring 2011), available at http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf (last visited June 5, 2012).

III. TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS¹⁷

Five Minnesota counties—Blue Earth, Chisago, Rice, Stearns, and Waseca—currently have TDR programs that protect farmland. All of the programs are voluntary; landowners are not required to participate in the programs unless they desire to do so. All of the programs also share certain characteristics typically found in TDR programs. They establish sending areas where preservation is desired and receiving where growth is appropriate; compensate participating landowners in the sending areas for selling the development rights to their property; allow the purchaser of the rights to use additional development rights in the receiving area; and place a permanent conservation easement on the sending parcel, prohibiting further development on that parcel. A brief overview of the programs is set forth below.

A. Blue Earth County

Blue Earth County began its TDR program in approximately 1996.¹⁸ The program is intended to preserve agricultural land and conserve natural resources. The program is used most frequently in the agricultural areas of the County.

The program allows for the transfer of development rights between contiguous 40-acre parcels.¹⁹ Development rights can be transferred across township boundaries between adjacent parcels. Transfers are not allowed if they would result in more than four dwellings being established in a 40-acre section.²⁰

As of 2008, 150 densities had been transferred under the program and 6,000 acres of farmland protected.²¹

B. Chisago County

Chisago County adopted its current TDR program in 2001. The program seeks to reduce development within the Chisago County Green Corridor. Although not

¹⁷ We attempted to obtain current information about the number of acres protected via each of the programs described below, and have included that information where the counties had the information readily available and agreed to provide it to us.

¹⁸ Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf (last visited June 5, 2012).

¹⁹ Blue Earth County Zoning Ordinance, Chapter 24, Article III, Section 24-114 (October 17, 2006).

²⁰ Blue Earth County Zoning Ordinance, Chapter 24, Article III, Section 24-114 (October 17, 2006).

²¹ Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf (last visited June 5, 2012).

strictly a farmland preservation TDR program, we include it here because there is farmland within the corridor.

The program allows landowners to transfer development rights within a designated Transfer Overlay District. Landowners located within the district's sending area receive increased development credits if they rezone their property from the agricultural zoning classification to the Protection and Transfer classification. The allowable density on rezoned property changes from one unit per five acres to one unit per 20 acres. In return, the landowner receives credits at a rate of 1.25 credits per five acres (versus the regular rate of one credit per five acres) and a bonus credit for the landowner's residence. Development right credits may thereafter be transferred to and used in the receiving areas of the Transfer Overlay District.²²

In 2008, 11 densities had been transferred through the program and 290 acres had been protected.²³ As of June 2012, there have not been any additional transfers.²⁴

C. Rice County

Rice County began its TDR program in 2004. The program is intended to help achieve the following comprehensive plan goals: protect and promote agriculture by preserving large tracts of land; encourage development in areas where public services and utilities are available; discourage scattered development and promote clustered development; minimize conflicts between agriculture and non-agricultural uses; promote growth in villages; and protect shoreland areas.²⁵

The program allows for the transfer of development rights either between contiguous or non-contiguous parcels, provided the parcels are located in the same township. Where the sending and receiving parcels are under common ownership, development rights may be transferred between the parcels even if they are located in different townships, provided both townships authorize the transfer of development rights.²⁶

As of 2008, 102 densities were transferred through the program and 3,252 acres were protected.²⁷

²² Chisago County Zoning Ordinance, Section 6.10 (December 30, 2008).

²³ Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf (last visited June 5, 2012).

²⁴ June 6, 2012, interview with Chisago County Assistant Zoning Director, Tara Guy.

²⁵ Rice County Zoning Ordinance, Section 520.02 (July 2007).

²⁶ Rice County Zoning Ordinance, Section 520.04 (July 2007).

²⁷ Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf (last visited June 5, 2012).

D. Stearns County

Stearns County adopted its current TDR program in 2009.²⁸ The program strives to permanently protect “agricultural resources while promoting development in areas more appropriate for development, such as less productive areas and areas planned for future urban services.”²⁹ The program also seeks to provide additional “economic opportunities” to rural landowners, while simultaneously managing and channeling the impact of development.³⁰

For a township to participate in the TDR program, it must agree by resolution to participate in the program and identify growth areas consistent with those specified in the county comprehensive plan. All TDR transactions must be reviewed by the township(s) where the sending and receiving parcels are located.³¹

Like Rice County’s TDR program, the Stearns County program allows for the transfer of development rights either between contiguous or non-contiguous parcels, provided the parcels are located in the same township. Where the sending and receiving parcels are under common ownership, development rights may be transferred between the parcels located in different townships provided both townships authorize the transfer of development rights.³²

In addition to its TDR program, Stearns County protects agricultural land through a zoning ordinance provision that allows landowners to cluster their development rights in one corner of their property, while setting the remainder aside for agricultural use. This arrangement is reflected in a recorded deed restriction.³³ Since 2000, the County has preserved approximately 30,000 acres through its zoning ordinance provision.³⁴

²⁸ The county had a prior TDR program that was put on hold because of implementation issues. The county revamped the TDR program and adopted the new program in 2009. April 2010, interview with Stearns County Land Use Division Supervisor, Angie Berg; see also, CR Planning, Inc., Stearns County Comprehensive Plan Comprehensive Plan Update (2007), available at <http://www.crplanning.com/pdfs/stearnscompweb.pdf> (last visited June 5, 2012).

²⁹ Stearns County Zoning Ordinance, Section 11.1.1 (updated May 15, 2012). The county also has a separate natural resource conservation TDR program. See Stearns County Zoning Ordinance, Section 11.2.

³⁰ Stearns County Zoning Ordinance, Section 11.1.1 (updated May 15, 2012).

³¹ Stearns County Zoning Ordinance, Section 11.1.3 (updated May 15, 2012).

³² Stearns County Zoning Ordinance, Section 11.1.1 (updated May 15, 2012).

³³ Stearns County Zoning Ordinance, Section 9.117-9.118 (updated May 15, 2012).

³⁴ March 12, 2012, and April 4, 2012, interviews with Stearns County Land Use Division Supervisor, Angie Berg.

The County's natural resource conservation TDR program has been used in its Avon Hills Policy Area, but the farmland preservation TDR program has not been used.

E. Waseca County

Waseca County adopted its current TDR program in 2009. The program is intended to permanently preserve "rural resources and lands that provide a public benefit."³⁵

The program allows for the transfer of development rights between sending parcels located anywhere within Waseca County as long as the parcels are under common ownership. The program will expire in December of 2015 unless extended by the County.³⁶

As of June 2012, there have been six TDR certificates issued and 240 acres protected through the program.³⁷ The slow housing market has stifled participation in this relatively young TDR program.³⁸

³⁵ Waseca County, Planning and Zoning Administrator, *2009 Transfer of Development Rights Report* (December 31, 2009), available at <http://www.co.waseca.mn.us/E-board%20meetings/2010/01-05-10/TDR%20report%202009%20consent.pdf> (last visited June 5, 2012).

³⁶ Waseca County, Planning and Zoning Administrator, *2009 Transfer of Development Rights Report* (December 31, 2009), available at <http://www.co.waseca.mn.us/E-board%20meetings/2010/01-05-10/TDR%20report%202009%20consent.pdf> (last visited June 5, 2012).

³⁷ June 6, 2012, interview with Waseca County Planning and Zoning Administrator, Mark Leiferman; Waseca County, Planning and Zoning Administrator; see also, *2010 Transfer of Development Rights Report* (February 1, 2010), available at <http://www.co.waseca.mn.us/e-board%20meetings/2011/2-1-11/1i%202010%20TDR%20Report.pdf> (last visited June 5, 2012); *2011 Transfer of Development Rights Report* (January 17, 2012), available at <http://www.co.waseca.mn.us/E-board%20meetings/2012/1-17-12/2o%20TDR%20Report%202011.pdf> (last visited June 5, 2012).

³⁸ June 6, 2012, interview with Waseca County Planning and Zoning Administrator, Mark Leiferman.

Farmland Conversion Trends in Scott and Dakota Counties

A collaboration between the Farmers' Legal Action Group, Inc. (FLAG) and the University of Minnesota's Center for Urban and Regional Affairs (CURA)

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March 1, 2011

I. INTRODUCTION

Agriculture in Minnesota has, as in much of the country, been going through a tumultuous transition. The loss of the small farm is a common story, as is the tendency toward agricultural consolidation and a general loss of farmland due to development pressure. Amidst these changes, land use and agricultural preservation policies are also put in place at the state, county, township, and local levels. Some of these policies encourage development, some attempt to preserve farmland and succeed, and others attempt to preserve farmland but fall short.

The following section examines the changes in the agricultural land bases of Scott County and Dakota County, two of seven counties in Minnesota's Twin Cities metropolitan area. This comparison is useful given their geographic proximity, similar development pressures, similar agricultural land bases, yet divergent local land use and agricultural preservation policies. While future analysis should connect the transitions in agriculture to the local agricultural preservation policies, the primary purpose of this report is only to identify the agricultural transitions themselves.

First, a brief introduction is given to each county and their respective land use and agricultural preservation policies. Next, statewide data based on satellite photography from 1990 and 2000 are analyzed. The second analysis section examines Geographic Information System (GIS) data sets for 2005 and 2010 in both counties. Greater detail is given to these years, including an analysis of changes in land area, number of parcels in agriculture, average agricultural parcel size, and loss of agricultural parcels based on parcel size. Finally, both time periods are tied together to examine the shifts in agriculture experienced by both counties over the past 20 years.

II. SUMMARY OF KEY FINDINGS

Overall, total agricultural land declined in both counties during both time periods. Between 1990 and 2000, the counties lost between one-quarter to one-third of their agricultural land and saw corresponding increases in total urban

land cover. Both trends were greater in Scott County relative to each county’s overall land base.

Between 2005 and 2010, total agricultural land area continued to decrease, as did number of agricultural parcels, and average parcel size increased. Whereas Scott County lost 13% of its agricultural parcels and 5% of agricultural land, Dakota County lost 22% of agricultural parcels but only 2% of agricultural land. This imbalance in Dakota County between number of parcels and overall land lost is the result of a steep loss in the smallest agricultural parcels (those less than five acres in size). This suggests a divergence between Scott and Dakota counties in which both are losing similar percentages of agricultural parcels, but Dakota County is stemming the loss of its overall agricultural land area. Furthermore, the analysis of agricultural loss by parcel size shows a loss distributed across several parcel size categories in Scott County, whereas parcel loss in Dakota County was greatest by far in the smallest parcel size category (zero - five acres). Despite this divergence, the total area lost was concentrated in larger categories due to each parcel’s overwhelmingly larger size (i.e., losing one 200-acre farm is equivalent to losing twenty ten-acre farms).

Finally, while future research on demographic, economic, and development trends is suggested to bring greater context, this analysis suggests that local land use and agricultural preservation policies are possible factors in explaining these changes in the agricultural land base.

III. METHODOLOGY & DATA

A. Data Sets Used

Two sets of secondary data were analyzed in producing this report. The first section utilizes a web-based set of maps and charts made available by the Minnesota Geospatial Information Office consisting of interpretations of aerial photography taken in 1990 and 2000.¹ The aerial photographs were taken by the Landstat satellite, whose scanner records digital images of the surface reflectance in visible and infrared wavelengths of the electromagnetic spectrum. The smallest area recorded is a ground resolution cell or pixel in the imagery measuring 30 x 30 meters, or about one-quarter acre. Each pixel was subsequently classified under a particular land cover category. It is important to note that these classifications are interpretations of satellite imagery based on a number of criteria regarding each pixel’s surface reflectance. Therefore, these maps and the changes in land use they represent may vary significantly from other analyses derived from data that determine agricultural area, for example, by entire parcels

¹ More information on how satellite images were interpreted and how maps were created can be found at <http://land.umn.edu/methods/index.html>.

and how they have been assessed for tax purposes. Nonetheless, this dataset provides consistent methods at the statewide and county level, thus making it a useful tool for the time period in question.

The second section utilizes the MetroGIS Regional Parcel Data Set for both counties in 2005 and 2010. These datasets were procured from the Metropolitan Council by way of the University of Minnesota's Center for Urban and Regional Affairs. The primary field examined was the Land Use field. Though coded differently in the GIS data sets for each county, both fields were ultimately determined by each parcel's tax assessment classification. In Dakota County, the different values in this field stayed relatively consistent between 2005 and 2010.²

In Scott County, a new classification system was implemented by assessors between 2005 and 2010. Since 2008, a GRM class code has been assigned to each parcel, with each GRM code incorporating one or several tax classifications. Furthermore, a parcel can be assigned multiple GRM classes (i.e., 200 Agricultural/300 Commercial). This analysis aggregates all 2010 parcels with the '200 Agricultural' GRM class code and compares them to the more simply classified 2005 parcel land uses. Also, prior to 2008 (i.e., in the 2005 dataset), 'rural vacant land' was lumped with agricultural land in the Scott County data. Afterwards, due to changes made in assessment and classification, 'rural vacant land' has been assigned its own tax classification (2b) and its own GRM code (211 Rural Vacant Land). In order to make the analysis consistent, rural vacant land was included in the 2010 data set as agricultural land; otherwise its omission by way of changes in classification would result in inaccurate conclusions regarding the changes in farmland in Scott County.

B. "Agricultural Parcel" Defined

The term agricultural parcel is used throughout this report, particularly in Section II, to signify any parcel of land whose value in the field "USE_DESC1" in the GIS datasets is populated as agricultural in nature. This field was, in turn, categorized by GIS programmers based on each parcel's tax assessment classification, the specific methods and process for which are described above. While a parcel might be labeled with a primary land use of agriculture, it is

² The four agriculture-related values consolidated in this analysis are 'AG,' 'AG-AG PRESERVE,' 'AG HOUSE GARAGE 1 ACRE,' and 'AG HOUSE GARAGE 1 ACRE-AG PRESERVE.' These values are generalized in plain language after organizing parcels by Assessment Code. 'AG' parcels include Assessment Code F1, 'AG-AG PRESERVE' parcels include Assessment Code F1 with a zone of A, 'AG HOUSE GARAGE 1 ACRE' indicates parcels with Assessment Code F, and 'AG HOUSE GARAGE 1 ACRE-AG PRESERVE' parcels are Assessment Code F with a Zone of A. The above information was gathered through personal communication with the Dakota County Assessor's office.

important not to conflate the term ‘agricultural parcel’ with actively productive farmland.

For property tax purposes, agricultural land is best described by the tax classification code 2a, which the Minnesota Property Tax Administrator’s Manual describes as,

“Parcels of property, or portions thereof that are agricultural land and buildings. Class 2a land may be homestead or non-homestead depending on ownership, occupancy and active farming scenarios... . Minnesota Statutes, section 273.13, subdivision 23, provides a number of requirements that must be met in order to be classified as class 2a land:

1. At least 10 contiguous acres must be used to produce agricultural products in the preceding year (or be qualifying land enrolled in an eligible conservation program);
2. The agricultural products are defined by statute; and
3. The agricultural product must be produced for sale.”³

Despite this definition, there is a large contingent of parcels classified as agricultural in the GIS datasets less than 10 acre in size. What accounts for these smaller agricultural parcels?

First, the Property Tax Administrator’s Manual notes that there are a variety of situations in which smaller parcels can be classified as ‘Class 2a Agriculture.’⁴ In addition, a document provided by the Scott County Assessor’s Office shows how the current GRM Class Codes for agriculture (mainly the GRM code ‘200 Agricultural’) encompass a range of tax classifications outside of Class 2a land. A few of many additional tax classifications included under the ‘200 Agricultural’ GRM code include Class 4bb2 (a single-family dwelling, garage, and surrounding one acre of property on a non-homestead farm), Class 1d (migrant housing, structures only), Class 2c (managed forest land), and many more.⁵

Thus, many parcels have been classified under agricultural GRM codes if their purpose, use, or affiliation is primarily agricultural, even if they do not meet

³ See Minnesota Property Tax Administrator’s Manual, Module 3, at 15, http://taxes.state.mn.us/property_tax_administrators/pages/other_supporting_content_propertytaxadministratorsmanual.aspx.

⁴ See Minnesota Property Tax Administrator’s Manual, Module 3, at 15-20.

⁵ A document is available from the Scott County Assessor’s office showing which GRM class codes incorporate which tax classification categories. The definitions of those categories are available in the Minnesota Property Tax Administrator’s Manual.

every criterion necessary to be considered Class 2a productive farmland. While consolidating this range of tax classification statuses into a general ‘agriculture’ category complicates the analyses in some ways, in other ways it gives a more accurate picture of the broader ranges of land that are engaged in agriculture-related activities.

IV. SECTION I: LOSS OF AGRICULTURAL LAND AREA, 1990-2000

Dakota and Scott County are neighboring counties, both located in the Twin Cities seven-county metropolitan area. These two counties were chosen for this case study because of their strong agricultural land bases, relative to other metro counties; their proximity to one another; the intense development pressure present in both; and their differing approaches to agricultural zoning.

Dakota County’s townships maintain control over zoning and planning. There, the townships have maintained agricultural zoning and generally have maximum densities of one dwelling unit per every forty acres. In addition, the county implemented its own farmland preservation program through which it purchases conservation easements on farmland from willing landowners.

In Scott County, the townships ceded planning and zoning authority to the county several decades ago. The county’s current comprehensive plan designates only one township and a small portion of the neighboring township for long-term agriculture, with agricultural zoning densities of one dwelling unit per every forty acres.

A. Statewide Losses

At least two indicators are available that give an overall statewide look at the total areas and percentages of agricultural land cover in Minnesota between 1990 and 2000. These include the aforementioned dataset made available by the Minnesota Geospatial Information Office and the USDA’s Farm Census data made available through Quickstats v1.0.⁶

Data Source	Agricultural Land in MN, 1990 (thousand acres)	Agricultural Land in MN, 2000 (thousand acres)	Area Lost (acres)	Percent Lost
MnGeo	26,775	23,543	3,232	12.07
USDA	30,000	27,900	2,100	7.00

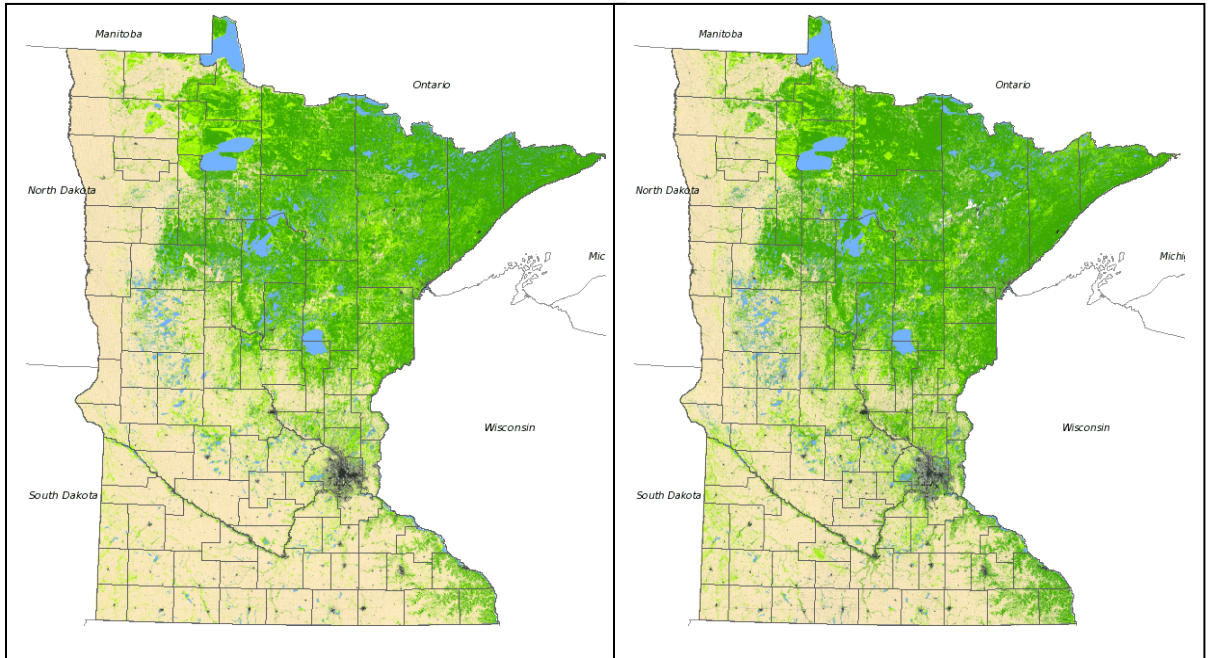
⁶ MnGeo statewide data is available at http://land.umn.edu/maps/impervious/landbrowse.php?year_imp=1990&type=county&county, and USDA Farm Census Data is available at http://www.nass.usda.gov/Data_and_Statistics/Quick_Stats/index.asp.

The two datasets show a divergence of over three million acres classified as agricultural. Furthermore, the USDA’s higher estimate shows the lesser estimated loss of just over two million acres over the decade, whereas the lower estimate shows a greater loss of over three million acres. While varying methodology is likely the cause of such a wide gap, and caution should therefore be taken in comparing the two datasets, both independently confirm a statewide trend of dwindling farmland. Using these two datasets as a range, a conservative assessment would simply say that Minnesota as a state lost between 7-12% of its overall agricultural land area between 1990 and 2000.

On the following page are statewide maps from the Minnesota Geospatial Information Office showing land cover in 1990 and 2000.

MN Land Cover 1990

MN Land Cover 2000



Land Cover	
	Agriculture
	Grass/Shrub/Wetland
	Forest
	Water
	Urban
Land Cover	
	Agriculture
	Grass/Shrub/Wetland
	Forest
	Water
	Urban

B. Scott and Dakota County Losses

The Minnesota Center Geospatial Information Office’s dataset allows a closer examination of Minnesota counties for the time period in question. The tables below show totals land cover between 1990 and 2000 for Scott County.

SCOTT COUNTY						
Land Cover ⁷	Acres, 1990	Percent of Land, 1990	Acres, 2000	Percent of Land, 2000	Acre Change	Percent Gain/Loss
Agriculture	159,492	67.72	108,309	45.99	-51,183	-32.09
Grass/Shrub/Wetland	39,228	16.66	54,460	23.12	15,232	38.83
Forest	10,908	4.63	32,509	13.80	21,601	198.03 ⁸
Water	6,683	2.84	7,466	3.17	783	11.72
Urban	19,204	8.15	32,776	13.92	13,572	70.67

Between 1990 and 2000, Scott County lost roughly one-third of its agricultural land base. In absolute area terms, this was a loss of over 50,000 acres. This loss was accompanied by a 70% increase of urban land cover. Because agriculture accounted for over two-thirds of land in Scott County as of 1990, even after this steep loss agriculture remained as the largest single category in 2000, covering nearly half the county’s total land.

⁷ The definitions of the land cover classifications can be found at http://land.umn.edu/methods/landcov_class.html, and an Accuracy Assessment of the dataset is available at <http://land.umn.edu/methods/accuracy.html>. This page estimates the accuracy for each year’s data separately (estimated at 86% for both the 1990 and 2000 impervious surface maps), and an estimate of 74% for the accuracy of estimating change between 1990 and 2000 based on this data (derived by multiplying the estimated accuracy of the two years together).

⁸ It is unknown to the author’s knowledge whether this is an accurate representation of change in forest cover in Scott County between 1990 and 2000, or what would account for such a large increase.

DAKOTA COUNTY						
Land Cover	Acres, 1990	Percent of Land, 1990	Acres, 2000	Percent of Land, 2000	Acre Change	Percent Gain/Loss
Agriculture	248,316	66.22	186,122	49.64	-62,194	-25.05
Grass/Shrub/Wetland	35,687	9.52	47,767	12.74	12,080	33.85
Forest	19,859	5.30	44,783	11.94	24,924	125.50 ⁹
Water	10,224	2.73	10,184	2.72	-40	-0.39
Urban	60,877	16.23	86,116	22.97	25,239	41.46

During the same time period, Dakota County lost 25% of its agricultural land area. The county also saw an increase in urbanization, with 41% more land area classified as urban in 2000 than in 1990. By the year 2000, agriculture accounted for roughly one-half the land cover in Dakota County.

C. Comparison of Losses in Scott and Dakota Counties

Overall, both counties show trends of a steep loss of farmland during the decade from 1990 to 2000, with a corresponding increase in urbanization. The two counties are, in fact, quite similar over this decade. Both counties began in 1990 with roughly two-thirds of their cover land area in agriculture. Both Scott and Dakota counties lost a large portion of their agricultural land cover over the decade (one-third and one quarter, respectively). Though Dakota County had a lesser proportional loss of agricultural land compared to Scott County, because Dakota started with a higher absolute number of acres in agriculture (248,316 acres in 1990), the absolute loss of 62,194 acres in Dakota County was greater than in Scott County. **Thus, while a greater area of farmland was lost in Dakota County, proportional to their original agricultural land bases, Scott County had a much greater loss.**

These losses in farmland corresponded with urbanization in both counties. **Scott County experienced a much higher proportional degree of urbanization (a 70% increase) compared to Dakota County (a 41% increase).** Interestingly, nearly all other categories of land cover, all of which are natural resource-based (Grass/Shrub/Wetland, Forest, and Water), increased over the decade, the cause for which is unclear.

⁹ Again, it is unknown whether this is an accurate representation of change in forest cover in Dakota County between 1990 and 2000, or what would account for such a large increase.

On the whole, this data shows that both counties entered the 21st century with a trend of decreasing farmland in generally comparable proportions and increasing total urban area. This analysis also shows that, even in the 1990’s, Scott County was hemorrhaging farmland at a higher rate than Dakota County, a trend that continues in the following decade.

V. SECTION II: LOSS OF AGRICULTURAL LAND, 2005-2010

A. Scott County Losses: Agricultural Parcels and Land Area

The table below represents changes in total number of agricultural parcels and agricultural land area in Scott County between 2005 and 2010.

SCOTT COUNTY				
Category	2005 Totals	2010 Totals	Loss/Gain	Percent Change*
Total Parcels	52,989	55,121	2,132	4.02%
Total Land Area (acres)	214,849	215,191	342	0.16%
Total Ag Parcels	3,630	3,159	-471	-12.98%
Total Ag Area (acres)	130,055	123,770	-6,285	-4.83%

* In terms of 2005 land base.

During this time, Scott County experienced a contraction in both agricultural area and total number of agricultural parcels, losing roughly 5% of all land classified as agricultural and 13% of its agricultural parcels. In addition, average agricultural parcel size rose from 35.8 acres in 2005 to 39.2 acres in 2010.

Also, between 2005 and 2010, land parcelized in Scott County by 4%. Parcelization is the division of parcels in a given area into a larger number of smaller parcels. A 4% parcelization indicates that, over this five-year period, land was broken up into smaller parcels resulting in 4% more parcels in 2010 than existed previously in 2005.

Parcelization is an important trend receiving growing attention among planners and natural resource professionals because of its relationship to development. To some it represents the repackaging of the land in a way that both reflects and favors a transition away from a reliance on agriculture and natural resource extraction toward residential and other development. In a 2007 paper from the University of Wisconsin, Rice & MacFarlane write, “It is through parcelization

that the land resources are refined and packaged for wholesale and retail consumption as real estate.

The characteristics of parcels can have significant impacts on the uses available to a parcel owner. Parcel size is often a critical factor: a parcel too small is impractical to manage for farming or forestry, while parcels that are too large may be impractical for housing or other consumptive uses.”¹⁰ Thus the degree of parcelization is included as an indicator that is both a result of increased development and a factor likely to influence future development trends.

B. Loss of Agricultural Land in Scott County by Parcel Size

The loss of agricultural parcels in Scott County was unequally distributed amongst parcels of different sizes. The following section includes a breakdown of all agricultural parcels in 2005 and 2010, frequently referring to Attachment A (directly following this case study), which includes a series of charts and graphs on loss of agricultural land by parcel size in Scott County between 2005 and 2010.¹¹

The table in Attachment A (Figure 1) shows totals for loss of agricultural parcels by both number of parcels and total area. **While categories with the most predominant parcel losses were the 0 - 5, 5 - 10, and 10 - 20 acre categories (losing 41%, 22%, and 13%, respectively), Scott County also showed a significant 11% loss in parcels of 125 acres and larger.** Figure 2 in Attachment A shows the side-by-side overall change in parcel numbers in each category, while Figure 3 shows each category’s parcel loss percentage. The result of these dynamics is a somewhat distributed total loss of farmland across categories. Figure 5 in Attachment A breaks down total area losses and gains by category. While the preceding figure shows a higher percentage loss among parcel size categories of smaller sizes, the 75-125 and +125 acre categories account for the categories with the largest agricultural area losses due to their larger size. Lastly, Figures 5 and 6 show the percentage distribution of total agricultural parcels by size in 2005 and 2010, showing how parcel gains and losses change the county’s overall agricultural parcel distribution.

¹⁰ McFarlane, D. & Rice, K., “Integrating Landscape Amenities with Historic Parcelization Trends to Better Target Landscape Conservation Efforts,” at 3, presented at the 48th annual conference of the American Collegiate Schools of Planning, Milwaukee, WI, October, 2007.

¹¹ A note on methodology: parcel sizes were chosen somewhat arbitrarily, except for the value of 35.7 acres that divides two categories. This was the average farm size in 2005; thus it was chosen to separate loss of agricultural parcels that were smaller than the 2005 average and those that were larger.

C. Dakota County Losses: Agricultural Parcels and Land Area

The table below represents changes in overall number of agricultural parcels and area of agricultural land in Dakota County between 2005 and 2010.

DAKOTA COUNTY				
Category	2005 Totals	2010 Totals	Loss/Gain	Percent Change*
Total Parcels	134,302	136,353	2,051	1.53%
Total Area (acres)	375,266	375,347	81	0.02%
Total Ag Parcels	5,746	4,501	-1,245	-21.66%
Total Ag Area (acres)	205,145	201,027	-4,117	-2.01%

* In terms of 2005 land base.

Land parcelization also occurred in Dakota County, resulting in 1.5% more parcels in 2010 than in 2005. This indicates a lesser but still prevalent general trend in Dakota County toward the conversion of larger parcels to smaller and more numerous parcels.

Between 2005 and 2010, Dakota County saw a 21.7% decrease in the number of parcels classified as agricultural. However, despite the loss of one-fifth of its agricultural parcels, Dakota County only saw a 2% decrease in total agricultural land area from 2005 to 2010. Average agricultural parcel size has also increased in Dakota County from 36 to 45 acres during the period of study. Thus, a more complex shift has occurred in which average parcel size has increased, the number of agricultural parcels has been drastically reduced, but the total area of land classified as agricultural has stayed relatively constant.

D. Loss of Agricultural Land in Dakota County by Parcel Size

As in Scott County, the loss of agricultural parcels was unevenly distributed among parcels of different sizes. The charts and graphs in Attachment B (directly following this case study) show breakdowns of agricultural parcels in Dakota County by parcel size 2005 and 2010.

Figures 1 and 2 show that the only categories that saw an absolute increase in number of parcels were those in the 20 - 36.69 and 35.7 - 74.99 acre categories, and were very minor increases of only several parcels. All other categories of parcel sizes saw a decrease in total number of parcels.

Most significantly, Figure 2 shows a drastic decrease in parcels between 0 and 4.99 acres in size between 2005 and 2010. **The number of agricultural parcels in Dakota County smaller than five acres fell 64%, from just under 1,900 parcels in 2005 to less than 700 parcels in 2010.**

Otherwise, the number of parcels in other categories has stayed relatively constant.

This drastic decrease in the number of small parcels has shifted the overall proportion of agricultural parcels between 0 - 4.99 acres from 33% of all agricultural parcels in 2005 to only 15% in 2010. In terms of overall percentage, this shifted the proportion of parcels over 125 acres from 22% in 2005 to 28% in 2010, now the largest category. These dynamics are displayed in figures 3, 5, and size of Attachment B. **Although roughly 1,200 agricultural parcels were lost from 2005 to 2010, because the majority of these parcels were very small, this accounts for how Dakota County was able to lose 22% of its parcels while only losing 2% of its agricultural land.** As Figure 4 in Attachment B displays, while the vast majority of parcels lost were in the smallest category, their minute size in comparison with an 8% loss among farms of 125 acres and over greatly concentrates most of the total area lost in the largest parcel size categories.

VI. CONCLUSION

Between both time periods examined, Scott County and Dakota County experienced overall losses in agricultural land; the primary difference is only to what degree. Between 1990 and 2000, both counties lost one-third and one-quarter of their overall agricultural land base, respectively, and saw an increase in urban areas of 70% in Scott County and 40% in Dakota County. Considering that the statewide figures show a 7 - 12% loss of agricultural land across the state, this indicates that Scott and Dakota counties lost agricultural land during this decade at over twice the statewide rate. When comparing the counties to each other, this decade shows the trend that continues in the latter time period in which Scott County is losing more agricultural land at a higher rate than is Dakota County.

The greater detail given to the second time period (2005-2010) shows how both counties continue to lose agricultural land but diverge in important respects. Both counties experienced overall land parcelization, but again more so in Scott County (4%) than in Dakota County (1.5%). Scott County lost 13% of its overall agricultural parcels, accounting for 5% of its agricultural land area, whereas Dakota County lost 22% of its agricultural parcels, accounting for only 2% of its overall agricultural area. These trends are supported by an overall increase in average agricultural parcel size in both counties. This increase was greater in Dakota County (a shift from a 36- to a 45-acre average) than in Scott County (a shift from a 36- to a 39-acre average).

The analysis of agricultural parcel loss by size shows important and complex trends of small farm loss. When broken into size categories, both counties showed the greatest losses among agricultural parcels of smaller sizes. This loss of small parcels was particularly evident in Dakota County, which lost over 60% of its zero- to five-acre agricultural parcels between 2005 and 2010. This is what accounts for a 22% loss of agricultural parcels while only a 2% loss of overall land classified as agricultural. While Scott County sustained more than double the overall proportional loss of its agricultural land area, these losses were more distributed across parcel size categories.

Scott and Dakota counties are a relevant case study for changes in agriculture in Minnesota and in the U.S. at large for a number of reasons. Both are counties are located in an expanding metropolitan region with intense development pressure. However, agriculture is still an important economic component, and much of both counties’ land is devoted to agriculture-related activities. At least one area where Scott and Dakota counties diverge, however, is on their varying land use policies and agricultural preservation programs. As noted previously, Dakota County maintains strong agricultural zoning, while Scott County does not. In addition, Dakota County initiated its own farmland preservation program in 2002. The overall goal of the program is to protect large, contiguous agricultural areas, and to protect and connect priority natural areas. Conservation easements are that program’s primary means of protecting farmland. The program is described in Appendix G of this report.

Further research would be needed to suggest causal agents for the loss of farmland in both counties. Any future policy analysis should examine possible causes of the divergent experiences in loss of farmland between Scott and Dakota counties. The two counties might, for example, produce a different set of crops and other goods, thus leading to different resiliency of their respective agricultural sectors. Economic conditions in the two counties outside of agriculture, such as general economic growth and residential development, might be pressuring the agricultural sector in different ways as well. In short, the loss of agricultural land is a complex phenomenon resulting from multi-faceted development pressure and economic conditions that cannot be attributed to any one policy or factor. However, the divergent local policies that address agricultural preservation in Scott and Dakota counties must not be overlooked.

While diagnosing the likely causes of farmland loss in Minnesota requires further analysis, this report has shown that counties in the Twin Cities metropolitan area are steadily losing agricultural parcels and agricultural land. Within this overall trend is a notable emphasis in the loss of small agricultural parcels in both counties. If preserving their agricultural assets is a goal of policymakers in Scott and Dakota counties, this analysis alone warrants a re-examination of local farm preservation policies.

Attachment A: Loss of Agricultural Parcels in Scott County, 2005-2010

Agricultural Parcel Size	Number of Ag. Parcels, 2005	Number of Ag. Parcels, 2010	Percent of Ag. Area Lost (%)	Total Ag. Parcels Lost	2005 Ag. Area (acres)	2010 Ag. Area (acres)	Percent of Ag. Area Lost (%)	Total Ag. Area Lost (acres)
0-4.99	659	388	41.12	271	1175	781	33.51	394
5-9.99	467	362	22.48	105	3978	3076	22.68	902
10-19.99	588	512	12.93	76	8594	7636	11.15	958
20-35.99	449	455	-1.34	-6	12107	12559	-3.73	-452
36-74.99	890	901	-1.24	-11	45002	44978	0.05	24
75-124.99	463	439	5.18	24	41606	39239	5.69	2367
125+	114	101	11.40	13	17592	15481	12.00	2111

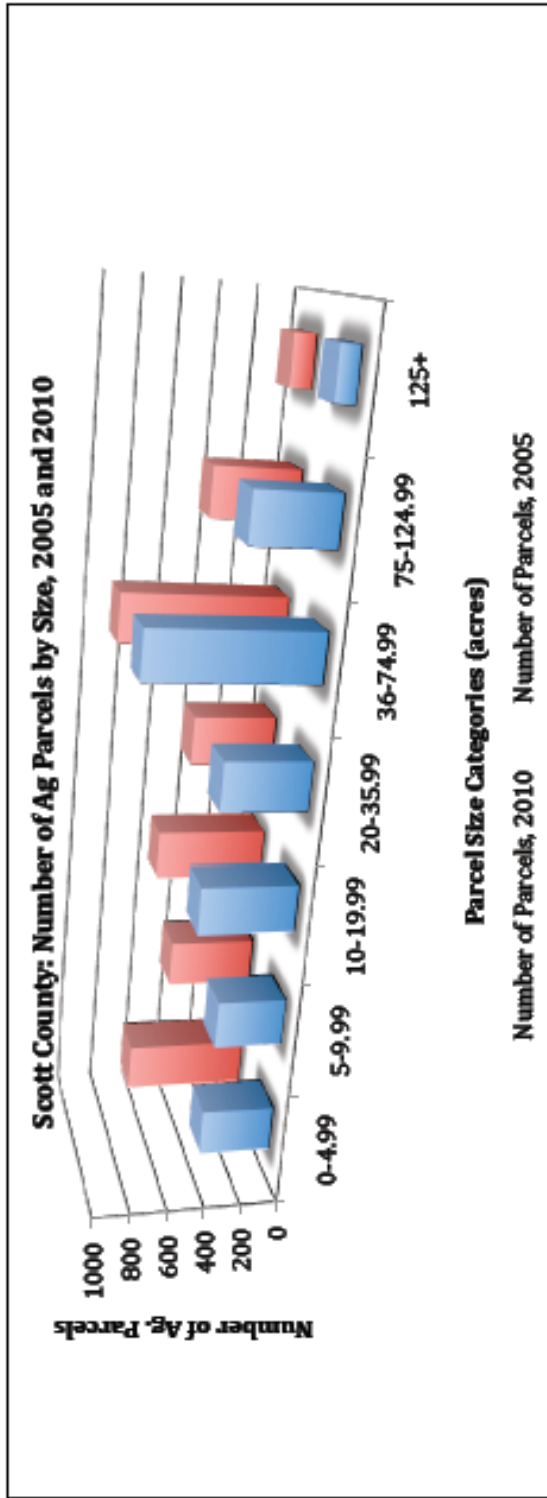


Figure 1

Attachment A (continued): Loss of Agricultural Parcels in Scott County, 2005-2010

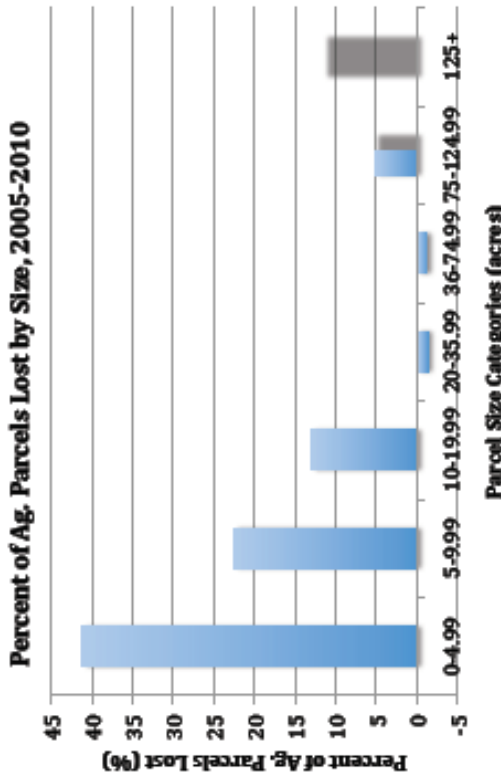


Figure 3

Total Ag. Area Lost by Parcel Size, 2005-2010

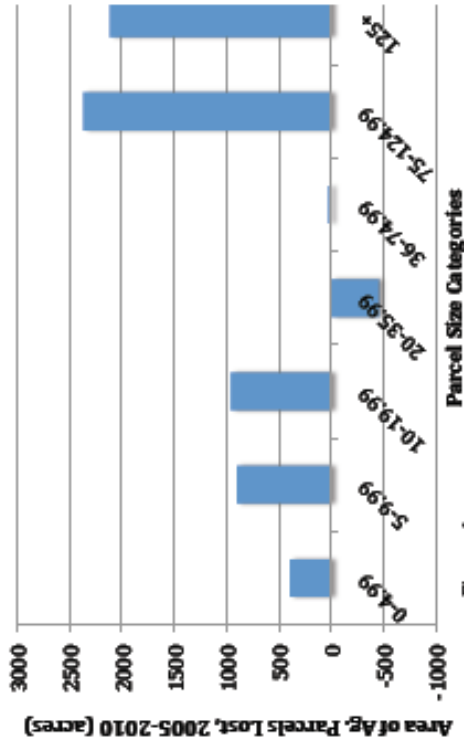
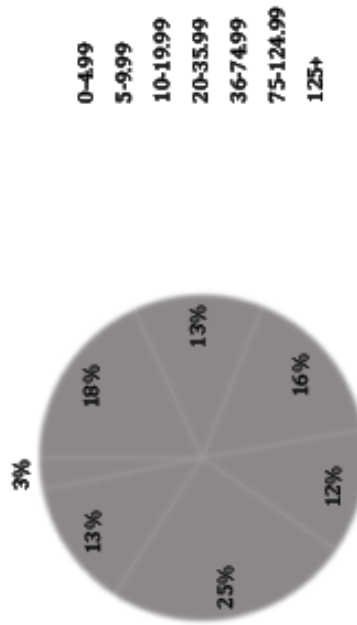
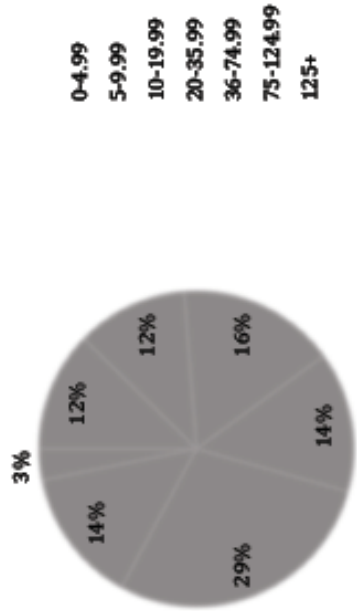


Figure 4

Number of Ag. Parcels by Size (acres), 2005



Number of Ag. Parcels by Size (acres), 2010



Attachment B: Loss of Agricultural Parcels in Dakota County, 2005-2010

Agricultural Parcel Size	Number of Parcels, 2005	Number of Parcels, 2010	Number of Ag. Parcels Lost	Percent of Ag. Parcels Lost	2005 Ag. Area (acres)	2010 Ag. Area (acres)	Percent of Ag. Area Lost	Area of Ag. Parcels Lost (acres)
0-4.99	1897	677	1220	64.31	1941	1530	21.19	411
5-9.99	375	373	2	0.53	2872	2852	0.71	20
10-19.99	535	535	0	0.00	8073	8086	-0.15	-12
20-35.69	538	550	-12	-2.23	14897	15313	-2.79	-416
35.7-74.99	1277	1279	-2	-0.16	64497	64872	-0.58	-375
75-124.99	857	839	18	2.10	71597	70215	1.93	1383
125+	267	248	19	7.12	41268	38162	7.53	3106

Figure 1

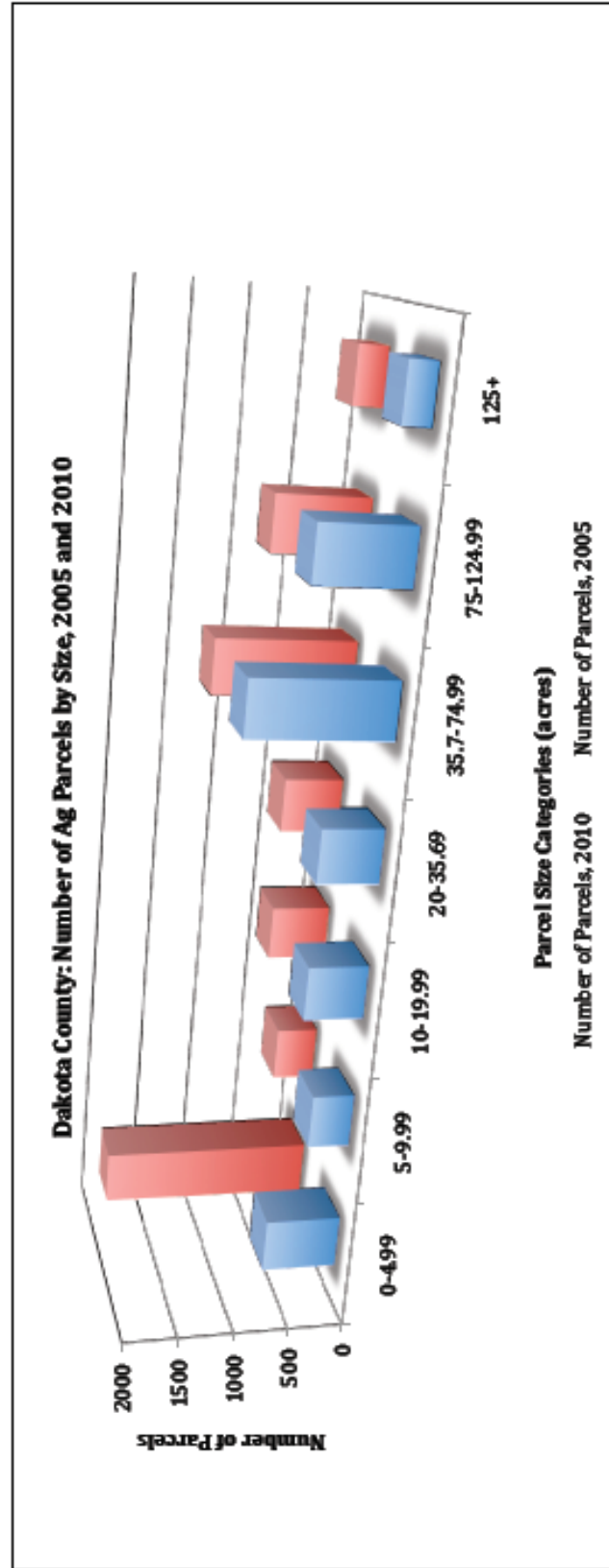
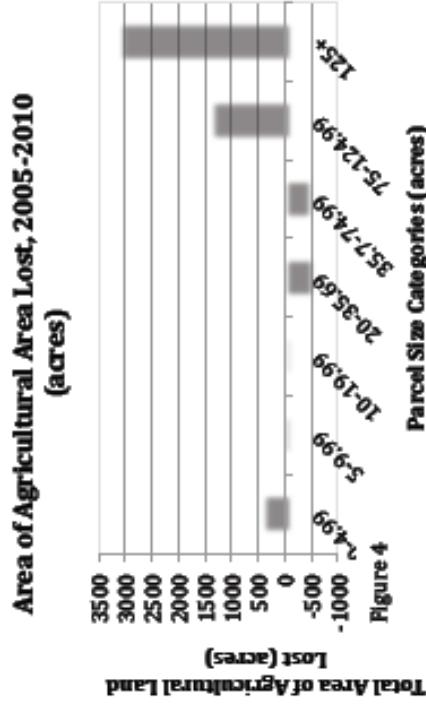
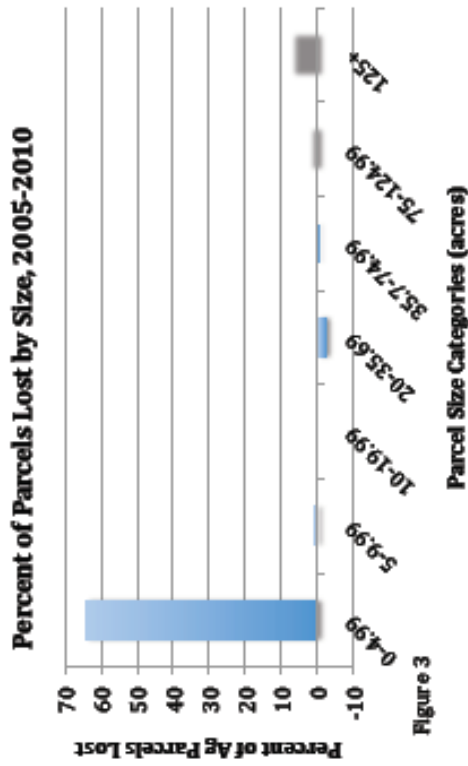
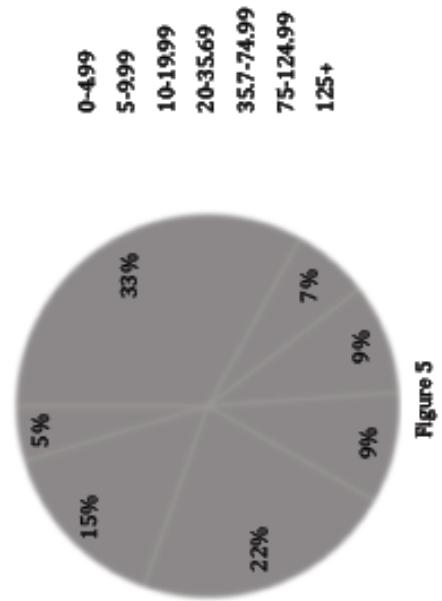


Figure 2

Attachment B (continued): Loss of Agricultural Parcels in Dakota County, 2005-2010



Number of Agricultural Parcels by Size, 2005



Number of Agricultural Parcels by Size, 2010

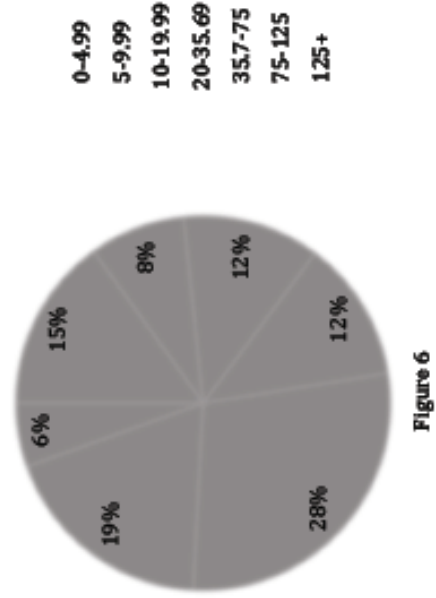


Figure 6

Figure 5

Appendix I

Case Study #1: Preserving a Family Farm on the Urban Fringe and Providing Multiple Benefits to the Community

The experience of a family in Belle Plaine illustrates the struggle inherent in maintaining farms near urban areas. It also shows that tenacity and innovation are often necessary to preserve a family farm located in what is now a developed area, and the many benefits inherent in preserving these farms.

Kim Devine-Johnson and Tammy Devine are sisters who are the fourth generation to own what was originally a 240-acre farm located on the edge of Belle Plaine in Scott County.¹ Although once squarely in a rural area and surrounded by other farms, the family farm is now hemmed in by development. Much of the farm consists of the last remnants of native sand-hill prairie in the region, and Robert Creek passes through the farm on its way to the Minnesota River. Recognizing the intrinsic value of their land and its many natural benefits, and wanting to care for it properly, the family has a long history of using soil and water conservation measures on their farm.

Beginning in the 1990s, the family saw that urban development was encroaching into the previously rural areas surrounding their farm. They very much wanted to preserve their farm as farmland and continue to conserve the precious natural resources on their land. At the same time, the family saw the wisdom of also repurposing the farm to add uses as development approached, and consequently began planning to actualize a vision for making some portion of the farm a retreat center.

In 2000, members of the family met with county staff regarding the family's long-term plans for the farm. At that time, the family was told the county needed the land for development. County staff told them: "You have to go. This land may not be developed in five or ten years, but it *will* be development property in 20 years."

The family continued in their planning despite the county's discouragement, and incorporated as Devine Valley Renewal Ministries in 2002 to advance the family's vision for the farm. The owners of the farm at that time were Roger and Marilyn Devine, the parents of Kim Devine-Johnson and Tammy Devine. When

¹ As described below, 40 acres of the farm were sold in 2005.

their parents passed away in 2003 and 2004, the property was taxed at its market value rate instead of its agricultural use rate, despite that the land was being actively farmed. That, combined with high estate taxes, forced the sisters to sell 40 acres of the land to a developer in 2005.²

Dedicated to sustaining their family’s vision for the farm, the sisters pressed forward to actualize that vision. The plan that ultimately evolved was to make a portion of the farm “a place devoted to ecology, to education, and to retreat and renewal,” with the remainder of the certified organic tillable and pasture land “rented to others to farm.”³ Accordingly, the sisters helped to initiate the formation of an educational nonprofit organization with its own board, the Prairie Oaks Institute at Robert Creek (POI). The organization was certified as a 501(c)(3) nonprofit organization in 2008. The family thereafter deeded 20 acres of the farm, including the original farmstead and a second house, called the “Harvest House,” over to POI in 2010. The Devine sisters continue to own the 180 acres adjacent to the 20-acre parcel now owned by POI, and that acreage continues to be used for farming purposes.

POI’s mission focuses on ecological sustainability and rejuvenation, education and leadership development, and retreat and renewal. It uses the property as a retreat center, hosts student groups and regular community potlucks, and rents three acres of the property to Open Arms of Minnesota. Open Arms uses that acreage to grow organic vegetables for use in its nutritional programs—i.e., providing free meals to people who are living with life-threatening illness. Open Arms also partners with community organizations in the Phillips neighborhood of Minneapolis to bring middle-school students out to the farm to teach them how to recognize, grow, harvest, and cook their own vegetables, as well as how their service in the garden will help people in their community. According to Open Arms, in 2011 it harvested 28,000 pounds of organic produce from the acreage it farms on POI’s land.⁴

The owners of the farm have fought tenaciously to keep their land in farming. Through their dedication, persistence, and innovation, they have been able to keep

² See Star Tribune, ‘*Sacred space*’ in Belle Plaine, by David Peterson (December 10, 2010) available at http://www.startribune.com/templates/Print_This_Story?sid=111387519 (last visited on May 14, 2012) (noting that, at this time, “Scott County’s hypergrowth was still near its peak and developers were more than interested. To pay estate taxes, they [Kim Devine-Johnson and Tammy Devine] did sell 40 of 240 acres to one of them: Bob Engstrom, renowned for his eco-friendly, open-space-preserving style”).

³ See Star Tribune, ‘*Sacred space*’ in Belle Plaine, by David Peterson (December 10, 2010) available at http://www.startribune.com/templates/Print_This_Story?sid=111387519 (last visited on May 14, 2012).

⁴ Star Tribune, *A thankful turnout at the Butterball*, by Sara Glassman (November 26, 2011), available at <http://www.startribune.com/printarticle/?id=134430763> (last visited on May 14, 2012).

most of the farm intact and preserve its natural resources and their attendant benefits. At the same time, they have been able to open the farm up to members of the community and beyond. The farm thus provides multiple environmental, social, and economic benefits not just to the surrounding community, but to inner-city urban areas as well. This has been done despite intense pressure to develop the farm, strong support from the county for such development, and limited state support for farmland preservation.

The sisters needed a significant amount of legal assistance to bring their vision for the farm to fruition—something many farmers struggling to hold onto their land may not be in the position to procure. This example makes clear the importance of preserving not only large contiguous blocs of farmland, but also farms located in close proximity to urban areas. These farms are vital local resources and should be eligible for preservation programs if the owners wish to preserve the land.

Appendix I

Case Study #2: Enrollment Obstacles in the Metropolitan Agricultural Preserves Program

Prior reports regarding the Metropolitan Agricultural Preserves Program (Metro Program) note that it is easier to withdraw from the program than to enroll in it. The recent experience of a family interviewed for this report bears this out.

Although the family's farm qualifies for the Green Acres Program, which offers tax benefits similar to those available through the Metro Program, the family intentionally chose to enroll in the Metropolitan Agricultural Preserves Program instead. They chose that program because they want to preserve their farm for the long term. The Metropolitan Agricultural Preserves Program is the only preservation program currently available within their county; the family thus reasoned that enrolling in the program was the best option currently available for preserving their farm.

The farm consists of 40 acres of certified organic farmland and has been used for farming for the past 132 years. The family has a strong desire to keep the land in farming and would like to pass it on to the next generation. Certain protections provided by the program were also incentives for the family to enroll in the program, including:

- **Some protection against annexation.** This is of concern to the family because their farm is adjacent to an area where farmland is being developed at an increasing pace (primarily for housing subdivisions).
- **Freedom from assessments.** Given that their farm runs along a highway, the family estimates their land could possibly be subject to assessments nearing a million or more dollars if rumored improvements are made to the highway.

The family learned about the Metro Program and the benefits it provides through their own efforts; no information was provided to them by the county. Rather, the family heard about the program from other farmers, and thereafter did the research to learn more about the program and get a sense of how it would work for their farm.

In September of 2010, the family went to their county assessor's office to learn more about the program and to figure out how to enroll in it. When their assessor

learned the family wanted to enroll in the Metro Program, the assessor dissuaded them from doing so, stating that the Green Acres Program and Metro Program were essentially the same with respect to the benefits they offer. The assessor further told the family that the tax savings on their 40-acre parcel would be minimal, and that the family would have to pay a fee to enter the program (the fees ultimately paid were approximately \$72). When the family responded that they were fine with paying a fee, the assessor again attempted to dissuade them from enrolling in the Metro Program, stating there is a lot of paperwork associated with the program. The family replied that they were okay with doing the paperwork, noting that their farm is certified organic, and they had to fill out about 80 pages of forms for their certification application. The assessor then said, “Well, you know you have to *apply*,” implying that the family’s application might be rejected. The family stated that was fine, too; they were more than willing to go through the application process. The assessor replied that their office was really busy and did not presently have time to look into the matter, but would get back to the family soon about the steps the family must take to apply for the program.

Approximately six weeks after their initial conversation with the assessor, the family still had not heard back from anyone, so they called the assessor’s office. They were told they needed to contact someone else in the assessor’s office to get the Metro Program application. When the family contacted that person and said they wanted to apply for the program, they were asked, “Are you sure you really want to do that?” That person went on to say that there are fees associated with the program, and that the family would need to apply to be part of the program, indicating that approvals are often not granted. The family was told that the assessor was currently very busy but would send the application to the family in about a month, sometime during January. The family did not receive an application, so they called a third time and were told that the assessor’s office was still busy, and an application would be mailed soon.

The family finally received an application in mid- to late March, six months after they first requested one, and about a month before the April 25 filing deadline for the Metro Program. They submitted their application on time and received an approval letter three to four weeks later.

Looking back on their experience, the family said it was difficult to get information and guidance about the program from the county. The overall message they received from county officials when they sought to enroll in the Metro Program was that they should not bother applying for it; doing so was expensive; the application process would take a lot of work; and they probably would not get approved anyway. The family questioned why those in charge of implementing the program seemed so averse to promoting it and seemed to obstruct rather than facilitate the enrollment process. Although this family’s perseverance and dedication allowed them to enroll in the Metro Program, they were left wondering what would happen to other farmers seeking to enroll.

FLAG



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Preserving Minnesota's Agricultural Land: Proposed Policy Solutions

June 30, 2012

Attachments to Appendix A,
Prior Reports and Recommendations
Regarding Minnesota's
Farmland Preservation Programs

Rural Area Task Force Report
to the Metropolitan Council

February 1979

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Introduction

In February 1978, 57 people gathered at the Metropolitan Council to begin a vibrant ten-month study of rural area issues. The Rural Area Task Force was formed by the Metropolitan Council to establish a common understanding of rural area concerns and to prepare recommendations for managing the rural area in the context of the growing Twin Cities Metropolitan Region.

This final report presents the findings and 60 recommendations of the task force. The recommendations are found throughout the report, numbered and printed in capital letters.

Members of the task force were appointed by the Metropolitan Council and served without pay. The task force was made up of people who live and work in and are knowledgeable about the rural areas of this Region. Membership included farmers; extension agents; county, township and municipal officials; a veterinarian; a county agricultural appraiser; a county surveyor; an economist; and many others.

The major work of the task force was performed by three committees — Agricultural Preservation, General Rural Use, and Rural Centers. The task force was divided in this way because the Metropolitan Council's Development Framework guided growth plan establishes three definable land uses within the "Rural Service Area." Those land uses include a Commercial Agriculture Region, a General Rural Use Region and Rural Centers or hamlets. Each committee prepared summary reports at the conclusion of its work. These reports were then discussed extensively by the full Rural Area Task Force in September and October 1978 and, after suitable amendment, recombined to form this final report.

The Agricultural Preservation Committee was the largest committee and carried out its assignment through four work groups. Each work group prepared a report for the committee which in turn prepared the summary report. Since the work group reports contribute valuable background to the final report; they are included intact in the appendix which was reproduced separate from this report and may be obtained by calling or writing the Metropolitan Council Public Information Office.

In addition to being the largest committee, Agricultural Preservation had the benefit of a foundation already established by the 1975 Technical Advisory Committee on Agriculture. It also had the benefit of substantial policy direction in the Metropolitan Development Framework Plan.

The primary charge for this committee was not, "Should agriculture be preserved?" but "How can it be preserved?" In the course of its work, the committee made many significant observations about why agricultural land is lost and what needs to be done to stem the loss of this important economic resource. The committee identified the generation-to-generation transfer of the farm and the problems that impede that transfer as the most critical points, and it was felt that this identification was a virtual breakthrough in understanding the whole issue of agricultural preservation. The discussion and recommendations on this subject should be given careful consideration.

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The General Rural Use Committee also used work groups for the major part of its assignment. The committee, which was originally entitled "Non-Farm Development," changed its name to more positively identify with the area it was addressing. The main focus of its attention remained the non-farm development in that area which is neither long-term agriculture nor rural centers.

Non-farm development in the rural area is a subject which is unquestionably one of the most vexing from many standpoints: from the homeowner's standpoint when he or she discovers how septic tanks function and what rural life style really is like, from the local government's standpoint when making everyday decisions on services and development, and from the regional standpoint as the Metropolitan Council establishes its orderly growth program for the Region. This will remain a difficult issue for all involved, but the recommendations of the task force should lead to a better understanding of the subject and better management of the area.

Many of the recommendations prepared by this committee were ultimately included in the section on area-wide recommendations because they applied to all rural communities. Work group reports to this committee are included in the appendix.

The Rural Centers Committee, almost characteristically, was the smallest committee and always met as a whole. It is important that the reader make the distinction between which communities are Rural Centers and which are Freestanding Growth Centers, since the latter were not directly addressed by the task force. The Rural Centers are identified in the Development Framework Plan, and basically are the small, old, rural municipalities which usually do not have many urban services. Freestanding Growth Centers are large rural centers with most urban services available and which can accommodate moderate growth.

The findings of the Rural Centers Committee were corroborated by a special survey of Rural Center mayors, city councilmen and local planners. Survey response was excellent and showed a dramatic correspondence with the committee's recommendations. (A report on the survey and response is contained in the appendix.)

Finally, it should be noted that this report is advisory to the Metropolitan Council. However, its scope is much wider. The report shows clearly that many of the policy objectives of the Metropolitan Council require the participation and cooperation of all levels of government and, unquestionably, the understanding and consent of the public.

The report will be distributed to local governmental officials, interested parties and the Minnesota Legislature. Local and county governments will find many recommendations which apply directly to their activities, as will state and federal agencies. It is hoped the recommendations, through their wide application, will provide some guidance to those governmental units. It is also hoped the report will assist governmental officials, as well as the public at large, to gain a better understanding of the rural area issues in this Metropolitan Region.

Summary

The task force concludes that a sound local planning and administrative capability is the cornerstone for obtaining all other agricultural, development and life-style objectives. Efforts are vitally needed to bolster existing programs that provide support for this capability. It takes as much management expertise to maintain a desired rural situation as it does to handle rapid urbanization.

AGRICULTURAL PRESERVATION

The task force agrees with the Metropolitan Council that agriculture is a primary land use and should remain so for a very long time. But to bring this about, several steps are needed: government activities should be realigned to be more supportive of agriculture; a stable land use environment should be created to assure capital availability and a fair realization of equity; and the tax burden on farmland should be equalized. The task force urges the establishment of an agricultural preserves program that provides several necessary corrections and incentives to support long-term agricultural activity in the Metropolitan Area. The generation-to-generation transfer of the farm is identified as the most critical point in agriculture preservation, and several measures are suggested for overcoming problems associated with this transfer. It is recommended that the Green Acres law be continued, but that certain changes are needed and that its area of application should be reduced as it is superseded by agricultural preserves.

GENERAL RURAL USE REGION

The General Rural Use Committee acknowledged that within the General Rural Use Region there is tremendous diversity from one community to another, and from one county to another. At the same time, the committee was able to identify land uses and other qualities of a "rural life-style" which were felt to prevail across the General Rural Use Region as a whole. The committee felt these land uses are legitimate and "ultimate" land uses — that is, the General Rural Use Region is not an area waiting to be developed and urbanized.

The committee said that local rural communities should, in their comprehensive plans, clearly define the kind of development that they want to encourage or restrict within their boundaries. The committee felt that without such careful local consideration, the General Rural Use Region will encounter more and more suburban development, eventually causing great difficulty for rural residents and rural governmental units.

RURAL CENTERS

Rural Centers, the task force thinks, need to make a greater effort to manage their own destiny as they face the prospects of being buffeted by an ever increasing number of conflicting forces in the rural area. The task force makes several recommendations for improving the capability of the small Rural Centers to deal with these forces. Specific planning issues, management needs, and important intergovernmental relationships are identified. Growth is vital to most Rural Centers, but the task force emphasizes that growth for a Rural Center is much different than growth for a suburban community. Services are also an important issue

for Rural Centers, but especially so because it is usually the Rural Center which supports them. The task force urges the Rural Centers to reconsider how service costs are allocated, and to assure that they are not subsidizing the scattered non-farm development which frequently contributes to their demise.

AREA-WIDE RECOMMENDATIONS

The task force also identified several very important issues which apply to the entire Rural Service Area. Recommendations include measures to better prepare the potential rural residents for the life-style that exists in the rural area; to improve awareness of local regulations and limitations as land is bought and sold; and to develop a rural services handbook that identifies for local officials key decision points for supplying services. In addition, several recommendations were made for correcting annexation abuses and for assuring a more equitable annexation process, for directing and targeting federal funds in the rural area, and for establishing new or separate legislation for preserving open space so that agricultural preservation legislation is not mis-used for this purpose.

Finally, the task force urges the Metropolitan Council to make a concerted effort to assure that the Council staff and Council members maintain an awareness and understanding of rural concerns. And it especially recommends the creation of a rural advisory group to assure the continuation of this effort.

Orientation: The Rural Service Area

Readers of this report will observe frequent references to terms such as "Rural Centers," "General Rural Use Region," and "Commercial Agriculture Region."

The basis for this terminology is the Metropolitan Development Framework, the Metropolitan Council's overall development plan for the Twin Cities Metropolitan Area. The terms usually refer to the general policy areas shown on page 5.

It should be further noted that delineation of these areas will be refined by individual local governments under the provision of the Metropolitan Land Planning Act of 1976.






The policy areas related to this report are defined by the Development Framework as follows:

Commercial Agriculture Region — The regional purpose of the Commercial Agriculture Region is the maintenance of commercial farming and food production and related agribusiness as the primary and predominant activity in the Rural Service Area.

General Rural Use Region — The regional purpose of the General Rural Use Region is to provide very low intensity land uses such as commercial farming, hobby farms, horticulture, conservation of natural resources, passive recreation, and in some cases to act as a holding or





DEVELOPMENT FRAMEWORK PLAN

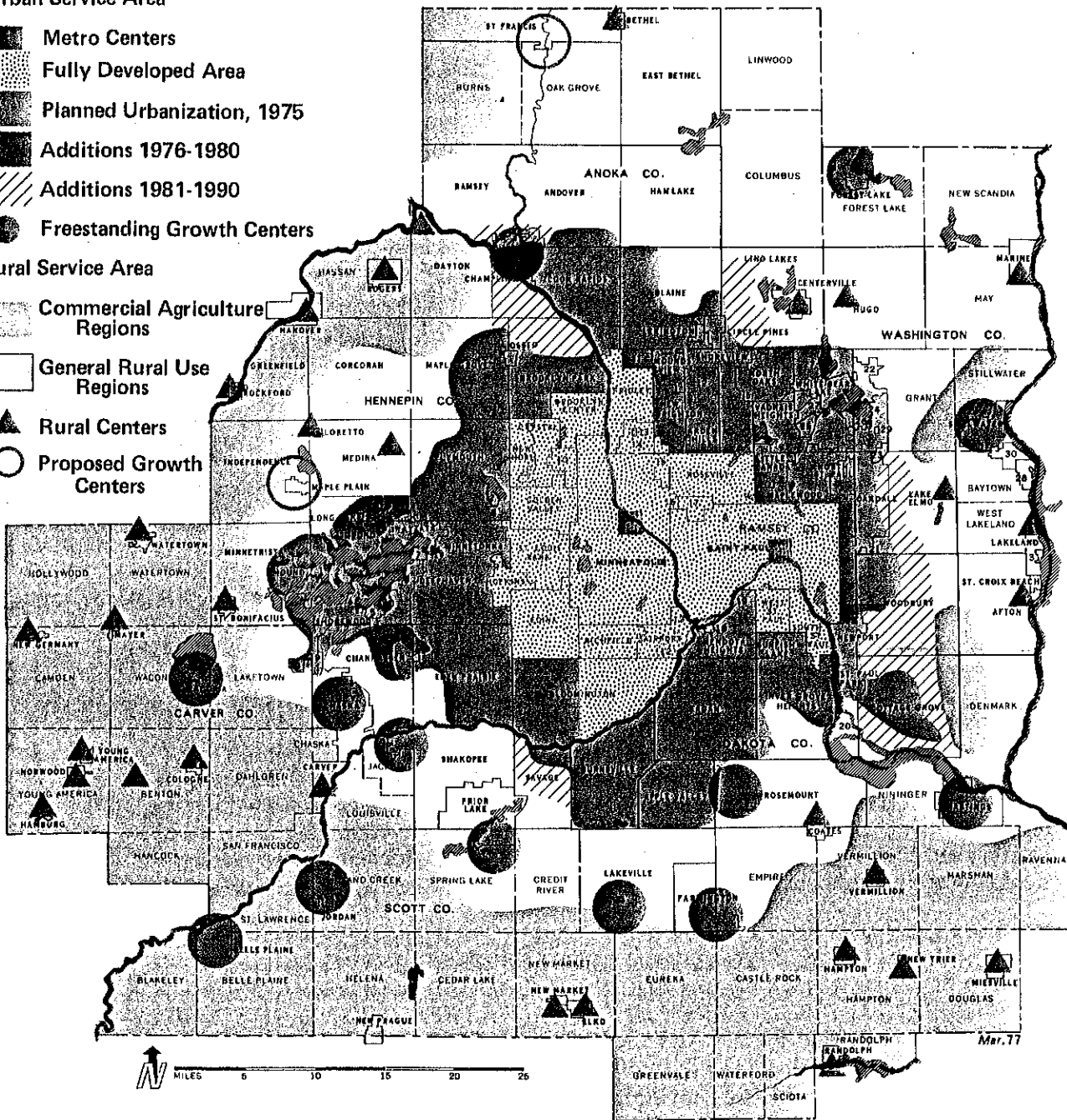
Urban Service Area

-  Metro Centers
-  Fully Developed Area
-  Planned Urbanization, 1975
-  Additions 1976-1980
-  Additions 1981-1990

-  Freestanding Growth Centers

Rural Service Area

-  Commercial Agriculture Regions
-  General Rural Use Regions
-  Rural Centers
-  Proposed Growth Centers



TWIN CITIES METROPOLITAN AREA

transition area between long-term agricultural areas and urbanization areas.

Rural Centers – The Rural Centers are the small rural cities which usually do not have most of the standard municipal services. The regional purpose of Rural Centers is to support local agricultural enterprises and to accommodate residential development at a scale appropriate to the Rural Centers' ability to finance and administer services. In those cases where the municipal boundaries are very extensive, areas contiguous to the central business district, often an "old village," or served by central sewers are considered the Rural Centers. The remainder of the municipality is a rural service area.

Freestanding Growth Centers – These are the larger rural cities which possess adequate municipal services to maintain a reasonable rate of growth. They have on a reduced scale most of the characteristics of the Metropolitan Area, i.e., a downtown and older core, a developing ring, and a surrounding rural area.

The Cornerstone

All three committees of the task force, although working in separate policy areas, have emphasized strongly that planning is the cornerstone for successful management of a rural metropolitan community. But the planning referred to here is more than a simple map or report which may sit on a shelf collecting dust.

The task force emphasized that the planning process is an ongoing program for becoming aware of community resources, service demands, costs, long-term fiscal implications, etc., and for examining them in the larger perspective of community goals and policies. The planning program must be closely linked with the local decision-making process for regulations, zoning, and so forth.

This planning framework is needed because rural communities are affected by many pressures and interests, including the county, Metropolitan Council, real estate interests, retiring farmers, commercial interests, and many more. All of these factors are collectively creating and changing the life-style in the rural area. The task force made ten recommendations concerning local planning.

1. IF A COMMUNITY HAS ANY DESIRE TO PROTECT, ESTABLISH, OR MAINTAIN A CERTAIN RURAL SITUATION, IT MUST PREPARE AN ONGOING PROCESS FOR CONSIDERING AND BALANCING THE NUMEROUS AND VARIED INTERESTS AND PLACE THEM IN THE LARGER PERSPECTIVE OF COMMUNITY GOALS. AN ONGOING LOCAL PLANNING PROCESS IS THE ONLY WAY THIS CAN BE ACHIEVED. AS ONE MEMBER DESCRIBED IT, "THE KEY TO PROTECTION IS YOUR PLAN."

Because of the large number of interests and pressures that may affect a rural community, only one of which is the Metropolitan Council, a caution is in order: the local plan is fulfilling many needs beyond those listed in the Metropolitan Land Planning Act (MLPA).

2. THE METROPOLITAN COUNCIL SHOULD NOT MISTAKE SUPPLEMENTARY ITEMS IN THE LOCAL COMPREHENSIVE PLAN FOR A DEPARTURE FROM THE METROPOLITAN LAND PLANNING ACT REQUIREMENTS.

In the major sections of this report, specific recommendations are made for improving the planning process, and for correcting many related factors. At the outset, however, and in the planning context, certain matters should be emphasized.

3. PLANNING LAWS SHOULD REQUIRE AN AGRICULTURAL COMPONENT IN EVERY COMPREHENSIVE PLAN.

Agriculture is more than a resource. It is a vital industry which, by its very existence, makes many contributions to the Region. As a primary land use, it should be given major attention in a local comprehensive plan just as housing, transportation and waste management are presently.

In subsequent parts of this report, land areas are identified as being "long-term" or "short-term." Long-term refers to land for which there is no reasonable need to convert to urban use in the foreseeable future (at least 20 years). Short-term is that land which is located in an area where much of the land has a reasonable expectation of being urbanized during the next ten to 20 years. The agricultural component of local comprehensive plans should identify these two areas. The vast majority of the farmland in the Metropolitan Area is long-term. This land should not be regarded as a holding zone for future development.

The task force suggests that the long-term status of such lands should be clearly identified with suitable roadside signs just as wildlife management, state parks, and some conservation lands are identified.

The future of Rural Centers and the General Rural Use Area depends on sound local planning and decision-making. Each Rural Center must establish an aggressive local planning process that addresses its problems and issues and establishes political and administrative structure for solutions to these problems.

Rural Centers, in particular, must confront the need to establish new economic bases or secure existing economic bases if they are to maintain themselves, much less grow. Many, if not most, Rural Centers find themselves confronting an uncertain future and a need to make well-considered decisions on their future growth and development. A few centers have ostensibly committed themselves to a course of action and now require the means to assess and implement their decisions.

Many communities find it difficult to gather local support for comprehensive long-range planning. This is frequently due to fears of forced (legislatively mandated) planning and a perception of planning as a means to curtail individual freedoms and property rights.

4. THE SECURING OF CITIZEN INVOLVEMENT IN AND SUPPORT FOR THE GOALS, POLICIES AND STANDARDS FOR COMMUNITY DEVELOPMENT SHOULD BE A MAJOR ITEM IN ANY LOCAL PLANNING PROCESS. CONTRACTS WITH PRIVATE OR PUBLIC PROFESSIONALS TO PREPARE LOCAL PLANS AND ORDINANCES SHOULD INCLUDE SPECIFIC PROVISIONS FOR COMMUNITY EDUCATION AND PARTICIPATION, AND CONTINUED INVOLVEMENT IN THE PLANNING PROCESS.

County, metropolitan, state and federal units of government and agencies preparing plans and programs which affect local units of government should take special measures to secure local participation during plan preparation. When general public interest must override the interests of a particular community, the agency preparing the plan should be required to explain why to the affected community.

Agricultural communities must actively publicize and enforce their plans and ordinances. Local banks, real estate agents, and prospective buyers should be made aware of the communities' goals and development restrictions.

Despite the availability of both publicly and privately produced handbooks on the local planning process, many rural communities that are faced with undertaking and administering a comprehensive planning program do not have a thorough understanding of its purpose, the steps in the process and the resources available to them throughout the process. Also, many rural communities do not have the resources to effectively conduct such planning and implementation programs. Most rural communities can use county planning services. But rural communities in Hennepin and Ramsey counties must be particularly independent because these counties are not permitted to carry out land planning activities.

5. LOCAL PLANNING HANDBOOKS AND RESOURCES (BOTH FINANCIAL AND PROFESSIONAL) SHOULD BE BETTER PUBLICIZED AND DIRECTLY APPLIED TO RURAL NEEDS.
6. THE STATE LEGISLATURE AND CONGRESS SHOULD BE URGED TO APPROPRIATE ADDITIONAL MONIES FOR LOCAL RURAL PLANNING EFFORTS AND THEIR IMPLEMENTATION BY EITHER AUGMENTING EXISTING FUNDING VEHICLES (METROPOLITAN PLANNING ASSISTANCE GRANT PROGRAM, 701 ASSISTANCE, FARM HOME ADMINISTRATION SECTION III) AND/OR BY ESTABLISHING NEW PROGRAMS SPECIFICALLY FOR RURAL PLANNING.
7. COUNTY AND REGIONAL PROFESSIONAL PLANNING ASSISTANCE TO RURAL COMMUNITIES SHOULD BE CONTINUED AND EXPANDED AND MADE AVAILABLE AT THE REQUEST OF LOCAL GOVERNMENTS.

Increased development, service requirements and the need for local comprehensive planning have created a great deal of pressure for expanded administrative and management capabilities in rural communities. Many rural governments recognize the need for change

from part-time government to a more sophisticated administrative structure, but the costs of such change are frequently beyond the reach of most rural governments. Innovative measures are needed to bridge this gap.

8. RURAL PLANNING SHOULD INCLUDE AN ASSESSMENT OF LOCAL ADMINISTRATION CAPABILITIES AND FUTURE ADMINISTRATIVE NEEDS.
9. RURAL UNITS OF GOVERNMENT FACED WITH A NEED FOR EXPANDED ADMINISTRATIVE AND MANAGEMENT CAPABILITIES AND LIMITED ABILITY TO PAY FOR SUCH EXPANDED SERVICES SHOULD INVESTIGATE OPTIONS FOR SHARED SUPPORT OF "CIRCUIT RIDER" ADMINISTRATORS, PLANNERS, INSPECTORS AND OTHER MUTUALLY NEEDED PERSONNEL. STATE, COUNTY, OR METROPOLITAN PROGRAMS SHOULD BE ESTABLISHED TO PROVIDE FUNDS TO MAINTAIN AND IMPROVE NEEDED ADMINISTRATIVE AND CODE AND ORDINANCE ENFORCEMENT CAPACITY. THIS IS VITALLY IMPORTANT FOR ACHIEVING LOCAL, REGIONAL AND STATE OBJECTIVES FOR COORDINATED AND ORDERLY DEVELOPMENT THROUGH THE IMPLEMENTATION OF COMPREHENSIVE PLANS.
10. RURAL COMMUNITIES SHOULD ESTABLISH AND MAINTAIN REGULAR ASSOCIATION AMONG THEMSELVES IN ORDER TO CREATE AN IDENTITY FOR SHARING INFORMATION, SUPPORT AND IDEAS.

Policy-Area Recommendations

THE PRESERVATION OF AGRICULTURE

Perspective

Agriculture is a major land use and the largest single land use in the Metropolitan Area. The Metropolitan Area lies on the northern edge of the Midwest corn belt which is one of the world's largest agricultural regions and is noted for its vast productive capability. According to Metropolitan Council land use policies, this prime agricultural land should be protected to promote long-term agricultural use of the land.

In 1977 approximately 1,600 square miles (1,037,700 acres) of the 2,840 square miles of land in the Metropolitan Area were classified as farmland. Harvested acreage in that same year totaled over 1,000 square miles. The distribution of farmland varies considerably by county with Ramsey almost totally an urban county and Carver, Dakota and Scott counties three-fourths or more agricultural.

Agriculture in the Metropolitan Area is threatened in two major ways. First, in the outright conversion of farmland to urban uses; and second, through a much greater but less visible impact of impermanence and uncertainty.

From 1964 to 1974, 16 percent of the Metropolitan Area farmland was converted to urban uses. At the same time, the number of farms declined by 15 percent. Rather than peripheral land immediately adjacent to urban land, much of the loss was widely scattered throughout the Region. This scattering contributes to the second and far greater problem: impermanence. As non-farm development scatters about the agricultural area, land values jump and many land use conflicts arise. A gradual questioning of the future of agriculture develops in the farm community and important agricultural investments are neglected. There is a gradual shift in the attitude of the whole community, and before long farm people themselves are caught in the conversion trap and, in effect, work against themselves. Often government programs, at all levels, join this confusion and add to the complexity and unsettlement of the area. The following section of this report will elaborate on certain aspects of this dilemma.

The farm community and the public in general should be seriously concerned about this problem because of the unnecessary disruption of productive agricultural areas and the loss of this important economic activity. In addition, enormous governmental costs can result from the inefficient use of costly public services.

Agricultural preservation has the mutual benefit of protecting the farm community and substantial private investments, and assisting with more orderly and realistic urban growth, and thereby more efficient use of government services.

Fundamental Position

There is need for a state program which identifies agriculture as a primary land use and which realigns government programs and actions to be supportive of long-term agricultural use.

Farmers do not need bribes or give-aways to continue farming. But in the vicinity of an urban area, certain measures are needed to compensate for pressures and forces beyond the control of the farmer, which work against the productive agricultural use of the land.

There is no question that if nothing were done to change the present state of affairs, some farming would continue in many parts of the rural Metropolitan Area. Many corrections have already been made which are beneficial to long-term farming. These include local planning and zoning efforts and the Metropolitan Council's Development Framework program. The importance of such efforts should not be neglected. But these alone are not sufficient.

This task force has determined that several additional measures are needed, as well as improvements in local planning and zoning, to secure a stable agricultural economy in the rural portion of the Metropolitan Area.

If nothing more is done, vast portions of the agricultural area will remain unstable, resulting in a waste of valuable productive resources in the land itself and affected farm enterprises, premature conversion to urban uses, and waste of public resources to serve these urban uses.

It must be realized that agricultural preservation is not only a matter of protecting the land. It is equally important that a viable farm community be preserved, and this means that cultural, governmental, financial and political institutions must make additional efforts to support the farm economy.

The task force does not think that agricultural preservation will run contrary to economic realities, but instead will reflect 1) a more realistic understanding of the economic forces at work, 2) a more realistic appreciation for the potential of non-farm development, and 3) the efficient use and conservation of valuable land resources.

The Rationale for Preserving Farmland

There are many good reasons for preserving the Region's farmland. The following are those discussed by the task force.

- Farmers are committed to agriculture and want to keep their land in agricultural use. Agriculture is the basic industry of this country.

The task force felt that a majority of farmers have a strong desire to keep their land in agricultural use while they own it, and want to see it remain in agricultural use after they retire. Attitudes to the contrary usually reflect a misunderstanding of the role of land as both equity and the means of production. Often, the land is a farmer's retirement. The task force made recommendations to deal with this issue.

- Much of the rural land in the Metropolitan Area is highly productive and capable of sustaining high levels of production indefinitely with good farm management.

Five of the six agricultural counties have large areas of prime agricultural soils as defined by the Soil Conservation Service. Additional areas have been made highly productive through irrigation systems and specialty crop management such as in the Anoka peatland farms.

- Farmers have committed a substantial capital investment to farming in the Metropolitan Area.

Much of this commitment is in permanent facilities such as silos, barns, pole sheds, irrigation wells and drainage, in addition to equipment such as tractors, machinery and implements.

- Much of the agricultural land has been extensively prepared for productive farm use over many years of careful management.

Crops do not just appear all by themselves. The fields must be prepared, conservation plans implemented, and many careful modifications made over the years to adapt the land to the crops, the machinery, and special soil conservation techniques that particularly suit the land.

- The land is not needed for urban development.

Even the most optimistic population forecasts show that population growth will not attain a level that would require a significant share of the farmland in the Metropolitan Area over the next several decades.

- There is plenty of non-agricultural land already with urban services available or scheduled which can contain non-farm development for many years to come.

The present Development Framework Plan alone includes sufficient land for development needs at least through 1990.

The Need for a Stable Land Use Environment

The acre-for-acre conversion of farmland to urban use is much less significant than the effects of the far-extending sense of impermanence and uncertainty which result from an unstable land use environment when non-farm uses are permitted in the farm area and given priority.

It is a subtle effect which rarely becomes visible to the urban eye until long after corrections can be made. To the farmer, however, the results are quite apparent. Capital investments which are needed to maintain productivity are deferred because of the uncertainty that they can be amortized. Land acquisitions which are needed to attain productive efficiency are dropped because the farmer is bidding against non-farm investors with greater resources; farm management practices become sloppy because it is presumed that the land will be torn up eventually for houses. The children of established farmers and new farmers, in general, are reluctant to take over the farms, even if they could afford to, because of doubts about the future of the land and the hassles with non-farm residents in the area.

This task force believes that much of the impermanence and uncertainty in the rural Metropolitan Area can be corrected and replaced with a legitimate assurance and certainty that agriculture has a sound, long-term future. But all levels of government have a responsibility and must take action. The planning recommendations discussed in the first section form the foundation of that action.

Ordinances and regulations (e.g., control of noise, dust, odor and other matters) that apply to the agricultural areas should not be designed to encourage or support non-farm development in those districts or to support non-farm development elsewhere in the community at the expense of normal farm operations.

11. PUBLIC AGENCIES SHOULD BE SEVERELY DISCOURAGED FROM PURCHASING TILLABLE LAND IN AGRICULTURAL AREAS FOR NON-FARM PURPOSES.

12. LEGISLATION WHICH APPLIES TO THE USE OF PRIVATELY OWNED LAND

FOR A PUBLIC PURPOSE, SUCH AS POWER LINES, PUBLIC ACCESS, AND SO FORTH, SHOULD PLACE AGRICULTURAL LAND AT A HIGHER LEVEL OF PROTECTION THAN WETLANDS, FLOODPLAINS, OR OTHER LAND WHICH ARE NOT WORKED BY AGRICULTURAL EQUIPMENT.

Public agencies often overlook the fact that farmlands need to be worked by large equipment while wetlands and such do not.

13. A STUDY COMMISSION SHOULD BE FORMED AT THE STATE LEVEL TO RESOLVE THE MANY PROBLEMS NOW ATTRIBUTED TO EMINENT DOMAIN.

Eminent domain actions were identified as a "necessary evil," but a serious threat to agricultural areas if not managed with care for the farmers' concerns. The task force feels that the subject is very complicated and beyond the scope of its assignment. A state commission could provide the process needed for examining the many perspectives on this issue and preparing solutions.

14. PROGRAMS AIMED AT THE PRESERVATION OF AGRICULTURAL LANDS SHOULD CONCENTRATE ON LAND USE RATHER THAN LAND OWNERSHIP. NEW LEGISLATION FOR AGRICULTURAL PRESERVATION SHOULD INCLUDE A TIME COMMITMENT BY THE OWNER TO AGRICULTURAL USE FOR A SUBSTANTIAL PERIOD OF TIME, REGARDLESS OF WHO FARMS IT. THE TASK FORCE SUGGESTS A PERPETUAL TEN-YEAR COMMITMENT IN WHICH EACH YEAR ADDS ONE YEAR UNTIL ONE OF THE PARTIES INITIATES TERMINATION. (SEE RECOMMENDATION NUMBER 24 AND DISCUSSION REGARDING "AGRICULTURAL PRESERVES" FOR MORE DETAIL.)

Land use is more important than land ownership in programs aimed at the preservation of agricultural land. The objective of agricultural preservation programs is to promote the retention of land in agricultural use as well as to promote the continuation of the family farm. While retention of a certain percentage of commercial farmers is required for the continuation of agricultural operations in the Metropolitan Area, availability of rental land is also necessary to agricultural operations.

Farmlands in the Metropolitan Area are frequently purchased as rural estates by agricultural investors desiring seclusion and the rural life-style. These persons do not farm the land themselves but make their lands available for rental for agricultural purposes. Rural estate owners offer both a source of rental lands for agriculture and a source of farm buyers who will keep the land in agricultural use.

15. AGRICULTURAL PRESERVATION PROGRAMS SHOULD REFLECT AN UNDERSTANDING OF THE VARIATIONS IN AGRICULTURE FROM ONE REGION TO ANOTHER.

The Metropolitan Region is characterized by a great diversity in agricultural operations,

although they are typified by capital intensive, smaller acreage family farm operations. Maintaining and encouraging diversity offers flexibility and stability to the survival of farming here. Preservation programs should apply to a broad range of agricultural operations.

Equity Realization and Capital Availability

A crucial issue in the preservation of agricultural land in the Metropolitan Area is the farmer's need to obtain equity from the farm upon retirement.

Misunderstanding of this issue has been the source of considerable difficulty in agricultural preservation efforts. Unlike most other occupations, a farmer's retirement does not come from a company pension plan, but rather is often dependent on the sale of the farm. The critical point for farmland preservation, therefore, is the time that land ownership is transferred, and there is a need for programs aimed at that time of transfer. The problem is that suburban development is encroaching on farmland in the Metropolitan Area, and land speculators and developers frequently offer the highest price for farmland. The price of the land may prohibit its purchase for agricultural use. The farmer sees at best only two choices open to him when he sells his farm: 1) to sell for the best price with no assurance that the land will remain in agriculture, or 2) to sell to a farmer at a sacrifice in order to keep the land in agriculture.

In an area where the outlook for farming is uncertain there are few agricultural buyers, but many speculative or investment buyers. No wonder, then, that farmers are often quoted as wanting to sell for development.

As noted in the beginning, this task force believes that most farmers want to see their land remain in agricultural use. But preservation efforts will be incomplete until steps are taken to compensate for this equity problem.

After extensive discussion of the issue, the task force concluded that the establishment of a comprehensive agricultural land preservation program will also help resolve many of the capital and equity problems, including those of the new farmer and the problem of equity realization for the retiring farmer. Similarly, the availability of solutions to the equity problem will increase farmers' willingness to participate in agricultural land preservation programs.

16. NEW MEASURES ARE NEEDED TO PROVIDE FARMERS WITH ADDITIONAL OPTIONS UPON SALE OF THE FARM SO THAT FULL VALUE IS OBTAINED, BUT WITHOUT TAKING THE LAND OUT OF AGRICULTURE.

The task force identified several alternatives which show promise. These include an agricultural land bank program similar to the program in Saskatchewan, Canada, a quasi-public company patterned after the St. Paul Port Authority, and a development rights program.

Both the Saskatchewan and Port Authority concepts would provide a sales alternative for the retiring farmer, and also a specific program for facilitating the purchase or lease of farmland by new or young farmers, as well as family members.

A development rights program would likely be much different. Sale or transfer of development rights was discarded as generally too costly and too complex. A "donation of development rights" program may have more potential. Briefly, farmers would donate their "development" rights to a state land trust and, in turn, could deduct a percentage of the value from their income tax.

This could contribute a positive cash flow to the farm, and subsequently, when the land is sold, only farm buyers would likely be interested and the land value would reflect only the agricultural value. The presumably lower agricultural value would make it possible for more new farmers to buy land in the Metropolitan Area.

An obvious shortcoming of the development rights approach is that there is no specific program of assistance to new farmers. On the other hand, by assuring the long-term use and agricultural value of the land, the market place may resolve these other problems by itself.

17. CAPITAL AVAILABILITY IS A SERIOUS PROBLEM FOR THE NEW OR YOUNG FARMER WITH RELATIVELY LITTLE ESTABLISHED CREDIT OR EQUITY. NEW MEASURES FOR PROVIDING ADDITIONAL FARM SALES OPPORTUNITIES, AS RECOMMENDED IN NUMBER 16, COULD ALSO BE DESIGNED TO HELP PROVIDE ADDITIONAL CAPITAL FOR NEW OR YOUNG FARMERS.

Capital availability is particularly crucial to agricultural preservation in the Metropolitan Area because of the capital intensive nature of farming in the area. The task force has determined that it is not a severe problem for the established farmer in the Metropolitan Area because of his net worth, cash flow, and ability to repay. But it is a severe problem for the new farmer.

It becomes a severe problem for the established farmer when he retires or sells, and the new farmer who would like to take over the operation but cannot because he cannot obtain the capital.

The land bank programs described above could be especially useful in providing financial assistance to young farmers; and through their land handling programs, land could be leased for a period of years as the young farmer builds equity, eventually buying the land.

18. INHERITANCE AND CAPITAL GAINS TAX LAWS SHOULD BE CHANGED TO ENCOURAGE CONTINUED OPERATION OF THE FAMILY FARM BY HEIRS.

One of the main problems of equity realization is the generation-to-generation transfer of the farm. Inheritance and capital gains taxes discourage continued operation of the family farm by heirs.

Present laws on gift taxes, inheritance taxes, capital gains and interest rates create severe financial barriers in the generation-to-generation transfer of the farm. This is a problem for other small family businesses as well. The task force believes that present laws are overly restrictive and inequitable. Hence, proposed changes would not create special benefits, but only correct a serious imbalance.

19. THE FAMILY FARM SECURITY PROGRAM SHOULD BE EXPANDED TO SERVE GREATER NUMBERS OF NEW AND YOUNG FARMERS IN THE METROPOLITAN AREA.

- THE NET WORTH LIMITATION SHOULD BE INCREASED SUBSTANTIALLY.
- THE STATE TAX EXEMPTION ON INTEREST FROM CONTRACT-FOR-DEED FARM SALES TO NEW FARMERS SHOULD BE EXTENDED TO A GREATER NUMBER OF SELLERS.

The Family Farm Security Program offers assistance to the new or young farmer but in a limited number of cases. The net worth limitation of \$50,000 is unrealistically low, especially for the Metropolitan Area, and this limits the number of young or new farmers who could be assisted in the Metropolitan Area. The state tax exemption on the interest from a contract for deed sale of a farm is an excellent incentive to farm sellers to assist new farmers but is again limited by the small number of new farmers able to qualify under the Family Farm Security Program.

20. THE FARMERS HOME ADMINISTRATION (FmHA) FARMER LOAN PROGRAM SHOULD REAFFIRM ITS COMMITMENT TO SOLVING THE SPECIFIC PROBLEMS FACED BY BEGINNING AND DISTRESSED FARMERS.

The Farmers Home Administration farmer loan program was originally intended to assist young farmers and distressed farmers, but the program appears to have moved toward making more secure loans instead.

Equalizing the Tax Burden

Preserving a viable agricultural economy in the Metropolitan Area requires equalizing the tax burden so that farmland which is designated for long-term agricultural use is taxed the same as similar land outstate that is removed from urban influences.

It must be recognized that the property tax burden is based on local mill rates and special assessments as well as valuation. The Green Acres law, which was passed by the Minnesota Legislature in 1967, is intended to equalize taxes but applies only to valuation and merely defers payment on special assessments. The discrepancies in mill rates between metropolitan and outstate communities, and the potential of special assessments nullify the preservation benefit of the Green Acres law. Once utilities are built and assessed to the farmland, conversion is no longer a question, only a matter of time.

Land has a different meaning to a farmer than most others — it is a means of production. In most other industries, the means of production is considered personal property and is not taxed.

21. STATE LEGISLATION FOR AGRICULTURAL PRESERVATION MUST INCLUDE MEASURES FOR EQUALIZING THE TAX BURDEN.

- THE LEGISLATURE SHOULD CONSIDER ADOPTING A SPECIAL APPROACH TO TAXATION OF LAND WHICH IS COMMITTED TO AGRICULTURE SO THAT THE NET TAX IS RELATED DIRECTLY TO THE CAPABILITY OF THE LAND IN AGRICULTURAL USE.
- THE LEGISLATURE SHOULD CONSIDER CHANGES IN THE SCHOOL AID FORMULA SO THAT THE TAX BURDEN ON FARMLAND IS EQUALIZED BETWEEN OUTSTATE AND METROPOLITAN AREAS.
- AFTER SUITABLE MEASURES ARE ADOPTED TO EQUALIZE THE TAX BURDEN ON LONG-TERM AGRICULTURAL LAND, ALL RURAL RESIDENCES, INCLUDING THE FARMHOUSE, SHOULD BE TREATED ALIKE AND CLASSIFIED RESIDENTIAL.

The task force recognizes the complexities of the Minnesota property tax system. After extensive discussion of this issue and potential solutions, the task force determined that its best contribution would be to identify key concerns and to suggest several alternatives, rather than to select a single solution. (References to equalization do not necessarily imply that the task force believes all outstate land is taxed properly. That dimension was beyond the charge of this task force.)

Agricultural land near urban areas often pays a higher net tax due to local mill rates which reflect urban services. The school tax is often the greatest share of the total tax reflecting construction and expansion programs to serve new non-farm development. Rather than a fixed state contribution, regardless of location and actual tax burden, the aid formula could be devised to equalize the school tax burden on farmland.

Another approach would be for the state to set a standard net tax per acre for each class of farmland. Individual farms would be assigned tax rates higher or lower than the standard, based on the productive capability of a typical farm in the county. The net tax would be based directly on the productive capability of the land.

Rural, non-farm residences, classified agricultural, do not pay their share of the costs of government and services. It is the residence and not the open land which requires urban services. But many non-farm residences on ten or more acres qualify for agricultural classification and then avoid paying their full share of the cost of services.

The task force recommends that after suitable measures are adopted to equalize the tax

burden on long-term agricultural land, that the legislature exclude all residences, including the farmhouse, from the agricultural classification.

22. SPECIAL ASSESSMENTS FOR URBAN SERVICES SUCH AS SEWER AND WATER SHOULD BE PROHIBITED ON LAND DESIGNATED FOR LONG-TERM AGRICULTURE. DEVELOPERS SHOULD BE REQUIRED TO PAY THE ENTIRE COSTS OF EXTENDING SERVICES TO THEIR LAND.

Current special assessment practices which assign utility costs on the basis of availability foster leap-frog development and premature conversion of agricultural land. A developer knows that he can buy cheaper land farther out and then when he demands services, the intervening farmland will be assessed for a large share of the costs, thus giving him a free ride. As noted earlier, once utilities are built and assessed to the farmland, conversion is no longer a question, only a matter of time. Agricultural use cannot support the costs of sewer and water.

Faced with the requirement of paying the entire costs of extending services to their land, developers would be more likely to select land that is closer in and more appropriate for development.

23. THE GREEN ACRES LAW SHOULD BE CONTINUED AS THE PRIMARY PROTECTION FOR SHORT-TERM AGRICULTURAL AREAS. NO CHANGES SHOULD BE MADE UNTIL ALTERNATIVES ARE AVAILABLE FOR THE LONG-TERM AGRICULTURAL AREA. ONCE ALTERNATIVES ARE AVAILABLE, TWO CHANGES ARE NEEDED:

- 1) PLACE A TEN-YEAR LIMIT ON THE DEFERRAL OF SPECIAL ASSESSMENTS, SUBJECT TO ADDITIONAL WAIVER BY THE LOCAL GOVERNMENT.
 - ALL EXISTING DEFERRED SPECIAL ASSESSMENTS WOULD BECOME DUE TEN YEARS FROM THE DATE OF ENACTMENT OF SUCH AN AMENDMENT (UNLESS WAIVED BY THE LOCAL GOVERNMENT).
 - ALL SPECIAL ASSESSMENTS SUBSEQUENT TO DATE OF ENACTMENT COULD BE DEFERRED UP TO TEN YEARS FROM DATE OF ASSESSMENT (EXTENSIONS PERMITTED AT DISCRETION OF LOCAL GOVERNMENT).
- 2) INCREASE THE PRODUCTION REQUIREMENT (EXPRESSED IN DOLLARS) SO THAT THERE IS BETTER ASSURANCE THAT ONLY BONAFIDE FARMS ARE INCLUDED.
 - AN AVERAGE GROSS AGRICULTURAL INCOME FROM THE LAND FOR THE LAST THREE YEARS OF AT LEAST \$1,000, PLUS \$50 PER TILLABLE ACRE.

The Green Acres law, for all of its faults, still provides a significant protection to a large number of farmers, especially those close in to the urban area. It has, as a result, become a fixed element in the land use market and repeal in the absence of better alternatives would be unwise.

It should be emphasized that its application as suggested here would be for a much smaller area than at present. New legislation is needed for the long-term agricultural area.

After considerable study, the Agricultural Preservation Committee's taxation work group concluded that the chief problem with the Green Acres law is the indefinite deferral of special assessments which can be harmful to both the farmer and the local government. A time limit should be placed on these deferrals so that the local government can plan adequately for services while still providing the farmer with sufficient protection from premature extension of services. The qualification requirements should be tightened up to at least keep up with inflation and a measure is needed to state a legislative presumption that the land will be farmed according to a plan based on conservation management principles.

24. A NEW LEGISLATIVE ACT IS NEEDED TO PROTECT LONG-TERM AGRICULTURAL AREAS. THIS ACT SHOULD PROVIDE FOR THE CONSISTENT APPLICATION OF SPECIAL BENEFITS AND SHOULD ASSURE THAT THE LAND WHICH RECEIVES THESE BENEFITS REMAINS IN LONG-TERM PRODUCTIVE AGRICULTURAL USE. THE TASK FORCE IS PROPOSING A SPECIFIC LEGISLATIVE MEASURE WHICH IT CALLS "AGRICULTURAL PRESERVES." THIS MEASURE IS INTENDED TO SECURE THE LONG-TERM AGRICULTURAL LANDS SO THAT AGRICULTURAL INVESTMENTS AND PLANS CAN BE MADE BY FARMERS WITH CONFIDENCE, AND WITHOUT UNCERTAINTY AS TO THE FUTURE OF THE LAND.

It is suggested that creation of preserves be initiated by farmers only, and certified through a local and state review process.

Discussions have pointed to the need for providing two methods for creating agricultural preserves.

First, there is need for the uncomplicated designation of large areas comprising many farms, i.e., there should be a districting process.

Second, there is need for enabling an individual farmer with a viable farm operation — but located in an area with few farms, or scattered non-farm development — to secure the same level of protection as he would obtain through the districting process. This could be achieved through an individual contract. It is suggested that to prevent the contract method from being abused, qualification requirements should be more stringent than for a district.

The following outline suggests general provisions for an agricultural preserves act.

1. Qualification - Creation

	District	Contract
Initiation	By owners of 25% of land in proposed district	By individual owner
Minimum Size	At least 500 contiguous acres, no minimum parcel size	At least 50 acres, may be contiguous provided no parcel is less than 10 acres and all is farmed as a unit
Minimum Income	None	An average gross agricultural income from the land for the last three years of at least \$1,000 plus \$50 per tillable acre
Duration of Ownership Requirement	None	7 years, or farm is home-stead of owner

Applies to Both:

Must be in accord with comprehensive plans at time of first qualification.

State appeals board for grievances.

Specific time process and sequence for creation stated in act, including certification by the State Commissioner of Agriculture.

2. Benefits - should be attractive and reasonable.

- Special tax measures that result in an equalized tax burden between land in a preserve and similar farmland outstate, removed from urban influences.
- Prohibition of special assessment for sanitary sewer, water.
- Protection for normal farm practices (exempt from certain local regulations, and modifications of certain state regulations).
- All eminent domain actions must demonstrate that no prudent alternative exists.
- State agencies directed to be supportive.
- Family Farm Security Act program directed to give priority to preserves.

3. Responsibilities - items of general public interest.

Adherence to prudent soil and water conservation practices. (Process for bringing legal action if there is an alleged violation. See Recommendation Number 25.)

4. Limitations - to assure that uses remain agricultural.

- No non-farm residential development.
- No commercial or industrial uses.
- Only those uses normally associated with farming in the area.
- State review board or local appeals board to decide if there are differences of opinion.

5. Perpetuation & Expiration

- Ten-year perpetual duration whereby each year adds one year until either a landowner or the local government request expiration. Request for expiration must state which parcels are proposed for expiration. Expiration would occur ten years from the date of request.
- In the event a landowner objects to expiration, grievance can be brought before appeals board which has authority to continue participation if in the public interest.
- All deeds marked as to designation, limitations and duration.

6. Early Termination

An over-riding public interest may necessitate early termination for certain parcels within a preserve. In addition, events not discernible at the time of preserve creation may require use of certain parcels for a legitimate non-farm use prior to the normal ten-year expiration, but in the public interest.

- In the event of an over-riding public need, early termination achieved upon resolution of local governing body, comment by the regional agency and the appeals board, and approval by the State Commissioner of Agriculture.
- For a private purpose, early termination achieved upon request of owner, review of regional agency, and approval of local governing body, the appeals board, and State Commissioner of Agriculture. If approved, a penalty (of difference in tax plus interest, compounded) for early termination unless waived by local governing body and approved by Commissioner.

25. ANY LEGISLATION WHICH PROVIDES SPECIAL BENEFITS TO AGRICULTURAL LAND (INCLUDING GREEN ACRES) SHOULD CONTAIN A REQUIREMENT THAT THE LAND BE FARMED ACCORDING TO SOUND CONSERVATION MANAGEMENT PRINCIPLES.

When the ultimate use of land is uncertain, owners sometimes neglect conservation practices, and valuable land resources are wasted. The task force believes that any legislation which provides benefits should include a presumption that the land is to be farmed according to good conservation practices. Rather than having a complicated process for requiring conservation plans and certification, the task force suggests a provision requiring the county to seek corrective measures upon receiving a written complaint and after consulting with the County Agricultural Extension Board and the County Soil and Water Conservation District.

26. AN EXISTING STATE AGENCY SHOULD BE DIRECTED TO ESTABLISH A MONITORING PROGRAM TO MAINTAIN INFORMATION ON GREEN ACRES, AGRICULTURAL PRESERVES, AND OTHER RELATED MEASURES.

One of the major problems with Green Acres has been the absence of reliable and consistent data on its use. The need for such information will be even more important if additional measures are adopted.

The monitoring program should be devised so that the effectiveness of the new measures can be evaluated by the legislature and changes made if needed. If the programs are shown to be ineffective, they should be abolished.

27. NEW AGRICULTURAL PRESERVATION LEGISLATION SHOULD INCLUDE A SPECIFIC PROVISION FOR AN EXTENSIVE EDUCATIONAL EFFORT TO INFORM THE PUBLIC, ESPECIALLY FARMERS, OF THE PURPOSE OF THE ACT, HOW IT WILL BENEFIT THEM, AND HOW IT WORKS.

Much of the success of the Wisconsin and New York agricultural preservation laws is due to the careful educational process which preceded the implementation of the acts.

THE GENERAL RURAL USE REGION

Perspective

A recent Gallup Poll revealed that nationwide 40 percent of the public today would like to move to a rural environment. Over 50 percent of the 18- to 34-year age bracket in central cities have this desire, and the number drops to below 40 percent only for the 50-and-over age bracket. The suburbs provide little better attraction. There, a full 46 percent of the 18- to 34-year age bracket desire to move and 30 percent of the 35- to 49-year age group. Only 16 percent of those in the central cities say they would like to move to the suburbs.

The Gallup commentary notes that the strongest desire (as many as six in ten) is to live in communities with less than 10,000 population. When asked to describe what they desire, the description is clearly the public notion of rural areas: a lack of crime, no crowding, no traffic congestion or pollution; also, clean, attractive, well-maintained housing, and friendly people.

Between 1970 and 1977 the population in the rural area increased some 38 percent, while the overall metropolitan population increased only about five percent. An attitudinal survey conducted by the Metropolitan Council in 1974 corresponds closely with the results of the Gallup Poll. In this survey 41 percent of the respondents indicated a desire for a single-family home on rural acreage. (See appendix for additional discussion of population trends.)

The task force was concerned with this fact of latent public demand for a so-called "rural life-style," and the additional fact that not all of the rural area is agricultural. Fully 25 percent of the rural area, mostly in the northern portion of the Metropolitan Area, is marginal or otherwise impractical for agricultural use. Additionally, much of this land is scenic and highly attractive to that percentage of the public which thinks that it desires a rural life-style.

The task force, in this portion of its study, focused its attention on the General Rural Use Region as defined by the Metropolitan Development Framework. Much of the non-agricultural rural land is located in this region. Over 90,000 people already live there and enjoy, to some degree, a rural style of life.

The objective of the task force was to define and better understand the development taking place today in the General Rural Use Region, and to make recommendations which will help avoid the waste of urban sprawl. The task force believes that the "rural life-style" is a viable alternative for many people in the Metropolitan Area, but a better understanding is needed by the potential inhabitants as well as those who administer the area, and especially much more effective management is needed on the part of local governments.

Finally, there is substance for thought here for the central cities and suburbs. Clearly, the public is not finding all it desires in those environments today. Yet, much of what the public thinks that it is buying in the rural area has little to do with "rural life-style" and could be provided within the Urban Service Area by following better urban design principles and providing services more efficiently. Surely less crime, noise and pollution, and more friendly neighbors are all within the grasp of most communities in the Metropolitan Area.

A Region of Diversity

The General Rural Use Region is a highly varied and complex area. It is not the quiet and continuous open space which many urban residents seem to believe. Nor is it the same collection of diverse elements from one township to the next, which many rural residents seem to believe. The extent of diversity was surprising even to task force members. Early discussions were stalemated until members recognized that what was typical for one was

atypical for another.

From level, uninterrupted sandplains to rugged, complex hills, the basic geophysical condition is highly varied. These conditions can have immense impact on land use and the attitude of the public toward future development.

In some areas the region is a relatively narrow strip separating commercial agriculture from full urbanization; in other areas, the region is extensive, covering several townships and extending into adjoining counties.

Standard land use classifications fail to show the diversity of activities already present in many parts of the region. Included are a wide assortment of recreational facilities, small or "cottage" industries, institutional sites, junk yards, dog kennels, and so forth. In addition, there are often remnants of a former agricultural economy. Rural residences make up the balance.

The collection of land uses changes markedly from one community to the next. One may be predominantly residential with residents mostly working in the Urban Service Area, while the next may have a highly localized and diverse economy with minor orientation to the Urban Service Area.

The farm operations which remain are often highly specialized, like the peatland farms in Anoka County or the orchards in Washington County. In some cases, the commercial farms are thriving operations, but for the most part the land is marginal. The change from an agricultural area, however productive, to this mixture of general rural uses has left many remaining farmers unsympathetic to continuing agricultural use. If the feed mill, grain elevator, equipment dealer, creamery, and so forth, have all moved out, it is very difficult to perpetuate the farm use. Where viable commercial farms remain, the area probably should not be considered as a General Rural Use Region, but rather as a Commercial Agriculture Region. This distinction should be determined at the local level.

Some portions of the General Rural Use Region have intense urban pressure due to highway proximity, employment, and so forth, while others may not.

Communities entertain a wide range of expectations for the future of their areas in terms of life-style and general development.

Finally, government sophistication is highly varied as well. When the town board only needed to meet four times a year, there was little call for sophisticated procedures and personnel. But today, demands are much greater and local governments have responded in different ways. Some have acquired a high level of organizational capability while others have not. Most are still facing the issue.

The Rural Life-Style

Notwithstanding all of the diversity described above, there is surprising agreement that a certain living condition prevails in this region: the task force called it the "rural life-style."

Task force discussions, reflecting the diversity of the region as described above, showed that a wide variety of combinations all produce what is generally called rural life-style. There are, however, basic characteristics and these are identified as follows:

a. Distance from commercial services and conveniences

A principle of the rural life-style area is that commercial conveniences are not on every corner, but instead located in the rural centers or the urban area; this is not suburbia. The area, therefore, is separate from rural centers or business centers that may be adjacent to major highways.

b. No central sewer or water systems

When central sewer or water is extended into a rural area, that area is becoming something different with great potential for higher densities and more intense land uses. But without these facilities, many urban residential, commercial and industrial activities are precluded and appropriate general rural residential use is more predominant.

c. Avoidance of disproportionate service demands

Acceptable land uses are those which would not place an excessive burden on other uses due to service demands. Uses which do require extraordinary services should be located only in "special service area" districts. It must be recognized that these districts are gradually departing from the rural life-style.

d. Individual responsibility

The low densities, coupled with a relatively low level of public services which are characteristic of this area, place a higher proportion of responsibility on the individual. Examples range from keeping one's dog away from farm animals to taking additional safety precautions since emergency medical services are not as readily available as they are in the urban area. Neighbors must be prepared to provide some types of assistance in the absence of nearby service professionals.

e. Low density

The rural life-style is characterized by low density residential development with a high proportion of non-commercial or "hobby" farms, all interspersed with large amounts of open space. Contrary to the public image, many of the hobby farms are

productive business units; included are nursery orchards, poultry and egg operations, beef feeding, dairy goat farms, horse breeding and training, dog kennels, beekeeping, truck farming and recreational sites. In many cases, land is equally essential as a buffer or insulator between uses as a necessary component for the particular use. Examples would include dog kennels and feed lots.

f. New uses subordinate to existing uses

Allowable land uses may produce noises or odors that seem objectionable to city dwellers. These characteristics are typical in rural areas and are part of the rural life-style. Local comprehensive plans should contain text and policies in support of the rural life-style and should state the desire of the local government to support the existing land use when complaints arise from new residents.

Rural Life-Style – Suitability of Land Uses

Service requirements and implications are a primary concern in the General Rural Use Region. Certain land uses have serious service implications while others do not. The task force has prepared a list of uses to identify their general suitability for the region. Many of these uses require land as an insulator rather than as a basic requirement for the activity. Those which are suitable contribute to the rural life-style, while those with greater service demands mark a change in the area, a departure from the rural life-style and a step towards eventual urbanization. The task force presents the list as a guide for rural communities and the Metropolitan Council; obviously, there will be exceptions.

I. Generally Suitable Land Uses

- A. Commercial agriculture, including grains, feed lots, dairy, etc.
- B. Hobby and marginal farms
- C. Cemeteries
- D. Essential services (electrical, etc.)
- E. Farm equipment sales (occasional on-farm)
- F. Forestry
- G. Greenhouses, nurseries
- H. Nature centers, wildlife preserves
- I. Parks, trails (passive)

- J. Private garages, farm buildings
 - K. Home occupations, crafts
 - L. Incidental repair
 - M. Residential – single-family detached – low density
 - N. Temporary farm dwelling
- II. Conditional – limited service implications
- A. Antennae – tall
 - B. Seasonal business, roadside sales' stands
 - C. Mining (sand and gravel, borrow pits)
 - D. Junk yard
- III. Conditional – severe service implications

These are uses which are generally found in rural areas, but which have heavy service implications for the local government, including traffic problems, sewage disposal, street parking, noise, dust, road widening and maintenance, policing, landscape alterations, health service needs, and so forth.

A. Recreation

1. Campgrounds
2. Recreational vehicle park
3. Commercial recreation
4. Golf courses
5. Country clubs
6. Gun clubs
7. Gun and archery ranges
8. Race tracks
9. Resorts
10. Riding stables
11. Drive-in theater
12. Horse judging
13. Commercial animal training, animal boarding kennels, veterinary clinics
14. Festivals and fairs
15. Model airplane sites

- B. Airports
- C. Churches

IV. Not Suitable

These are uses which are not compatible with the rural life-style, have severe service implications and are usually most appropriate in rural centers and sewered areas where traffic control and other services can be provided in an efficient manner.

- A. Armories, convention halls
 - B. Apartment or multiple-family buildings, mobile home parks
 - C. Auto service, repair (although suitable as part of highway service zone)
 - D. Care facilities (elderly and invalids)
 - E. Business, office buildings
 - F. Retail sales (full-time establishments)
 - G. Funeral homes
 - H. Hotels or motels (although suitable as part of highway service zone)
 - I. Manufacturing, industrial
 - J. Schools
 - K. Taverns and bars
 - L. Warehousing
 - M. Platted subdivisions of high density, large-scale residential development requiring local improvements
28. THE METROPOLITAN COUNCIL SHOULD ACCEPT "RURAL LIFE-STYLE" AS A LEGITIMATE LAND USE FOR CERTAIN PORTIONS OF THE GENERAL RURAL USE REGION. HOWEVER, IT IS LEGITIMATE ONLY IN CERTAIN AREAS AND WITH CERTAIN PRECAUTIONS, PROTECTIONS, AND LIMITATIONS AS DESCRIBED BELOW. (THESE CRITERIA ARE PRESENTED AS GUIDELINES. IT IS THE RESPONSIBILITY OF THE LOCAL GOVERNMENT TO MAKE SUITABLE ANALYSIS AND EXPLANATION FOR THE LOCAL APPLICATION OF THESE CRITERIA.)

- PRODUCTIVE FARMLANDS – LANDS WHICH HAVE A REASONABLE POTENTIAL FOR REMAINING IN PRODUCTIVE AGRICULTURAL USE SHOULD BE EXCLUDED. SUCH LANDS SHOULD BE AFFORDED SPECIAL PROTECTIVE MEASURES AS DESCRIBED IN THE SECTION ON AGRICULTURAL PRESERVATION.
- CONSERVATION LANDS – LANDS WHICH CONTAIN WETLANDS, FLOODPLAINS, UNIQUE HABITAT, STEEP SLOPES, OR OTHER SENSITIVE ENVIRONMENTAL CONDITIONS SHOULD BE EXCLUDED. THESE LANDS SHOULD ALSO BE AFFORDED SPECIAL PROTECTION AS DESCRIBED IN RECOMMENDATION NUMBER 51.
- UNSUITABLE SOILS – LANDS WHICH HAVE SERIOUS CONSTRAINTS FOR BUILDING, SUCH AS HIGH SEASONAL OR PERMANENT WATER TABLE, INSTABILITY, OR SEVERE SHRINK AND SWELL PROBLEMS, SHOULD BE EXCLUDED. THESE ARE SIMPLY POOR LANDS AND RESTRICTIONS ARE AS MUCH FOR PROTECTING UNWARY OWNERS AS THE PUBLIC IN GENERAL. NO COMPENSATION SHOULD BE OFFERED. SUCH LANDS (ALONG WITH CONSERVATION LANDS) COULD, HOWEVER, BE COUNTED IN THE LOT SIZE REQUIREMENT.

28A. LANDS WHICH REMAIN HAVE A POTENTIAL FOR RURAL LIFE-STYLE DEVELOPMENT PROVIDED THE FOLLOWING CRITERIA ARE MET:

- NO CENTRAL SEWER OR WATER – AS MENTIONED PREVIOUSLY, WHEN THESE SERVICES ARE PROVIDED, THE AREA IS NO LONGER RURAL.
- NO COMMERCIAL SERVICES, CONVENIENCES, OR INDUSTRIAL DEVELOPMENT – A PRINCIPLE OF THE RURAL LIFE-STYLE IS THAT SUCH FACILITIES ARE LOCATED *IN THE RURAL CENTERS*, NOT ON EVERY CORNER OF THE RURAL AREA. THESE FACILITIES HAVE SEVERE SERVICE REQUIREMENTS WHICH ARE INCONSISTENT WITH THE REGIONAL SERVICE PLAN AND THE ABILITY OF LOCAL GOVERNMENT TO PROVIDE THEM.
- NEW USES SUBORDINATE TO EXISTING USES – AS DESCRIBED IN A PREVIOUS SECTION, NEW RURAL RESIDENTS MUST BE AWARE OF AND TOLERATE EXISTING LAND USES. IF POTENTIAL RESIDENTS CANNOT STAND MANURE SPREADING, ANIMAL AND FARM EQUIPMENT NOISES, OR OTHER LEGITIMATE RURAL USES, THEY SHOULD NOT LOCATE IN THE RURAL AREA.
- STRONG SEPTIC TANK REGULATIONS – SEPTIC SYSTEMS MUST BE ABLE TO FUNCTION INDEFINITELY. THIS REQUIRES STRONG LOCAL REGULATIONS FOR THE SITING, INSTALLATION AND MANAGEMENT OF THE

SYSTEMS SO THAT COSTLY AND DISRUPTIVE CORRECTIONS ARE NOT NEEDED.

- LOW DENSITIES – REGARDLESS OF TECHNICAL FACTORS, SMALL LOTS AND HIGH DENSITIES ARE, BY DEFINITION, NOT RURAL LIFE-STYLE. EVEN IF THE SEPTIC TANK CAN BE GUARANTEED TO FUNCTION PROPERLY, HIGH DENSITIES RESULT IN ADDITIONAL LOCAL AND REGIONAL SERVICE DEMANDS WHICH INEVITABLY RESULT IN MISPLACED SUBURBAN DEVELOPMENT AND THE DESTRUCTION OF THE AMENITIES WHICH WERE SOUGHT BY RESIDENTS IN THE FIRST PLACE. THE ACTUAL LOT SIZE OR DENSITY DEPENDS ON LOCAL CIRCUMSTANCES. (SEE RECOMMENDATIONS 43 AND 44.)
- IN PORTIONS OF THE GENERAL RURAL USE REGION WHICH ARE NOT SCHEDULED FOR EXTENSION OF URBAN SERVICES IN THE FORESEEABLE FUTURE AND WHICH COMPLY WITH THE CRITERIA SET FORTH ABOVE, THE RURAL LIFE-STYLE SHOULD BE CONSIDERED AN *ULTIMATE* LAND USE. REGIONAL, COUNTY, STATE AND LOCAL PLANS AND PROGRAMS SHOULD CORRESPOND WITH AND SUPPORT THIS PLANNING DECISION.
- IT IS IMPERATIVE THAT EACH LOCAL GOVERNMENT FULLY DOCUMENT IN THE COMPREHENSIVE PLAN ITS OWN UNIQUE CIRCUMSTANCES AS REVEALED BY APPLYING THE FOREGOING CRITERIA. THESE WILL HAVE ENORMOUS BEARING ON THE VALIDITY OF THE PLAN DECISIONS.
- IT IS ALSO IMPERATIVE THAT THE METROPOLITAN COUNCIL GIVE FULL CONSIDERATION TO THESE INDIVIDUAL VARIATIONS WHEN THE LOCAL PLAN IS REVIEWED. THE COUNCIL SHOULD BE PREPARED TO ACCEPT RURAL LIFE-STYLE AREAS AS LEGITIMATE AND ULTIMATE LAND USES IF FULLY AND REALISTICALLY SUPPORTED BY THE LOCAL PLAN IN A WAY APPROPRIATE TO A RURAL COMMUNITY.

RURAL CENTERS

Facing Reality

Rural Centers first evolved in response to the service needs of the surrounding agricultural community. They also provided social control and identity through the local government structure, transfer of values through family, church, school and society in general, and mutual support through reliance on neighbor and friend.

In the history of Minnesota settlement, cultural groups, railroads and agriculture are highlighted in most accounts as the driving forces. But it was the Rural Center where all of

these forces came together and became the real heart of early Minnesota civilization. The Rural Center soon acquired additional substance as a cultural center and way of life and it is this substance which continues to keep most of them alive today.

A number of factors have long since combined to diminish the former economic dependence of the surrounding countryside on Rural Centers. Agriculture has become much more capital intensive than labor intensive and has acquired sophisticated service needs. As a result, there has been a shift from many small agricultural service providers located in the Rural Centers to a few large dealers and services in central locations.

Farms have become larger and fewer in number. Consequently, the size of the farm population has declined, resulting in a reduced market for Rural Centers. At the same time farm and rural populations have increasingly looked to the central cities and suburbs for their needs, rather than the Rural Centers.

As a result of land speculation and an urban-to-rural emigration, a lot of land that was formerly used for agricultural purposes is now being used by rural life-style residents. While there is a prevailing view that rural living is more desirable, new rural residents generally retain their urban orientation and look to the urban area for their employment, retail and other needs.

Simultaneously, demands for local public services (fire and police protection, sewer, water, road maintenance, recreation facilities) have increased, posing serious fiscal burdens and dilemmas for Rural Centers.

The major challenge for most Rural Centers in the Metropolitan Area is to face their own reality. The changes cited above are general and affect specific Rural Centers in different ways. But the obvious need for all of them is to assess their own circumstances and prospects for the future, and to take deliberate steps to secure community goals. The staying power of most Rural Centers through the years tends to make residents apathetic to such suggestions. And, indeed, most will continue, through sheer momentum if nothing else. But the pressures are real and the question for Rural Centers is whether they will control their own destinies or be controlled by others.

Taking Control

Rural Centers vary in size, population and land use composition, market for their services, pressures and competition from other Rural Centers and Freestanding Growth Centers and the urban area, and local government administrative and fiscal capability and goals for the future. Therefore, there are variations in their problems and solutions.

29. EACH RURAL CENTER PLAN MUST BE BASED ON AN ACCURATE ASSESSMENT OF THE COMMUNITY'S UNIQUE SET OF CIRCUMSTANCES IF IT IS TO RESULT IN A WORKABLE STRATEGY FOR FUTURE GROWTH AND DEVELOPMENT. EACH LOCAL PLANNING PROCESS MUST FIRST ESTABLISH AT

A MINIMUM:

- THE CHARACTER OF ITS RESIDENTIAL BASE (POPULATION AND HOUSEHOLD AGE, INCOME, EMPLOYMENT, TRENDS).
- THE CHARACTER OF ITS ECONOMIC BASE (SERVICE, COMMERCIAL AND INDUSTRIAL DEVELOPMENT; ITS MARKET, ITS CONTRIBUTION TO THE COMMUNITY; ITS SERVICE REQUIREMENTS).
- THE TYPE AND EXTENT AND ADEQUACY OF LOCAL SERVICES (FIRE, POLICE, SEWER, WATER AND RELATED COSTS).
- COMPETITION FOR FUTURE GROWTH AND NEEDED RESOURCES FROM OTHER COMMUNITIES AND SECTORS.
- UNIQUE ASSETS OR ATTRIBUTES OF THE COMMUNITY (e.g., STRONG AGRICULTURAL MARKET, HISTORIC OR ETHNIC SIGNIFICANCE).
- PHYSICAL/ENVIRONMENTAL CONSTRAINTS.
- COMMUNITY GOALS AND VIEWS FOR THE FUTURE.

The Rural Center planning process need not be designed for growth and expansion. Indeed, not all Rural Centers desire growth and for many centers there are strong factors which would inhibit significant growth. Whether a community chooses to remain at its present level of development or to expand, securing its existing residential, economic and service base is of foremost importance.

30. RURAL CENTER PLANS AND IMPLEMENTATION PROGRAMS SHOULD FIRST CONSIDER MEANS TO MAINTAIN EXISTING DEVELOPMENT, ASSURE ADEQUATE SERVICES TO THE EXISTING BASE WITHIN THE ABILITY TO PAY FOR THEM, AND IF NECESSARY, ESTABLISH PROGRAMS FOR REVITALIZING ITS OLDER AREAS.
31. A STRATEGY FOR FUTURE GROWTH MUST INCLUDE A REASONABLE ASSESSMENT OF ANTICIPATED GROWTH BASED ON OVERALL REGIONAL GROWTH PROJECTIONS, AND COMPETITION FOR THAT GROWTH AND RESOURCES TO SUPPORT IT FROM OTHER RURAL CENTERS, FREESTANDING GROWTH CENTERS AND THE URBAN AREA.
32. RURAL CENTER PLANS MUST ASSURE AN ADEQUATE LEVEL OF SERVICES FOR ANTICIPATED NEW GROWTH (REALIZING THAT METROPOLITAN SERVICES WILL NOT BE AVAILABLE).
33. "GROWTH" FOR MOST RURAL CENTERS IS USUALLY OF A MUCH SMALLER

SCALE THAN THAT FOR SUBURBAN COMMUNITIES. THIS DIFFERENCE IN SCALE SHOULD BE RECOGNIZED BY THE METROPOLITAN COUNCIL IN REVIEW OF RURAL CENTER PLANS AND PROJECTS.

Rural Centers should acknowledge that factors such as existing trends in agriculture, energy availability, population migration and other outside pressures which affect their future may change.

34. RURAL CENTER PLANNING SHOULD BE FLEXIBLE AND UNDERGO PERIODIC REASSESSMENT IF IT IS TO BE OF VALUE TO THE COMMUNITY. WHEN A COMMUNITY MUST RELY HEAVILY ON VARIABLE FACTORS (SUCH AS ONE BIG EMPLOYER) IN ITS PLANNING, CONTINGENCY PLANS SHOULD BE PREPARED TO MAINTAIN THE COMMUNITY'S VIABILITY IN THE FACE OF CHANGE.

Minnesota's energy future is, at best, uncertain. Projected shortages could dramatically affect its energy dependent style of life and economy. This can pose particular problems for low-income and elderly persons, and high consumption commercial and industrial development in Rural Centers and other sectors of the state.

Energy considerations are being given an increasing weight in decision-making processes of the general public as well as business and industry. Rural Centers desiring to attract new development will likely benefit from an active energy awareness.

35. POTENTIAL ENERGY SCARCITY AND INCREASED COST SHOULD BE A RECOGNIZED FACTOR IN RURAL CENTER DECISION-MAKING. STEPS A RURAL CENTER MAY CONSIDER ARE:

- ESTABLISHMENT OF A LOCAL ENERGY COMMITTEE TO ADVISE ON ENERGY-RELATED ISSUES.
- ESTABLISHMENT OF PUBLIC EDUCATION PROGRAMS ON INDIVIDUAL CONSERVATION MEASURES.
- ESTABLISHMENT OF CONSERVATION MEASURES IN LOCAL SERVICE PROVISION.
- ADOPTION OF LOCAL CODES AND ORDINANCES (e.g., SIGN AND LIGHTING ORDINANCES, SITE DESIGN REQUIREMENTS) THAT REFLECT CONSERVATION EFFORTS.
- LOCAL RECEPTIVITY TO USE OF ALTERNATIVE ENERGY SOURCES AND TECHNOLOGIES IN RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND AGRICULTURAL DEVELOPMENT.

Measures such as these can be implemented easily and simply. But together, they illustrate very clearly to a potential commercial or industrial developer that the city is committed to wise and economical administration of its affairs.

The support of local banks for Rural Center planning programs is necessary. The task force urges Rural Centers to seek out and maintain local bank involvement in community affairs.

36. THE METROPOLITAN COUNCIL SHOULD REVIEW RURAL CENTER PLANS WITH A SENSITIVITY TO RURAL CONDITIONS. DEPARTURE FROM METROPOLITAN COUNCIL FORECASTS SHOULD BE REVIEWED IN LIGHT OF LOCAL PLAN FACTORS AND INFORMATION.

The task force believes that apparent disagreements between Rural Centers and the Metropolitan Council often arise from a misunderstanding of rural conditions on the part of the Metropolitan Council, and a failure to prepare adequate studies and documentation of the local situation by the Rural Centers. By following the suggestions contained in this report, a Rural Center should be able to realistically defend its planning goals, and the Metropolitan Council should be more sensitive to rural conditions, and better equipped to make decisions that apply to Rural Centers.

"Shrinking" tax bases, increasing numbers of tax exempt properties (e.g., schools, churches, parks) and the continued scattering of non-farm development outside of Rural Center boundaries that require services by the Center have created some fiscal burdens for Rural Centers. Additional measures are needed to bolster Rural Center development, and existing programs need to be realigned so that they directly support Rural Centers.

37. THE LEGISLATURE SHOULD TAKE STEPS TO ASSURE ADEQUATE COMPENSATION TO COMMUNITIES THAT MUST SERVE AND SUPPORT TAX EXEMPT PROPERTIES WITHIN THEIR BOUNDARIES.

INCLUDED IN THIS STUDY AND ACTION SHOULD BE EXAMINATION OF MEANS BY WHICH NON-LOCAL PUBLIC BODIES WHICH OWN TAX EXEMPT PROPERTIES CAN THEMSELVES PROVIDE NEEDED SERVICES.

38. COMMUNITIES ON THE PERIPHERY OF RURAL CENTERS SHOULD BE AWARE OF THE LIMITATIONS OF RURAL CENTER SERVICE PROVISION TO THEIR DEVELOPMENT, AND SHOULD COORDINATE THEIR DEVELOPMENT PLANS WITH THOSE OF THE RURAL CENTERS THROUGHOUT THE PLANNING PROCESS. RURAL CENTERS SHOULD COORDINATE THEIR PLANNING AND PROGRAMS WITH ADJACENT COMMUNITIES. MEASURES WHICH ACCURATELY ALLOCATE THE COSTS OF SUCH SERVICE PROVISIONS TO BENEFICIARIES OUTSIDE THE RURAL CENTER SHOULD BE INITIATED WHERE LACKING AND UPDATED PERIODICALLY TO REFLECT ACTUAL SERVICE COSTS. SALE OF SERVICES TO ADJOINING COMMUNITIES SHOULD BE ADEQUATELY COMPENSATED.

Area-Wide Recommendations

EDUCATION FOR THE POTENTIAL RURAL RESIDENT

Some of the pressure for services in the rural area may be mis-assigned. Often it is thought that rural residents are the source of pressure for additional rural services. The task force suggests that a large part of this pressure actually comes from professional providers of rural services — for instance, engineers, attorneys and public safety specialists — who are thinking about their professional esteem and additional business.

Generally, though, a serious misconception of anticipated services is held by many of the people who move out to the rural area from the city. Coming from an area where most services are taken for granted, the absence, or in most cases, the reduced level of services is a rude awakening. In addition, greater responsibility is placed on the individual for looking after his/her own affairs. Such matters as septic tank inspection and maintenance, well repair and maintenance, grass fires, and so forth, require a commitment of time and preparation on the part of the resident for emergencies.

39. THERE IS A NEED FOR AN EDUCATIONAL PROGRAM IN RURAL COMMUNITIES THAT WILL 1) ALERT NEW RESIDENTS AND OTHERS INVOLVED TO IMPORTANT SERVICE ISSUES, AND 2) CLEARLY DESCRIBE THE RESPONSIBILITY OF THE NEW RESIDENT TO SELF AND NEIGHBOR. THE TASK FORCE PLACES GREAT IMPORTANCE ON THIS NEED. ONE ALTERNATIVE IS FOR A LOCAL UNIT OF GOVERNMENT TO ADOPT A WAITING PERIOD FOR BUILDING PERMITS AND RESOLD HOMES, TO ASSURE FULL OPPORTUNITY TO APPRISE POTENTIAL RESIDENTS OF THESE MATTERS. IT IS ALSO SUGGESTED THAT A STATE AGENCY OR PERHAPS THE AGRICULTURAL EXTENSION SERVICE PUBLISH A BROCHURE WHICH LISTS THE SEVERAL MATTERS THAT NEW RESIDENTS SHOULD BE AWARE OF AND THEIR RESPONSIBILITIES.

LAND CONVEYANCE: REACHING THE POTENTIAL BUYER

Members of the task force shared many experiences which they had as public officials in the General Rural Use Region. Although these experiences were often comical in retrospect, they also had quite significant effects on the development of the community. A common problem in most of these cases was the process of land conveyance and the inability of the local government to reach the buyer ahead of time to apprise him of important regulations or other factors which seriously affect the potential use of the land. Contact with the local government is always "after the fact," that is, after the ownership has been transferred. It is then frequently forced into the position of accommodating developments which are inappropriate or contrary to community plans. The state metes and bounds law, which excludes parcels over five acres in size from subdivision regulations, was most frequently cited as a source of trouble for local governments.

After attempting to prepare a specific solution for this problem the task force determined that its best contribution would be a general recommendation on the subject. Groups which are more qualified to address the specifics should be urged to prepare detailed legislative recommendations. The task force hopes that new legislative measures will emphasize the moral responsibility of the seller to honestly represent the potential of the land.

40. LEGISLATION IS NEEDED TO PROVIDE A TIMELY WARNING TO THE LAND BUYER ABOUT APPLICABLE LAND-USE REGULATIONS BEFORE THE SALE IS CLOSED OR TITLE TRANSFERRED. A STATEMENT IS SUGGESTED ON A STANDARD OWNERSHIP TRANSFER INSTRUMENT WHEREBY THE BUYER AND SELLER ACKNOWLEDGE THE AWARENESS OF APPLICABLE LAND-USE REGULATIONS.
41. PLANNING AND ZONING LAW WHICH PRESENTLY PERMITS THE USE OF METES AND BOUNDS FOR CONVEYANCE OF LAND PARCELS OVER FIVE ACRES IN SIZE SHOULD BE AMENDED SO THAT THE LOCAL UNIT OF GOVERNMENT SETS THE MINIMUM ACREAGE FOR THE USE OF THIS LAND CONVEYANCE METHOD. PARCELS UNDER THE MINIMUM WOULD THEN BE SUBJECT TO THE LOCAL SUBDIVISION REGULATIONS.

RURAL SERVICES HANDBOOK

As indicated in several parts above, service implications were a recurring theme in task force discussions. Local governments need to be better aware of the impact of development increments on the present services, and the approximate thresholds for new or expanded services. The task force did not have sufficient time nor expertise to develop a guide or handbook on service thresholds, but it strongly believes that something on this order is needed, especially for the General Rural Use Region.

42. THE METROPOLITAN COUNCIL SHOULD PREPARE A RURAL SERVICES HANDBOOK WHICH IDENTIFIES 1) THE SERVICES IN A RURAL AREA, 2) THE MAJOR FACTORS INVOLVED IN THE CHOICE TO PROVIDE THESE SERVICES, 3) LEVELS OF SERVICE THAT CAN BE PROVIDED, AND 4) SERVICE COST IMPLICATIONS.
 - TO PREPARE THIS HANDBOOK, THE METROPOLITAN COUNCIL SHOULD CONVENE SPECIAL COMMITTEES OF QUALIFIED TECHNICIANS AND KNOWLEDGEABLE CITIZENS TO DEVELOP PARAMETERS, INDICATORS AND OTHER FACTORS WHICH CAN PROVIDE GUIDANCE ON THESE MATTERS.
 - LOCAL GOVERNMENTS SHOULD ESTABLISH WHAT LEVELS OF SERVICES ARE IMPLIED IN THEIR COMPREHENSIVE PLANS, AND FURTHERMORE, ESTABLISH SOME MECHANISM TO ASSURE THAT ADEQUATE PUBLIC ATTENTION BE GIVEN TO ALL SUBSEQUENT SERVICE LEVEL CHANGES.

LOT SIZE AND DENSITY STANDARDS

The task force spent much time debating appropriate densities and lot sizes for the General Rural Use Region. After much difficulty it became obvious that such discussions are really meaningless until each community has made a realistic appraisal of its present state, and established sound goals for its future. Only with these steps, performed in a planning process, can intelligent and workable decisions be made.

43. THE METROPOLITAN COUNCIL STANDARDS FOR LOT SIZES OR DENSITIES IN THE RURAL AREA SHOULD BE STATED IN RELATIONSHIP TO CERTAIN PLANNING GOALS THAT MAY BE SELECTED BY A RURAL COMMUNITY, AND APPLICABLE TECHNICAL FACTORS.
44. LOT SIZES AND DENSITIES SELECTED BY LOCAL GOVERNMENTS SHOULD BE BASED ON LOCAL PHYSICAL CONDITIONS, TECHNICAL FACTORS, COMMUNITY GOALS, APPLICABLE STATE REGULATIONS, THE RELATIONSHIP TO NEIGHBORING COMMUNITIES, AND A REASONABLE ASSESSMENT OF ANTICIPATED GROWTH BASED ON OVERALL REGIONAL GROWTH PROJECTIONS, AND COMPETITION FOR THAT GROWTH AND RESOURCES TO SUPPORT IT FROM RURAL CENTERS, FREESTANDING GROWTH CENTERS, AND THE URBAN AREA. IT IS THE LOCAL GOVERNMENT'S RESPONSIBILITY TO PRESENT IN THE COMPREHENSIVE PLAN THE RATIONALE FOR ITS ADOPTED LOT SIZE STANDARDS AND DENSITIES.

Many rural communities contain some uses which would probably be rejected if proposed today. These are uses which may generate heavy traffic or place excessive demand on local services. In the planning process, the community should give careful thought to the long-term effect of such uses on the area — whether they should be expanded, increased in number, or rather gradually phased out.

HIGH DENSITY LAND USES

High density uses, especially mobile home parks, pose a serious threat to the General Rural Use Region and are a very sensitive issue. Once a rural community has completed its comprehensive planning process and has decided to remain as a rural farming low-density community, in accordance with the Development Framework, mobile home parks are then inappropriate because of their high density and service requirements. But legal precedents based on exclusionary zoning issues have given mobile home park developers a strong advantage in forcing these facilities on rural communities. The task force feels strongly that the Metropolitan Council should address this issue, and actions should be taken by appropriate levels of government so that mobile homes remain a viable housing alternative, but do not jeopardize the Development Framework. This position applies to any high

density use in the rural area.

45. THE TASK FORCE BELIEVES THAT MOBILE HOME PARKS ARE INCOMPATIBLE WITH COMMERCIAL AGRICULTURE AND GENERAL RURAL USE REGIONS. THEY SHOULD ONLY BE LOCATED IN AREAS WHERE APPROPRIATE MUNICIPAL SERVICES ARE AVAILABLE.
46. THE METROPOLITAN COUNCIL SHOULD STUDY THE IMPACT OF MOBILE HOMES ON RURAL AREAS AND THE REGION IN GENERAL. SPECIAL EMPHASIS SHOULD BE PLACED ON SEWER AND FISCAL IMPACTS ON THE AFFECTED LOCAL GOVERNMENTS.
47. THE HOUSING ELEMENT OF THE METROPOLITAN DEVELOPMENT GUIDE SHOULD ADDRESS MOBILE HOME PARK USAGE AND LOCATION IN THE RURAL AREA.
48. THE METROPOLITAN COUNCIL, AFTER STUDIES SUGGESTED ABOVE, SHOULD SEEK SPECIAL LEGISLATION WHICH REQUIRES THAT NEW MOBILE HOME PARKS AND OTHER HIGH DENSITY USES BE LOCATED ONLY IN COMMUNITIES WHICH PROVIDE THE NECESSARY AND SUFFICIENT SERVICES SUCH AS SEWER, WATER, POLICE AND FIRE PROTECTION.
49. THE METROPOLITAN COUNCIL SHOULD BE PREPARED TO ASSIST RURAL COMMUNITIES WITH LEGAL SUPPORT ON THIS ISSUE.

ANNEXATION

Task force members have had a wide range of experience with annexation. Some events have been quite amicable while many have resulted in fierce disagreement which, in some cases, remains to this day. Obviously, community identity, windfall profits, personal feelings, fiscal integrity, and many other aspects can deeply infect what might otherwise appear to be a simple boundary change. Hence, this is an issue requiring careful study and full participation by all affected.

The task force believes that the Minnesota Municipal Board (MMB) has made great progress in stabilizing the annexation process so that relevant factors are fully considered. Many of the annexations in the past which members are concerned about probably would be handled much differently today.

Still, the task force feels that certain recommendations are in order; annexation is an issue which concerns all parts of the rural area.

50. ANNEXATIONS WHICH INVOLVE FARMLAND SHOULD BE RIGOROUSLY REVIEWED FOR THEIR EFFECT ON THE LONG-TERM VIABILITY OF THE FARM AREA.

- MUNICIPALITIES STILL APPEAR TO HAVE THE UPPER HAND IN ANNEXATION PROCEEDINGS. MEMBERS FROM TOWNSHIPS DESCRIBED THE CONSTANT TREPIDATION WHICH COMES FROM NOT KNOWING WHEN THE "BIG GRAB" WILL BEGIN. ONE TOWNSHIP APPARENTLY HAS INITIATED ANNEXATION PROCEEDINGS ON ITS OWN JUST TO RESOLVE THIS QUESTION. MEASURES ARE NEEDED TO PLACE ALL PARTICIPANTS ON A MORE EQUAL BASIS.
- MUCH OF THE ILL-WILL BETWEEN LOCAL GOVERNMENTS ARISES FROM THE LONG UNCERTAINTY FACED BY RESIDENTS IN THE AFFECTED AREAS. RECENT ORDERLY ANNEXATION EXPERIENCES, FORTUNATELY, SHOW THAT THIS PROBLEM IS BEING CORRECTED. A MUTUAL AND AMICABLE UNDERSTANDING SHOULD BE ESTABLISHED BETWEEN THE LOCAL GOVERNMENTS, INCLUDING A WRITTEN MUTUAL AGREEMENT PRIOR TO ANNEXATION PROCEEDINGS. ALL PARTIES HAVE THE RESPONSIBILITY TO SEEK THIS UNDERSTANDING. DISCUSSIONS WHICH ARE HELD TO DEVELOP AN UNDERSTANDING BETWEEN PARTIES SHOULD BE ESPECIALLY ATTENTIVE TO THE CONCERNS OF AFFECTED RESIDENTS.
- BEFORE A MUNICIPALITY ANNEXES LAND IN AN ADJOINING TOWNSHIP, THE CITY SHOULD PRESENT A PLAN SHOWING HOW MUNICIPAL SERVICES WILL BE PROVIDED IN THE ANNEXED AREA, AND THE WHOLE AREA TO BE ANNEXED SHOULD BE SERVED WITH THE SAME LEVEL OF URBAN SERVICES AS THE REST OF THE CITY WITHIN THREE YEARS.
- ALTERNATIVES TO ANNEXATION SHOULD BE GIVEN GREATER EMPHASIS. JOINT POWERS AGREEMENTS, ORDERLY ANNEXATION, AND PURCHASE OF SERVICES BY ADJOINING COMMUNITIES SHOULD BE ENCOURAGED. MUNICIPALITIES WHICH SELL SERVICES TO OTHER GOVERNMENTS SHOULD PRICE THESE SERVICES SO THAT ADEQUATE COMPENSATION IS RECEIVED. THERE APPEARS TO BE MUCH UNDER-CHARGING, WHICH AMOUNTS TO A SUBSIDY.
- A FEAR OF "LAND GRABBING" (AS WAS PERMITTED IN THE PAST) STILL PERSISTS. THE MINNESOTA MUNICIPAL BOARD SHOULD BE URGED TO ASSURE AS WELL AS POSSIBLE THAT LAND SLATED FOR ANNEXATION HAS A STRONG LIKELIHOOD OF BEING DEVELOPED OR PRESENTLY CONTAINS A SIGNIFICANT AMOUNT OF NON-AGRICULTURAL DEVELOPMENT. ANNEXED LAND SHOULD BE ADJACENT AND ALL OF IT CLOSE TO THE MUNICIPALITY.
- THERE IS VERY SELDOM REASON FOR ANNEXING LONG-TERM AGRICULTURAL AREAS, AND SUCH LAND SHOULD RARELY BE INCLUDED WITHIN AN ANNEXATION UNLESS TOWNSHIP, CITY, AND

LANDOWNER AGREE OR IF SUBSTANTIAL URBANIZING DEVELOPMENT SURROUNDS IT. TOWNSHIPS SHOULD BE AWARE THAT IF THEY ALLOW NON-FARM DEVELOPMENT TO SPREAD THROUGHOUT THE AGRICULTURAL AREA, THE LONG-TERM CHARACTER OF THE AREA IS QUESTIONABLE, AND IT IS OPENING ITSELF TO ANNEXATION BY ADJOINING COMMUNITIES.

DIRECTING AND TARGETING FEDERAL FUNDS IN THE RURAL AREA

The task force believes that federal assistance programs for rural non-farm housing have contributed to the problem of scattered development in the rural area. This non-farm development often interferes with agricultural areas and adds to fiscal problems for Rural Centers because residents use Rural Center services but do not contribute to the tax base or community life. At the same time many Rural Centers have unused utilities within their boundaries and need moderate growth to maintain their viability.

51. THE METROPOLITAN COUNCIL SHOULD SEEK AGREEMENTS WITH FEDERAL AGENCIES TO ASSURE THAT FEDERAL ASSISTANCE FOR RURAL NON-FARM HOUSING SUPPORTS LOCAL AND REGIONAL PLANS AND IS FOCUSED ON RURAL CENTERS WHICH HAVE ADEQUATE SERVICES AVAILABLE.
52. PRIORITY FOR GENERAL COMMUNITY DEVELOPMENT PROGRAMS IN THE RURAL SERVICE AREA SHOULD BE GIVEN TO THE RURAL CENTERS, WHERE PUBLIC SERVICE INVESTMENTS HAVE ALREADY BEEN MADE.
53. THE METROPOLITAN COUNCIL SHOULD ENDORSE SUBSIDIZED FAMILY AND ELDERLY HOUSING REQUESTED BY RURAL CENTERS AND DESIGNED TO SERVE THE RURAL CENTER'S SERVICE AREA NEEDS, PROVIDED APPROPRIATE MUNICIPAL SERVICES ARE AVAILABLE.
54. THE METROPOLITAN COUNCIL HAS RESPONSIBILITY FOR DISTRIBUTING SOME GRANT MONIES TO LOCAL GOVERNMENTS. THE COUNCIL SHOULD ALLOCATE THESE FUNDS BY POLICY AREA SO THAT RURAL CENTERS NEED ONLY COMPETE AMONG THEMSELVES FOR AVAILABLE FUNDS.

OPEN SPACE

Much confusion results from efforts to use agricultural preservation measures to protect "open space." The words are not necessarily synonymous. The legislation should be designed to provide protection both before and after development. Agricultural preservation only does the former, at best.

55. NEW OR SEPARATE LEGISLATION IS NEEDED TO SPECIFICALLY PROTECT OPEN SPACE SUCH AS WETLANDS AND FLOODPLAINS. PARTICIPATION AND

BENEFITS SHOULD BE TIED TO LOCAL PLANNING AND ZONING FOR THESE RESOURCES.

INCONSISTENT ASSESSMENT PRACTICES

Task force discussions were often hampered by contrary experiences due to different approaches being used by county assessors and differences in their attitudes toward farmland. Consistency of practices is needed among metropolitan counties as well as with adjoining non-metropolitan counties.

56. ADDITIONAL EFFORT IS NEEDED TO IMPROVE CONSISTENCY FROM ONE ASSESSMENT DISTRICT TO ANOTHER IN AGRICULTURAL AND OTHER ASSESSMENT PRACTICES, TO INSURE THAT SIMILARLY SITUATED AGRICULTURAL LANDS AND RESIDENCES WILL NOT PAY A DISPROPORTIONATE AMOUNT OF TAXES FOR THE SAME SERVICES.

BETTER EDUCATION IN RURAL CONCERNS

The planning needs of agricultural and rural life-style communities require the recognition of rural, not urban, values, problems, solutions and resources. The application of urban originated and oriented expertise and methods to the rural area has frequently resulted in their inappropriate use and the lack of local support for them.

57. PLANNING SCHOOLS OF COLLEGES AND UNIVERSITIES SHOULD BE URGED TO DEVELOP CURRICULA WHICH PROVIDE TRAINING IN THE PLANNING NEEDS AND CHARACTERISTICS OF RURAL AS WELL AS URBAN COMMUNITIES.
58. EXISTING AND FUTURE GOVERNMENTAL PROGRAMS WHICH ARE TO PROVIDE ASSISTANCE TO RURAL COMMUNITIES SHOULD BE REVIEWED TO ASSURE THAT THEY ARE GEARED TO RURAL NEEDS AND CAPABILITIES.

More than half of the Metropolitan Area is rural/agricultural, yet none of the Metropolitan Council members is a farmer. The task force feels that the Council has made important progress with its rural and agricultural policies in the Development Framework. But as these policies are implemented, the Council will need a better personal understanding of the area. A farmer member would help solidify the regional commitment to the preservation of agriculture.

59. MORE FARMER/RURAL AREA REPRESENTATION IS NEEDED AT THE COUNCIL, ADVISORY, AND STAFF LEVELS OF THE METROPOLITAN COUNCIL.

- THE APPOINTMENT PROCESS SHOULD ASSURE THAT THERE IS

ADEQUATE REPRESENTATION FROM THE RURAL AREA ON THE METROPOLITAN COUNCIL.

- AN ONGOING RURAL AREA ADVISORY COMMITTEE, WITH A COUNCIL MEMBER AS CHAIRMAN, SHOULD BE CREATED, AND BETTER RURAL REPRESENTATION IS NEEDED ON OTHER ADVISORY COMMITTEES.
- STAFF WITH SUFFICIENT BACKGROUND IN RURAL AREA PLANNING IS NEEDED TO PROVIDE EXPERTISE IN RURAL ISSUES AS APPLIED TO ALL PLANNING SUBJECTS.

COORDINATION WITH ADJOINING, NON-METROPOLITAN COMMUNITIES

Under the Metropolitan Land Planning Act, communities within the periphery of the Metropolitan Region are obligated to prepare plans and ordinances which are in accord with the Metropolitan Development Framework. This area has been designated to remain at very low densities. However, just across the regional boundary, communities are not obligated to control growth and in many cases they are permitting very high density development. This causes severe service problems especially when service boundaries cross regional lines — which is common for school districts — and causes tremendous development pressure on communities which are located in between. The task force does not have a solution for this problem, but urges the Metropolitan Council to take steps to correct it before more serious problems are created. The Council should be more aware of development taking place in adjoining counties.

60. THE METROPOLITAN COUNCIL SHOULD TAKE STEPS TO COORDINATE DEVELOPMENT PLANS OF ADJOINING NON-METROPOLITAN COMMUNITIES WITH THE METROPOLITAN DEVELOPMENT FRAMEWORK.

Rural Area Overview

COMMERCIAL AGRICULTURE REGION

Extent of Agriculture

Agriculture is a major land use and the largest single land use in the Twin Cities Metropolitan Area. The Metropolitan Area lies on the northern edge of the Midwest corn belt which is one of the world's largest agricultural regions and is noted for its vast productive capability. The protection of this prime agricultural land to promote agricultural use of the land is a policy of the Metropolitan Council.

In 1977 approximately 1,600 square miles (1,037,700 acres) of the 2,840 square miles of land in the Metropolitan Area were classified as farmland. Harvested acreage in that same

year totaled over 1,000 square miles. The distribution of farmland varies considerably by county with Ramsey almost totally an urban county and Carver, Dakota and Scott counties three-fourths or more agricultural. The number of acres of farmland by county is shown in Table 1.

Table 1
LAND IN FARMS* 1977

County	Total Land Acres	Land in Farms	Land in Farms as Percent of County Land	Percent of Metro Area Farm Land
Anoka	274,918	114,400	42	11
Carver	229,171	198,600	87	19
Dakota	367,774	277,200	75	27
Hennepin	362,977	132,000	36	13
Ramsey	98,050	4,800	5	—
Scott	229,202	172,800	75	17
Washington	255,850	137,900	54	13
Metropolitan Area	1,817,942	1,037,700		100.0

*A farm is defined as a place of ten acres or more with sales of \$50 or more and also places of less than ten acres with sales of \$250 or more.

Source: Minnesota Agricultural Statistics 1978, Minnesota Crop and Livestock Reporting Service, USDA.

Comparable data from the early seventies on farm acreage is not available because of a change to a more accurate method of reporting farmland. However, if the extent of farming in the Metropolitan Area is measured in terms of income, agriculture in this Area has remained relatively stable. In 1969 Metropolitan Area farmers received 4.9 percent of the total farm income in the state; by 1974 the Metropolitan Area's share had decreased only .7 percent, to 4.2 percent (based on the total market value of agricultural products sold by farms with sales of \$2,500 or more).¹

¹U.S. Department of Commerce, 1974 Census of Agriculture, Minnesota State and County Data.

Types of Farming²

Some significant variations in the commodities produced occur by county (see Table 2), a result largely of topographic and soil differences in the Region. Anoka, for example, does not produce much of a cash crop with its sandy soils but concentrates on livestock with an increasing emphasis on poultry farming. Another major type of farming in Anoka is truck gardening in the peat land areas. Dairy farming predominates in Carver, Hennepin and Scott counties with Carver County farmers receiving over 56 percent of their 1974 income from dairy products. Cash crops are a major income source in Dakota and Scott counties, and, to a lesser extent, in Washington County. Washington and Hennepin counties each garnered over 20 percent of their 1974 farm income from nursery and greenhouse operations. A larger share of income from cash crops is shown for 1974. This is explained by an increase in commodity prices for cash crops at that time and by an increased number of acres planted.

Agricultural Land Costs

In 1977 the average sales prices for improved agricultural land in Metropolitan Area counties ranged from 40 to 100 percent above the statewide average sales price. Metropolitan Area farmland experienced from 1967 to 1972 its most substantial price increases in the last ten years. From 1972 to 1977, the Metropolitan Area counties had below average sales price increases. According to Philip Raup in the *Minnesota Agricultural Economist*, No. 595, January 1978, farm land in the eastern portion of the state which includes the Metropolitan Area, has been most strongly influenced by urban, residential and recreational land uses, and is more dependent on livestock agriculture than is the western portion of the state.

Throughout the 1960s and into 1972 the largest annual percentage increases in farmland values occurred in the eastern counties. In 1972 with the dramatic increase in prices for cash crops the western districts where cash crops predominate saw higher than average increases in farm prices. According to Raup:

These higher crop prices were quickly capitalized into higher farmland prices. Many farmers used their record incomes to expand the size of their land holdings, adding further to upward pressure on farmland prices. By 1975, farmland values rose by more than the statewide average in the three western districts (25 to 48 percent) while farmland values increased by notably less than the statewide average (6 to 17 percent) in the eastern districts where livestock farming and urban, residential, and recreational land uses are prominent

By 1977, the market had begun to return to its earlier pattern and farm land values in the eastern portion of the state again rose by more than the statewide average (see Table 3).

²Information from Minnesota Agricultural Statistics for each year cited.

Although it is evident that some of the increase in agricultural land values in the Metropolitan Area is due to its proximity to an urban area with its pressures for development, it is also true that prices for farmland in non-urban areas have also risen rapidly. From 1972 to 1977, for example, the statewide average sales price of farmland increased 293 percent.

Table 2
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD
 (Percent by commodity of total market value for year shown)
 (Data for farms with sales of \$2,500 or more)

	Anoka County		Carver County		Dakota County		Hennepin County		Ramsay County		Scott County		Washington County	
	1969	1974	1969	1974	1969	1974	1969	1974	1969	1974	1969	1974	1969	1974
CROPS	9	19	9	18	20	41	16	25	1	1	13	28	14	29
Grains	4	12	7	15	19	39	7	17	—	—	11	25	10	25
Hay, etc.	2	5	2	3	1	2	2	2	—	—	2	3	2	2
Other Field Crops	3	2	—	—	—	—	7	6	—	—	—	—	2	2
HORTICULTURE	22	28	—	2	5	11	30	27	83	94	2	2	21	25
Vegetables	13	14	—	1	3	5	4	3	5	5	1	2	1	2
Fruits	0	0	—	—	—	—	—	—	—	—	—	—	3	3
Nursery	9	14	—	1	2	6	26	24	78	89	1	—	17	20
LIVESTOCK	68	53	91	81	74	47	53	47	16	4	84	69	65	46
Poultry	25	20	3	3	3	2	6	4	(D)	(D)	3	2	8	3
Dairy Products	20	14	60	56	28	21	29	28	1	—	47	40	26	18
Dairy Cattle	5	10	10	13	5	17	5	10	—	—	8	16	23	19
Other Cattle	8	8	8	26	26	8	8	1	1	11	11	11	8	5
Hogs, Sheep	9	9	10	9	11	7	4	4	6	1	15	11	8	5
Other	1	—	—	—	1	—	1	1	—	—	—	—	—	1

NOTE: Totals may not add to 100 percent due to rounding.
 (D) Data withheld to avoid disclosing individual farms.

Source: 1974 Census of Agriculture, Minnesota State and County Data.

Table 3
 AVERAGE SALES PRICES OF FARM LAND
 JANUARY - JUNE 1977

County	Dollars Per Acre	Percent of Statewide Average
Anoka	---	---
Carver	1,596	186
Dakota	1,475	172
Hennepin	1,750	204
Ramsey	---	---
Scott	1,200	140
Washington	1,315	153
State Average	859	

Source: Rodney Christianson and Philip M. Raup, "The
 Minnesota Rural Real Estate Market in 1977,"
Minnesota Agricultural Economist, No. 595,
 January 1978.

GENERAL RURAL USE REGION

The General Rural Use Region consists of those lands in the Rural Service Area which are not best suited to long-term large-scale agricultural production but are more compatible with uses such as specialty farming, passive recreation, and low density residential development. The General Rural Use Region serves as a buffer between the urbanized areas and the commercial agriculture areas. According to the Development Framework, land in the General Rural Use Region will not be needed for intensive urban development before 1990 and metropolitan services will not be extended to the area before that time. To achieve this, the population density of the General Rural Use Region must remain low enough so that urban services will not be necessary until 1990.

Population

In 1977 an estimated 244,170 people lived outside the urban service area, about 13 percent of the regional population.

Table 4
METROPOLITAN AREA POPULATION, 1970, 1977

	1970	1977	Average Annual Increase
Rural Service Area	103,833	143,750	5,702
Rural Centers	17,218	21,420	600
General Rural Use Region	60,525	89,970	4,206
Commercial Agriculture Region	26,090	32,360	895
Freestanding Growth Centers	78,567	100,420	3,122
Total	182,400	244,170	8,824
*Metropolitan Area Total	1,874,612	1,973,470	14,122

Since 1970 the Rural Service Area has grown by 40,000 people and the Freestanding Growth Centers by about 22,000. During this period the Metropolitan Urban Service Area (MUSA) showed a net population growth of 37,000, lower than the rural area's growth. Three-fourths of the growth in the Rural Service Area has been in the General Rural Use Region; only 10 percent in the Rural Centers.

Housing

Approximately 22,000 housing units were built outside the MUSA from 1970 to 1977 compared to approximately 90,000 units built inside the MUSA during the same period.

Table 5
INCREASE IN HOUSING UNITS OUTSIDE THE MUSA

	Housing Units			Average Annual Increase			
	1970	1975	1977	1970-1975		1976-1977	
				Units	Percent	Units	Percent
Rural Service Area	29,290	39,167	42,161	1,975	6.7	1,497	3.8
Rural Centers	4,488	6,144	6,527	331	7.4	192	3.1
Rural Use Region	18,373	24,964	27,041	1,318	7.2	1,039	4.2
Agricultural Use Region	6,429	8,059	8,593	326	5.1	267	3.3
Freestanding Growth Centers	22,083	29,344	31,572	1,452	6.6	1,114	3.8
Total	51,373	68,511	73,733	3,427	6.7	2,611	3.8
Metropolitan Area Total	594,017	686,491	705,839	18,495	3.1	9,674	1.4

The 22,000 units outside the MUSA breaks down as 12,800 in the Rural Service Area and 9,200 in the Freestanding Growth Centers. Within the Rural Service Area, the General Rural Use Region accounts for about two-thirds of the houses built. On the average, 1,318 new houses were built there each year between 1970 and 1975 and 1,039 new houses annually in 1975 and 1976. This decline in housing construction in the General Rural Use Region appears to have been due more to the recession in the new housing market region-wide than to Council policy. In fact, during 1975-1976, while housing construction in the Metropolitan Area as a whole dropped to half its pre-1975 level, construction in the General Rural Use Region declined only 21 percent. During 1975 and 1976, 27 percent of all housing built in the Region was built outside the MUSA.

Thus, there has been a slow-down in rural growth during the past two years. An alarming sign, however, is that the rural area continues to increase its share of regional growth. And only about one-half of the growth outside the MUSA is occurring in the Freestanding Growth Centers and Rural Centers, places where Council policy is attempting to encourage all rural growth to be.

Density

Housing development outside these centers is not uniformly spread throughout the rural regions; it is highly concentrated in Anoka County. In fact, 44 percent of all housing construction in the General Rural Use Region and Commercial Agriculture Regions between 1970 and 1976 was in Anoka County. Hennepin and Washington counties each accounted for 18 percent, while Dakota had 10 percent, Scott 6 percent, and Carver 4 percent.

RURAL CENTERS

Function and Location

Rural Centers are those small communities located in the Rural Service Area which provide some support services for the farmers in the area and which have a small amount of residential and commercial development. The Rural Centers are distinguished from the Freestanding Growth Centers primarily by their lack of an employment base and also by the size of their population which is generally less than that of the Freestanding Growth Centers.

Thirty-three Rural Centers are identified in the Development Framework, 17 of which are located in Hennepin and Carver counties. Almost 85 percent of the Rural Centers' households are located in Carver, Hennepin and Washington counties and only 15 percent in Anoka, Dakota and Scott counties. Dakota and Scott counties, however, are the location of eight of the Freestanding Growth Centers, whereas Hennepin County's agriculture area has no Freestanding Growth Center and Anoka has only one. Because of these two Rural Centers, one in west-central Hennepin County (Maple Plain) and one in northern Anoka County (St. Francis) have been designated as Proposed Freestanding Growth Centers to provide an alternative to scattered growth in these areas.

Table 6
RURAL CENTER HOUSEHOLDS BY COUNTY

Rural Centers	1970 Households	Percent of Total	1978 Households	Percent of Total	1970-1978 Percent of Increase
Anoka County	439	8	554	7	26
Carver County	1,744	31	2,280	30	31
Dakota County	416	7	491	6	18
Hennepin County	1,622	29	2,456	32	51
Scott County	103	2	144	2	40
Washington County	1,276	23	1,739	23	36
	5,600		7,664		37.0

In general, the Rural Centers have been growing more slowly than the remainder of the Rural Service Area. Although there was a 37 percent (2,064) increase in households in the Rural Centers from 1970 to 1978, there was a 77 percent (16,058) increase in households in the rest of the Rural Service Area.

Commercial and Industrial Growth

An important historic role for the Rural Centers has been to serve as rural trade centers for the surrounding agricultural area. Yet from 1973 to 1977 only 42 percent of the commercial and industrial growth (C-I growth as measured by building permit data) in the Rural Service Area took place in the Rural Centers. Commercial activity was somewhat more likely to locate in Rural Centers than was industrial activity by a 44 to 40 percent margin.

Distribution of the commercial and industrial activity among rural centers varied considerably also with Hennepin County Rural Centers garnering 57 percent of the commercial and industrial growth. Much of this (31 percent) was due to growth in the municipality of Rogers which is located adjacent to the recently completed I-94 and which is served by an I-94 interchange.

Table 7
RURAL CENTERS BY COUNTY
COMMERCIAL/INDUSTRIAL ACTIVITY

County	1973-1977		(\$000) Total	Percent of Grand Total
	(\$000) Commercial	(\$000) Industrial		
Anoka	101	55	156	2.6
Carver	836	163	999	16.5
Dakota	174	631	805	13.3
Hennepin	2,024	1,450	3,474	57.4
Scott	0	0	0	—
Washington	202	418	620	10.2
Total	3,337	2,717	6,054	100.0

Source: Building Permit Data, Metropolitan Council

Sixty percent of the industrial activity in the Rural Service Area from 1973 to 1977 took place outside the Rural Centers as did 56 percent of the commercial growth. Overall, commercial and industrial activity in the Rural Service Area (including Rural Centers) comprised 1.9 percent of the Region's commercial and industrial activity in that five-year period.

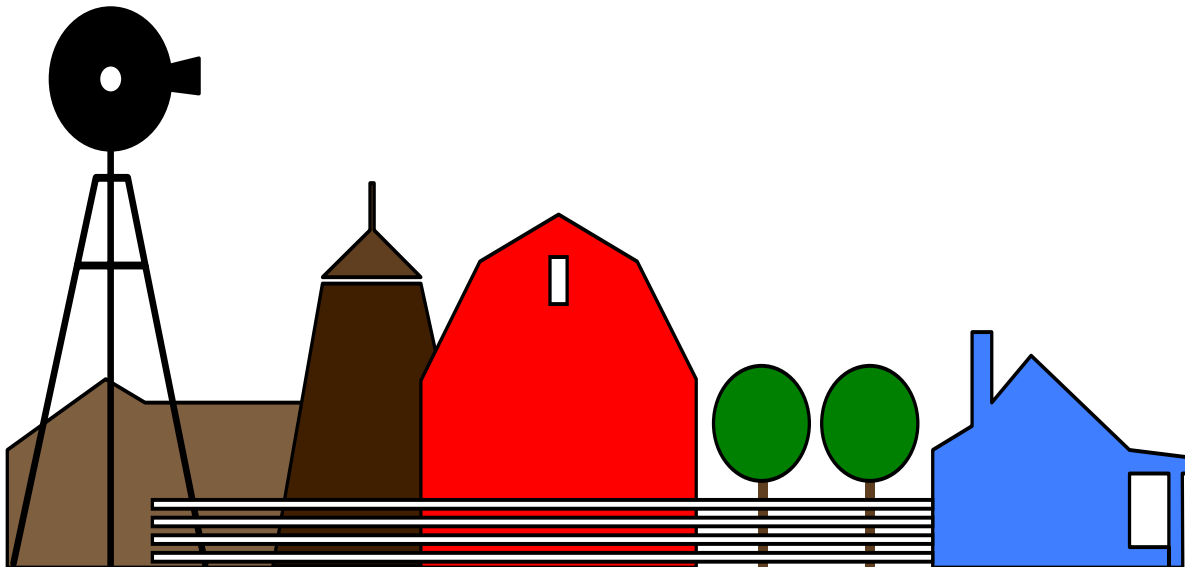
Tax Base

One major problem facing Rural Centers is the provision of services or the maintenance of service levels for households in their communities. Whereas rural townships have generally experienced increases in their assessed valuation (adjusted for the sales ratio) because of the increases in farmland values, many Rural Centers are facing a decline in assessed valuation when calculated in constant dollars. Nine of the 27 Rural Centers for which assessed valuation can be determined lost per household valuation from 1973 to 1976. Even those Rural Centers showing an increase may fall far behind the townships in which they are located. Cologne, for example, had an 18 percent increase in per household assessed valuation from 1973 to 1976, yet Cologne's per household valuation in 1976 was only 23 percent of Benton Township's per household valuation adjusted for sales ratio.

PERMANENT AGRICULTURAL LAND IDENTIFICATION PROCESS

Phase 1: Task Force Report and Recommendations

December 22, 1997



Permanent Agricultural Land Preservation Project Participants

Task Force Members

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Pete Beckius, Scott County Soil and Water Conservation District
Kevin Chamberlain, Farmer (Dakota County)
Bonnie Dehn, Farmer, Andover City Council member
Dave Drealan, Director of County Planning/Zoning, Carver County
Roger Fox, Farmer, Marshan Town Board Chair
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Ray Jones, Farmer (Anoka County)
Ted Kornder, Farmer, St. Lawrence Township Board Chair
Dick Krier, RLK and Associates
Gail Lippert, Greenfield City Administrator
Ralph Malz, Scott County Commissioner
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Jim Olson, Farmer, San Francisco Township Board member
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Project Consultant



Resource
Strategies
Corporation

Executive Summary: Permanent Agricultural Land Identification Process

The Metropolitan Council's *Regional Blueprint* identifies a regional growth strategy for the seven county area through the year 2040. Among other regional planning issues, the *Blueprint* identified the need for a system to identify and preserve agricultural land. The Metropolitan Council's *Permanent Agricultural Land Preservation Project* is involving local stakeholders in the development of this system. A Task Force was established in the summer of 1997, with the primary goal to establish a simple-to-use procedure that, with the support of county and regional government, local governments can use to identify permanent agricultural land.

The Task Force met eight times in the fall of 1997. During this time, they established goals for agricultural land preservation, reviewed national models for identification of agricultural lands, and evaluated relevant data sources. Finally, with an understanding of the unique and varied intergovernmental relationships and planning framework that exists in the Twin Cities metropolitan area, the Task Force established criteria and a simple but effective procedure for agricultural land identification that included analysis of physical characteristics (*Land Evaluation*) and local site conditions (*Site Assessment*).

The Task Force recommends that data related to the *Land Evaluation* are best provided at the county level, with assistance and coordination by the Metropolitan Council when necessary. This component essentially involves the computerized mapping, through Geographic Information Systems (GIS), of existing soils productivity data in the region.

The Task Force further recommends that the *Site Assessment* should be completed by individual communities, within the context of the existing regional planning framework. This component is designed to be completed on a section-by-section basis (one square mile increments). Site assessment criteria include agricultural land suitability, land use, zoning and tax classification, parcel size, adjacent land characteristics, and urban encroachment.

Lastly, they recommend that the Metropolitan Council consider the following strategies to encourage the identification of permanent agricultural land during the current round of mandatory comprehensive plan updates:

- Prepare an immediate information release strongly encouraging and describing the purpose and procedures to add the permanent agricultural land identification process to municipal comprehensive plans.
- Actively promote and “market” the permanent agricultural land identification process through a variety of media and outreach opportunities.
- Offer coordination and assistance in completing the land identification process.
- Guarantee that the land evaluations in each county will be available for this purpose.
- Consider extending the December 31, 1998 comprehensive plan deadline for municipalities that participate in the permanent agricultural land identification process.

These procedures and recommendations for agricultural land identification conclude the work of the Task Force and Phase I of the Permanent Agricultural Land Preservation Project. Phase II, which will begin in January 1998, will evaluate and recommend a set of tools to assist communities in preserving agricultural land.

Introduction

The *Permanent Agricultural Land Preservation Project (PALPP)* of the Metropolitan Council is an effort to develop an effective mechanism by which important agricultural lands are identified and protected from competing land uses. This project is intended to implement, through local and regional planning, an important part of the regional growth strategy. An action statement in the 1996 *Regional Blueprint* committed the Council to convene a task force to recommend how to define the permanent agricultural area and to identify tools necessary to preserve agricultural uses in the region. The Council also committed itself to consider amendments to the *Regional Blueprint* and the *Local Planning Handbook*, based upon the recommendations of the Task Force.

The Metropolitan Council divided the agricultural land preservation project into two phases. Phase I involved the recommendation of a simple to use procedure to identify permanent agricultural land. Phase II will involve the recommendation of an appropriate set of tools and practices to protect permanent agricultural land. In the summer of 1997, the Council appointed a task force to complete Phase I. The diverse *PALPP* Task Force, chaired by Metropolitan Council member Bill Schreiber, was comprised of farmers, state and local officials, government and agency staff, and representatives from non-profit and for profit organizations. The goals, purposes and scope of the agricultural land preservation project are attached as *Appendix A*.

The Task Force met seven times over the course of three months. A steering committee, consisting of Mr. Schreiber, Metropolitan Council staff, and the project consultant, met throughout the process to prepare meeting agendas, materials, summaries and this final report. The Task Force completed its business and accomplished the following activities:

- Discussed and identified the unique qualities, strengths and weaknesses of agricultural land in the Twin Cities.
- Identified agricultural land preservation goals.
- Reviewed terms and definitions, data sources and technical resources relating to the identification of permanent agricultural land.
- Reviewed national models for agricultural land evaluation and site assessment.
- Reviewed and recommended roles for municipalities, counties and the Metropolitan Council in permanent agricultural land identification.

- Recommended a relatively simple procedure to identify permanent agricultural land in the seven county metropolitan area.

Unique Qualities, Strengths and Weaknesses of Agriculture

As a prelude to developing goals for the preservation of agricultural land, the Task Force brainstormed about the qualities of agricultural land in the Twin Cities. The diversity of agriculture, including the full range of plant and animal production, emerged as the leading characteristic of the region. The Task Force identified a number of important qualities and issues that merit intervention through land identification and preservation. They discussed changes in land uses in the region as a result of the evolving nature of agricultural practices and products, the movement outward of suburban uses, the displacement of agricultural uses and the importance of local and regional planning.

The Task Force also discussed the unique economic issues that agricultural uses face in the metropolitan area, including competition for land and the proximity of a major market for specialty products. The Task Force acknowledged the importance of tradition, the sense of community, and the aesthetic and open space value of agricultural areas in the metropolitan area. The Task Force concluded that these latter characteristics should not become criteria for agricultural land preservation; however, these values will be realized through agricultural land identification and preservation. The brainstorming session is synthesized in *Appendix B*.

Goals of Agricultural Land Preservation

The Task Force approved the following set of goals for agricultural land preservation, following discussion and refinement over the course of several meetings:

- Identify and preserve land best suited for agricultural use, based upon land suitability criteria, economic viability, and growth management goals.
- Promote and maintain a diversity of agricultural production, including food, feed, forage, fiber, horticulture and oil seed crops.
- Maintain a critical mass of suitable agricultural land, or intensity of agriculture use, regardless of ownership, to sustain agriculture, agri-business and agricultural support services.

- Discourage speculation in land best suited for agricultural uses by distinguishing land use designations for urban, rural and agricultural areas.
- Prevent the premature conversion to non-farm uses of land best suited for agricultural uses.

Review of Terms, Data Sources and Technical Assistance for Implementation

The Task Force initially reviewed and discussed definitions of terms frequently used in agricultural land preservation efforts, types of data, and potential sources of data for land identification efforts. Metropolitan Council staff provided background on the use of the term “permanent agricultural” in the *Regional Blueprint*. The Task Force agreed that the permanency of an agricultural land use designation needed to be sufficiently long to meet agricultural land preservation goals, but not longer than the ability of the region to anticipate the impact of economic trends on the viability of agriculture in the metropolitan area. They concluded that “permanent agricultural” in the Twin Cities Metropolitan Area should refer to land designated as agricultural through the year 2040, at a minimum.

The Task Force requested background information on trends in agricultural economics and land use in the Twin Cities. This was provided, in part, by Steve Taff, Professor of Applied Economics at the University of Minnesota. Professor Taff emphasized the limitations of economic data on agriculture and the difficulty in obtaining standard and reliable measures. Professor Taff provided an overview of general trends related to land use conversion and agriculture in the metropolitan area and illustrated a method for calculating the value of development rights for agricultural land.

The Task Force reviewed and discussed the availability of resources for cities and townships to utilize in the identification of permanent agricultural land and evaluated the quality and availability of physical data necessary to assist in the identification of permanent agricultural land. A variety of state, regional and local agencies are available to provide data and technical assistance to municipalities. *Appendix C* includes a listing of data types and sources.

National Models for Agricultural Land Identification

The Task Force reviewed the use of agricultural land identification systems around the country, including the *Land Evaluation and Site Assessment (LESA)* procedure developed by the Soil Conservation Service in 1980. *LESA* was established to implement the federal Farmland Protection Policy Act. *Land Evaluation* criteria include relatively objective soil classification and productivity indices, while *Site Assessment* criteria include such community or site-specific variables as land use and zoning of site or surrounding area and distance from urban uses. These two sets of criteria provide a framework for agricultural land identification that is based upon economic and political suitability, in addition to agricultural productivity. *Appendix D* includes a summary of the *LESA* procedure.

The Task Force also reviewed a number of agricultural land identification procedures from other parts of the country. Programs included those designed in Yolo County, California; Lancaster County, Pennsylvania; the State of Oregon; and the State of Illinois. In addition, the Task Force heard about the Olmsted County, Minnesota *Comprehensive Land Use Evaluation System*, in a presentation by Ron Livingston, Rochester-Olmsted Planning Department. The Task Force concluded that agricultural land identification criteria in the various models are generally similar and many of them are already important components of the existing land planning process in the metropolitan area. *Appendix E* includes a summary of the various programs and a matrix of the evaluation and assessment criteria.

Roles of Government in the Identification Process

Another key component to designing an agricultural land identification process is an understanding of the potential roles of various level of government. The Task Force acknowledged the unique framework, roles, and relationships among communities, counties and the Metropolitan Council, as a result of the Metropolitan Land Planning Act. This framework establishes a system of accountability for land use decisions at each level of government. It also provides a system of checks and balances to coordinate planning at multiple levels and to

implement regional goals. *Appendix F* includes a matrix of the capabilities of various levels of government.

One purpose of these discussions was to determine which units of government might have the best access to data, the capability to generate data and the ability to analyze data. The Task Force concluded that either the counties or the Metropolitan Council have the best technical capabilities to generate soils data, which is necessary to identify land meeting physical suitability criteria. In turn, municipalities can utilize this information in their planning process.

The Task Force further concluded that cities and townships, from a local growth and planning perspective, have an interest, as well as a responsibility, for identifying permanent agricultural land. With this in mind, the Task Force looked at the challenges faced by municipal officials who want to identify agricultural land for preservation. These challenges include the desire of individual property owners to maximize the return on their land, the speculation by many that land may increase in value, and the difficulty of addressing regional goals at the municipal level. Communities that desire assistance in defending municipal and regional planning initiatives have that opportunity through the existing county and/or regional government framework.

Task Force Recommendations for a Permanent Agricultural Land Identification Procedure

The basic charge of the Task Force was to recommend criteria and a simple to use procedure for municipalities to identify permanent agricultural land. After examining various models, the Task Force agreed that both *Land Evaluation* and Site Assessment criteria were important. The Task Force concluded that the *Land Evaluation* procedure is more objective and technical in nature would be more consistently completed on a regional basis by individual counties and the Metropolitan Council. *Site Assessment* procedures, on the other hand, require more interpretation at the local level, which may lead to more subjective evaluations. The Task Force agreed that Site Assessment criteria should be simple and straightforward to maximize consistency in interpretation and use by any level of government.

Land Evaluation

The Task Force recommends that the *Land Evaluation* procedure in the Twin Cities be completed at the county or regional level rather than the community level. Soil surveys have been generated at the county level and are being computerized for use in GIS formats. Because the age of the surveys varies from county to county, an effort to synchronize the data for the seven-county region is necessary. The Task Force recommends the following process for developing *Land Evaluation* data.

1. The Council should facilitate the establishment of consistent criteria for land evaluation through the Metro GIS structure, with the assistance of County Soil and Water Conservation Districts (SWCDs) and the Natural Resource Conservation Service (NRCS). The need for consistency is based upon the age difference of the county soil surveys and discrepancies in interpretive data.
2. Basic criteria to be considered in this process should include land capability classifications and a productivity rating that will identify suitable agricultural land.
3. Counties should complete *Land Evaluations* for their respective communities. In the event any county is unable to complete its *Land Evaluation* in a timely manner, the Metropolitan Council should do it. Municipalities may also complete the *Land Evaluation* using the regional criteria established above.

Site Assessment

The Task Force recommends the following Site Assessment procedure for municipalities (or counties on behalf of municipalities) to identify permanent agricultural land. The Site Assessment criteria are relatively objective, comparable to other models evaluated, reflect the regional planning framework in the Twin Cities Metropolitan Area and should achieve the goal of a simple and consistent site assessment procedure.

1. Perform Site Assessment for Each Section in the Community

Each municipality should complete an assessment of the criteria in the table on the following page for each Section (one square mile) in the community. Determine whether 50% or more of the land in each Section meets these criteria.

While a Section by Section analysis may be the typical standard in the *Site Assessment* procedure, it may be appropriate in some circumstances to utilize a smaller increment of land area for analysis (e.g., quarter section or quarter quarter section). Analysis at this level should be used to refine the Section by Section analysis. This should be used as a tool to isolate or limit the extent of existing non-agricultural influences and increase the amount of

land that is identified as permanent agricultural. This process may also be used in Step #3, where individual adjustment of isolated negative values may be appropriate.

2. Record Site Assessment Value on Community Map

Each municipality should then record the Site Assessment Value on each Section (or smaller land unit) of the community map. The values can be shaded to highlight areas identified for permanent agriculture. Site Assessment Value maps may reveal compatible patterns of values, such as all positive, all negative or well-defined groupings of positive or negative values. This may allow for relatively easy distinction of land use categories at the local level. On the other hand, values may be more intermittent or isolated, which may make land use designations more challenging.

Site Assessment Criteria (Yes = +1; Not applicable or not available = 0; No = -1)	Value (+1, 0, -1)
a. Land suitable for agriculture (<i>Land Evaluation</i> results)	
b. Land in agricultural tax classification	
c. Land in current agricultural use	
d. Adjacent land in current agricultural use	
e. Land zoned agriculture (1:20 density or less dense)	
f. Land made up of parcels at least 20 acres in size.	
g. Land is outside Future Urban Area ¹	
h. Adjacent land zoned agriculture (1:20 density or less dense)	
i. Land designated agriculture by County	
j. Land designated agriculture by Metropolitan Council	
Total Site Assessment Score ²	
Site Assessment Value (+, 0 or -) ³	
¹ Future Urban Area is land within an identified urban transition area, land within the 2020 MUSA or land within the 2040 Urban Reserve.	
² Site Assessment Score will be a positive, negative, or zero value, based upon the sum of the above values.	
³ Site Assessment Value will be a plus or a minus. Simply note a “+” for a Site Assessment Score of zero or above and a “-“ for a negative score.	

1. Adjust Isolated Site Assessment Values, if Necessary, for Land Use Compatibility

Adjustment of isolated values by a community may allow for more uniform representation of the *Site Assessment*. This may lead to the establishment of a more compatible land use pattern by discouraging future isolated land uses or “spot zoning” locations. This may be most appropriate in areas where the majority of Site Assessment Values is positive (permanent agricultural land) and the isolated value is negative. In this instance, preventing non-agricultural uses in isolated areas would promote land use compatibility, critical mass of agricultural uses, and long-term agricultural use.

On the other hand, reversing a positive Site Assessment Value to reflect adjacent negative values may not be necessary or appropriate. Isolated agricultural uses in predominantly rural

settings may not be inconsistent or incompatible with other non-urban land uses. This should be determined at the municipal level. It would not be unusual for either rural communities or developing communities to establish long-term agricultural areas in their land use plans.

Site Assessment Value adjustments may also be appropriate based upon site assessment of contiguous communities. This may be accomplished by evaluating adjacent community Site Assessment Values and land use plans; comparing a municipality's values to county-wide assessments and land use plans; and comparing a municipality's values to Metropolitan Council regional assessments and land use policy areas. This process would be consistent with the relationships and requirements of the Metropolitan Land Planning Act.

The current metropolitan area planning process may allow for adjustments in Site Assessment Values, based upon regional growth policies and regional land use plans. This would be appropriate in assisting municipal units of government seeking justification for broader support for agricultural land preservation. It may also be appropriate in adjusting or challenging municipal government land use plans, if they are inconsistent with Site Assessment Values for that community.

Implementation Strategies

The Task Force recommends that permanent agricultural land identification should be a component of municipal comprehensive plans and addressed like other land use components in the Twin Cities Metropolitan Area. The *Regional Blueprint* and the *Local Planning Handbook* should be amended to describe the agricultural land identification component included in this report. As part of the regional planning process, permanent agricultural land should be identified jointly by the Metropolitan Council, area counties, and municipalities. Identification should be a plan component in any jurisdiction that is not wholly urbanized or planned for total urbanization by 2020.

The Task Force further recommends that the permanent agricultural land identification process be implemented to the greatest degree possible during the current round of comprehensive plan updates. While the Task Force believes that the permanent agricultural land identification process should be a mandatory component in land use plans, this process may have to remain voluntary at this time, since some communities have completed their plans and others may be nearing completion.

The Task Force requests that the Metropolitan Council considers the following additional recommendations to implement the permanent agricultural land identification process:

- Prepare an immediate information release strongly encouraging and describing the purpose and procedures to add the permanent agricultural land identification process to municipal comprehensive plans.
- Actively promote and “market” the permanent agricultural land identification process through a variety of media and outreach opportunities.
- Offer coordination and assistance in completing the land identification process.
- Guarantee that the land evaluations in each county will be available for this purpose.
- Consider extending the December 31, 1998 comprehensive plan deadline for municipalities that participate in the permanent agricultural land identification process.

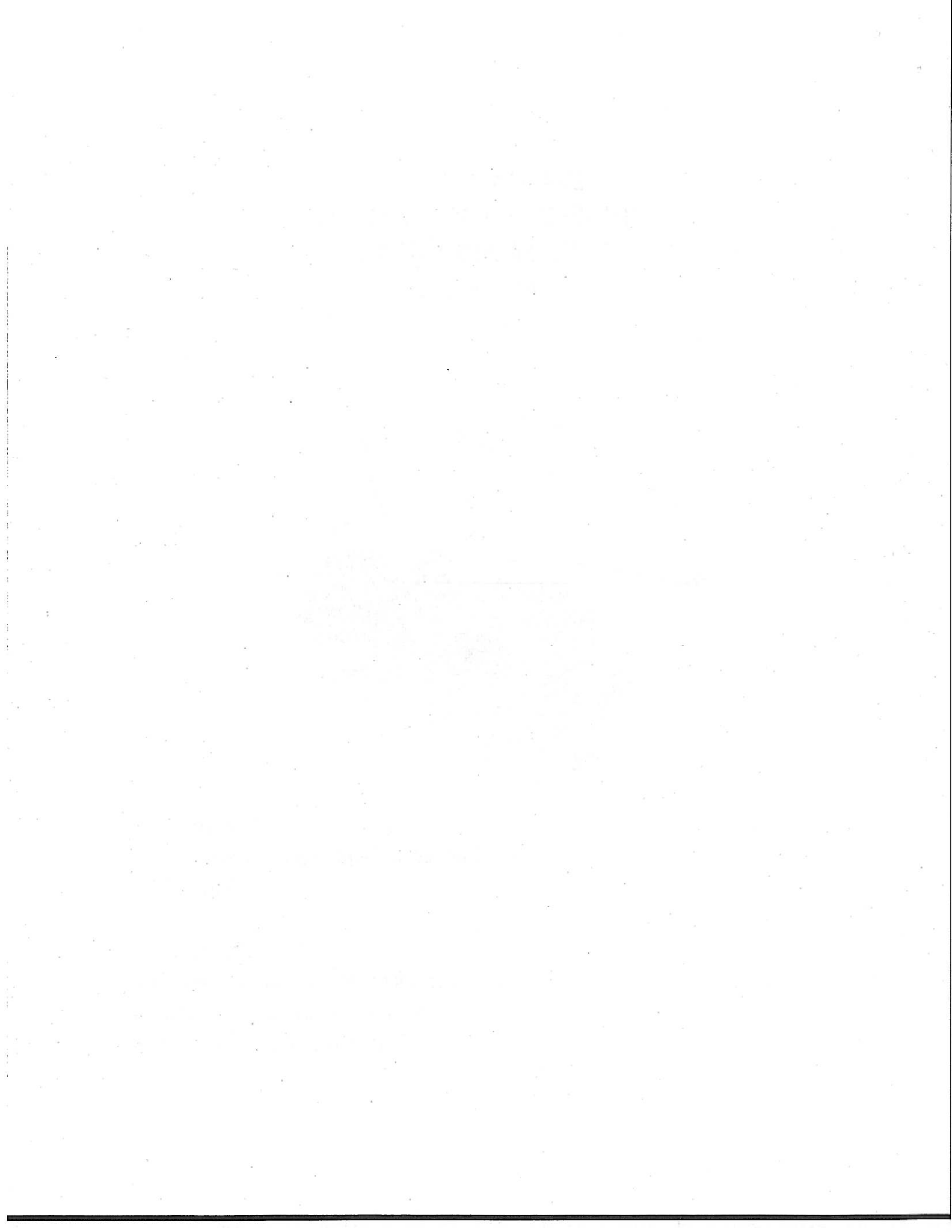
These procedures and recommendations for agricultural land identification conclude the work of the Task Force and Phase I of the *Permanent Agricultural Land Preservation Project*. Phase II, which will begin in January 1998, will identify and recommend a set of tools to assist communities in preserving permanent agricultural land.

EVALUATION OF
MINNESOTA AGRICULTURAL
LAND PRESERVATION
PROGRAMS



Prepared for:
The Minnesota Department of Agriculture
June 1999

Submitted by:
Resource Management Consultants, Inc.
Resource Strategies Corporation
Coughlin, Keene & Associates



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EXECUTIVE SUMMARY

Purpose

The primary purpose of the present report is to provide an evaluation of Minnesota's agricultural land preservation programs, with particular emphasis on the Agricultural Land Preservation Policy Act (the Statewide Program). Important to the evaluation is a review of experience and participation under the Metropolitan Agricultural Preserves Act (the Metro Program) which predated enactment of the Statewide Program by four years in 1980.

National Overview of Preservation of Agricultural Lands

Interest in the preservation of agricultural land has continued at a steady pace in the past three decades. State and local governments across the U.S. employ an array of preservation tools. The most successful programs use an integrated approach of economic incentives along with land use controls such as agricultural zoning. Agricultural districting is properly analyzed as only one element of this total context. The other major programs are: Property Tax Relief, Agricultural Zoning, Purchase of Development Rights (PDRs), Transfer of Development Rights (TDRs), Conservation Easements and Right to Farm Legislation. All these tools are used in Minnesota, which is at the forefront of agricultural preservation, with varying intensity and effectiveness.

Overview of Minnesota's Agricultural Land Preservation Programs

A snap-shot synopsis of the major provisions of Minnesota's Land Preservation Laws is incorporated into the report in order to set out the legal framework of agricultural land preservation in Minnesota.

Overview of Minnesota's Agricultural Land Preservation Programs

Metro Program

Experience under The Metro Program provides the best insight into the dynamics of participation in and success of Minnesota's first agricultural districting law, which in turn affords understanding of the less enthusiastic reception reserved for the subsequent Statewide Program.

The following principal inferences are to be drawn from experience under the Metro Program:

- results under Metro have been favorably influenced by the focus of the program on the uniformly rapidly growing Twin Cities region;
- there is general confidence in the Metro Program's ability to meet its financial obligations to landowners and local jurisdictions as well; the back-up guarantee of State Funds is instrumental in this regard;

- the amount of the economic incentive provided by Metro, i.e. the size of the conservation credit, has influenced the level of farmer participation in Metro; the provision for a \$1.50 per acre minimum conservation credit increased confidence in the program, after the credit had fallen to historic lows, and affected participation favorably;
- nevertheless, farmer decisions as to enrollment with eight year covenants in the Metro Program are made on a case-by-case basis, weighing all benefits (including but not limited to monetary benefits); much more land has been made eligible under Metro than has been enrolled;
- the Metro Program has served as an important buttress for the use and retention of agricultural zoning in the Metro region;
- there has been little promotion or education with respect to the Metro Program in the past 10 to 15 years.

Statewide Program

Participation under the Statewide Program, while significant, has remained limited. Causes could include:

- the fact that the Statewide conservation credit is limited to a flat \$1.50 per acre;
- the fact that long-term financing of the Statewide Program is uncertain, with many variables involved; there is no back-up guarantee from State Funds; thus confidence is lacking in the financial strength of the Statewide Program;
- the great diversity of growth pressure levels and in the levels of planning for agricultural land preservation in the widespread counties of Greater Minnesota embraced by the Statewide Program; this contrasts with the focus of the Metro Program on the uniformly high growth metropolitan region;
- as with the Metro Program, education and outreach is insufficient with respect to the Statewide Program.

Other Minnesota Programs

Agricultural zoning: Required by both districting programs, agricultural zoning has become the most used land preservation tool in Minnesota. The Minnesota experience is that it works best in conjunction with other agricultural land and growth management tools. Zoning appears to be holding, but pressure for rezoning and variances will continue to build in the high growth rate areas.

Green Acres Programs: The methods and goals of the Green Acres Program, which is essentially a tax relief tool, are in important ways at odds with the

Metro and Statewide agricultural districting programs.

TDRs and PDRs: There are opportunities for the use of TDRs and PDRs in Minnesota that should be identified and pursued by the Minnesota Department of Agriculture. The programs must be integrated as much as possible into the overall agricultural land preservation campaign.

Recommendations

1) Refocus the Statewide Program:

Refocusing should be implemented by targeting specific counties and subregions based on predetermined criteria. The criteria would include projected population growth, targeting growth corridors, areas experiencing rural development around urban centers, counties that have a strong agricultural land base and/or which need to strengthen their agricultural preservation efforts.

2) Strengthen the Statewide Program:

Various individual steps recommended to strengthen the Statewide Program are set forth in Section V. Among these is the suggestion that the property tax credit be increased from its current flat \$1.50 per acre rate. However revenue must be sufficient to cover the increase (a Future Funding Analysis is contained in Appendix A to discuss financial parameters).

3) Instill Confidence in Long-Term Funding of the Statewide Program:

Confidence in the long-term solvency of the Statewide Program is essential to both farmers and local jurisdictions. It is recommended that the soundness and feasibility of funding the Statewide Program be examined. The Future Funding Analysis discusses some of the many variables involved.

It is also suggested that a sliding scale conservation fee might be studied. In addition the provision of a guarantee from State Funds in the event of a shortfall in the Statewide Program is recommended. Such financial back-up has proven to be a confidence builder in the Metro Program.

4) Education and Outreach Benefits:

Education and outreach need to be bolstered. Funds from the state legislature should be appropriated to:

- provide for competitive grants to encourage agricultural land preservation efforts

- create local agricultural preservation committees to encourage counties, private non-profit organizations and others to look at alternative or supplementary preservation tools such as TDRs and PDRs.
- implement other education and outreach proposals contained in Section V.

5) Agricultural Zoning:

The synergistic relationship between agricultural districting and agricultural zoning should be encouraged by the Statewide Program in all ways possible. Some specific suggestions are made.

6) Green Acres Program:

Specific recommendations are made to reform the Green Acres program to make it more compatible with the goals and methods of the Metro and Statewide Programs.

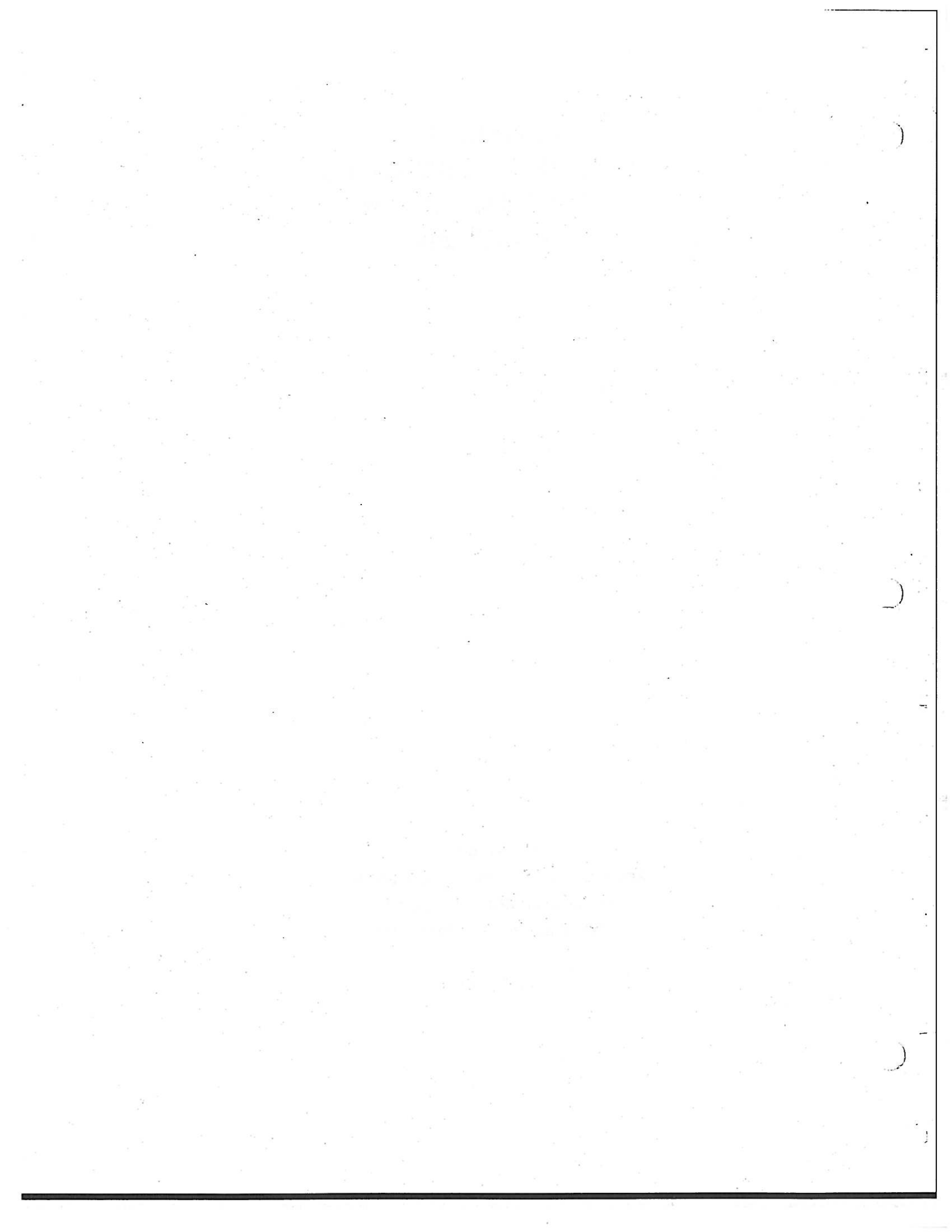
7) TDRs and PDRs:

The Minnesota Department of Agriculture should analyze and summarize the effectiveness in Minnesota of both TDR and PDR programs as additional agricultural land preservation tools. Specific opportunities are outlined.

**EVALUATION OF
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**prepared by
Resource Management Consultants, Inc.
Resource Strategies Corporation
Coughlin, Keene & Associates**

June, 1999



PREFACE

The Minnesota Department of Agriculture contracted with Resource Management Consultants, Inc. (RMCI) of Alexandria, Virginia to undertake an evaluation of Minnesota's agricultural land preservation programs. RMCI in turn subcontracted with Resource Strategies Corporation of Minnetonka, Minnesota and Coughlin, Keene & Associates of Philadelphia, Pennsylvania to form a Project Team to assist in this evaluation.

Research and experience suggests that the key to effective agricultural preservation is a synthesis of programs for managing urban growth, promoting the agricultural economy and addressing specific aspects of the loss of agricultural land. The effectiveness of agricultural preservation programs will depend on how well specific programs and policies impact the community level in terms of both the land market and the agricultural economy.

The evaluation contained in this report includes the following sections:

- Executive summary
- Section I: Introduction
- Section II: National overview of agricultural preservation programs in other states
- Section III: Overview of Minnesota Agricultural Land Preservation Programs
- Section IV: An analysis of Minnesota's agricultural preservation programs
- Section V: Findings, conclusions and recommendations
- Appendices

In order to have direct input on various aspects of the effectiveness of the Minnesota agricultural land preservation programs, the Project Team conducted a stakeholders survey of a broad spectrum of Minnesotans including: state legislators, county elected officials, planners, university specialists, farmers, private non-profit organizations, trade associations and citizens interested in agricultural preservation. The survey is contained in the appendices.

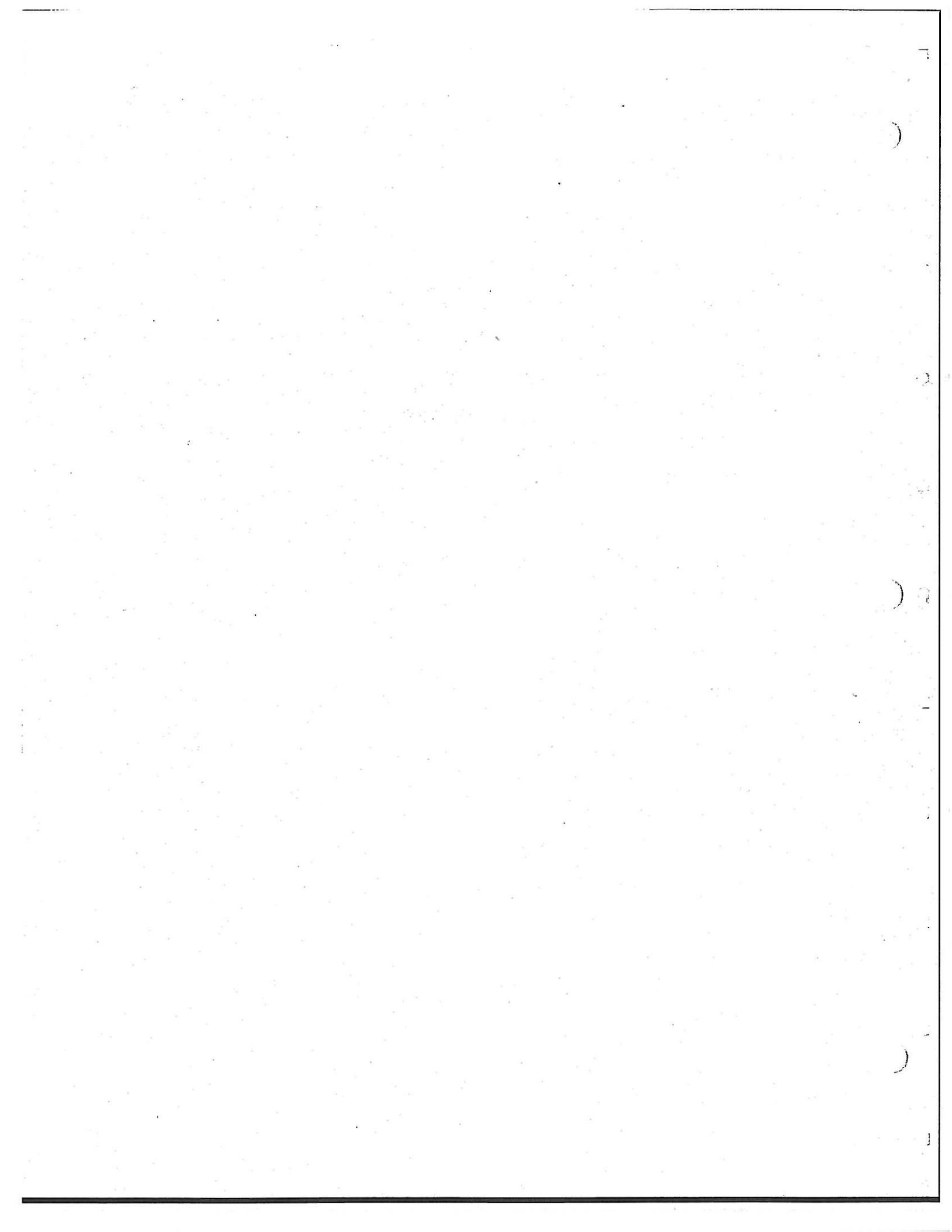
The Minnesota State Agriculture Department also formed a Working Group to review and comment on the work undertaken by the Project Team. We wish to acknowledge with gratitude the contribution of time and effort of each member of the Working Group as listed hereinafter:

Lee Ronning	1000 Friends of Minnesota
Dave Weirens	Association of Minnesota Counties
Mary Beth Block	Board of Water and Soil Resources
Karen Chrisopherson	Builders Association of the Twin Cities

Dave Fredrickson	Farmers' Union
Remi Stone	League of Minnesota Cities
Susan Thornton	Legislative Commission on Minnesota Resources
Jan Gustafson	Metropolitan Council
Tori Boers	Metropolitan Council
Dave Fricke	Minnesota Association of Townships
John Dooley	Minnesota Association of Townships
Troy Gilchrist	Minnesota Association of Townships
John Wells	Minnesota Environmental Quality Board
Tom Wegner	Minnesota Extension Service
Chris Radatz	Minnesota Farm Bureau
Dave Preisler	Minnesota Pork Producers Association
Dan Larson	Minnesota Rural Counties Council
Jodi Day	Minnesota Turkey Growers' Association
Daryl Franklin	Mower County Planning Department
Steven Rckers	Office of Strategic and Long Range Planning
Wes Judkins	Region 9 Development Commission
Kate Brigman	Waseca County Office of Planning and Zoning
Todd Bram	Winona Courthouse
Tom Salkowski	Wright County
Kerry Saxton	Wright County Soil and Water Conservation District

In addition to this project, the Minnesota Department of Agriculture also undertook two other projects as part of its "Reinventing the Agricultural Land Preservation Program". These two related projects consist of (1) an analysis of a selected group of rural Minnesota counties as case studies with respect to the fiscal impact of development and (2) the preparation of a fiscal impact model as a technical resource to help local officials evaluate the impact of various new development scenarios on their local governmental budgets.

SECTION I
INTRODUCTION



THE URBAN COMPONENT OF AGRICULTURAL PRESERVATION

The effectiveness of agricultural preservation efforts can largely be measured by the success that elected officials, planners and citizens achieve in making our cities and urban areas viable centers for future population growth and development. Although the urban part of agricultural preservation is beyond the scope of this report, it is an indispensable component for the long range viability of maintaining our agricultural land base.

To some people, the term growth management means accommodating growth in any way; to others, it means slowing or stopping it altogether. Somewhere in between lies a more appropriate goal: an explicit government program designed to control or influence the rate, amount, type, location, and cost of growth inherent in population increase and economic activity. This goal is based on the premise that population growth will continue to occur, and houses, facilities for job opportunities and other economic development that an increasing population requires must be provided. It involves, therefore, programs that combine land use regulations, incentives and disincentives to achieve a jurisdiction's specified objectives and policies. It also includes a close working relationship between state and local governments, citizen groups and the private sector.

The importance of improving urban and inner city infrastructure, schools and providing adequate affordable housing are major components of the concept of community "liveability" that is now being discussed at the national level. There also needs to be more emphasis on aesthetics in urban neighborhoods to improve the environment and quality of life.

If growth and development are given absolute free rein, it is reasonable to expect that for some arenas, the rate of growth will be staggering, and development will overwhelm all should we continue to rely entirely on highways and automobiles or should we continue with the patterns of growth seen in many urban areas of the country, it will be virtually impossible to effectively preserve agricultural land in or around those burgeoning areas. Scattered development on five to ten acre parcels in agricultural areas along with scattered subdivisions and strip malls will eventually eliminate agriculture as a major land use.

The term "smart growth" has been used increasingly in a number of states across the country. The idea behind this term is to provide the necessary infrastructure such as water, sewer and roads to effectively accommodate growth where it should occur – away from agricultural land, wetlands and environmentally sensitive areas. Concurrently, urban growth boundaries or urban service areas need to be given special attention. Incorporating effective land use regulations combined with sufficient economic incentives are key components in directing residential, commercial and industrial growth to proper locations within the urban core. The Metropolitan Urban Service Area (MUSA) around the Twin Cities is a prime example of the concept of an urban growth boundary. *

While in most urban areas around the country, we have not seen sufficient growth management, smart growth or urban growth boundary elements effectively applied, interest in these policies is growing across the country.

Making urban areas attractive and affordable places to live will be a major step forward in the battle to effectively preserve agricultural land. Conversely, without these concurrent actions, keeping increased rural development pressures away from agricultural areas will be a difficult challenge indeed.

Changes Ahead in Agriculture

As we move into the twenty-first century, U.S. agriculture is undergoing a series of rapid changes. Some of these changes have been brought about through shifts in federal policies which in the past have provided major commodities, such as corn and wheat, with government support payments during periods of low prices. The Federal Agriculture Improvement and Reform Act of 1996 (FAIR), otherwise known as the Farm Bill, is one of the major instruments of policy shift. The federal support payments on corn, wheat and other commodities are now being phased out over the next seven years. In their place are a series of transition payments made each year, in decreasing amounts, with the final payments being made in 2002. For many large midwestern agricultural states such as Minnesota, this will mean a substantial reduction in federal income transfer as compared to the crop support payments of the past. In addition, farmers are now free to plant whatever acreage of any crop they please. For example, restrictions on the amount of acres of corn planted on an individual farm have been removed but so has the guaranteed price support income. The economic viability of farming must not be a victim of these changes.

More Emphasis On Global Markets

With the approval of the General Agreement on Tariffs and Trade (GATT) a few years ago and with the creation of the World Trade Organization, global markets for grain, fruit and vegetables, livestock and poultry products have increased. There is greater interest among farmers, their cooperatives and the processing and retail sector in achieving overseas markets. However, along with this opportunity comes the financial vagaries associated with economic downturns in foreign countries where markets are being developed. The recent Asian financial crisis is a good example. Nevertheless, the U.S. exported \$57.3 billion dollars of agricultural products in 1998 and this substantial export market is expected to increase in the future.

Greater Price Volatility

As a result, in part, of potential increases in global markets and reductions in federal price support payments for certain commodities, farm price volatility is expected to increase. Most recently, this has occurred with respect to prices farmers receive for hogs. Corn and wheat prices have also been appreciably lower in the past few years. Farmers will most likely have to contend in the future with these trends towards wide swings in prices. Risk management which includes forward contracting with a processing company to ensure a stabilized price for an agricultural product or obtaining crop insurance to off-set reductions in market prices are several of the avenues being explored by farmers to cope with increased volatility.

Farm Size

Over the years, there has been an increasing trend toward larger farms including the amount of rented acreage individual farmers utilize in expanding their operations. This trend is likely to continue in the future; however, some agricultural experts also see a competing trend of smaller, diversified and intensively operated farms that will be producing agricultural products for local and regional markets. This potential mix of trends in farm size and production patterns could well soon impact on the future direction of agricultural preservation programs.

Contract Farming

Over the past two decades, there has been an increasing movement in the livestock and poultry industry toward contract farming. This management technique is characterized by the use of specific contracts by large processing companies with individual farmers. In many cases, the companies provide the facilities, feed and other inputs to the farmer who in turn provides the management and labor needed to raise the animals to the specifications required by the contracting company. Although contract farming has been prevalent in the pork and poultry industry for a number of years, it is now starting to be used in corn and other crops as companies contract with farmers for certain levels of starch and protein in corn. A number of agricultural economists see this trend continuing to grow in the future.

Organic Farming

Interest in organically produced agricultural products has clearly been on the increase in the past ten years. Organic production is associated with the use of environmentally sound farming practices that do not rely on the use of pesticides, commercial fertilizers and animal hormones. Although the organic industry represents less than 2% of the sales of agricultural products nationally, it is growing at a rate of 25% a year. Sales of organic products are expected to top \$4.5 billion in 1999. Organic food production appears to be one of the most rapidly growing sectors of the agricultural economy. Agricultural experts expect that organic agriculture will continue to grow at an accelerated pace in the next ten years.

Water Quality and Nutrient Management

As animal production has become more concentrated -- particularly in the hog and poultry industry -- concern over the handling of animal waste has heightened. A number of states as well as local jurisdictions have developed or are considering Confined Animal Feeding Operation (CAFO) ordinances. Most recently, USDA and the Environmental Protection Agency have developed federal guidelines that require animal feeding operations of a certain size to have permits in order to comply with animal waste handling and storage standards. Given the expected increases in concentrated animal production facilities, this issue will most likely receive a great deal more attention by federal, state and local governments in the years ahead.

What Do the Changes Mean for Agricultural Preservation?

There is no question that agriculture is undergoing a series of dynamic changes and will continue to do so in the years ahead. How these changes will play out in improving the economic well-being of farmers and in safeguarding the environment is not clear.

Therefore, future changes in agriculture will have a profound impact in how effective agricultural preservation programs work and what changes need to be made to adapting agriculture to the 21st century. This will be true of Minnesota as well, of course.

It seems clear that in the future state and local involvement in agricultural issues related to the environment and economic development will probably become greater due to the phasing down of the federal farm programs. However, at the same time, the federal role in environmental issues such as nutrient management will increase -- and this will necessitate a commensurate response at the state and local level given growing public interest and concern over water quality and other environmental considerations associated with the growth in confined animal feeding operations.

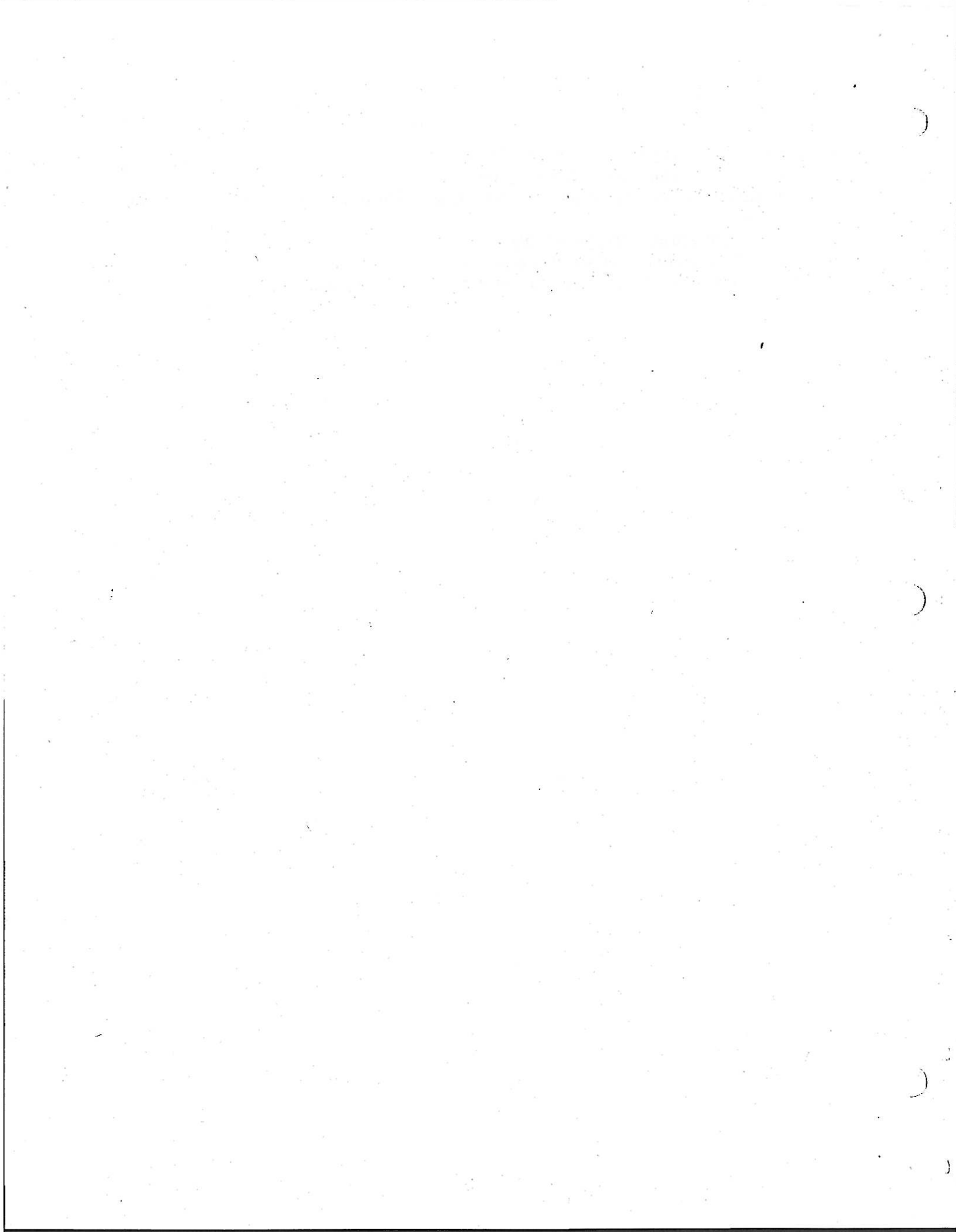
Concurrently, the increased concern nationally about urban sprawl and the need to improve the "liveability" of local communities will focus greater state and local attention on land use planning to deal with these questions. Changes in lifestyle and employment options could also have an effect on increasing the pressure on agricultural land. Higher emphasis on technology including computers and telecommunications may well result in more individuals working directly from their homes in the future, a trend that has started to develop in the past few years. This could mean a stronger desire for non-farm residents to live on five and ten acre rural estates, thereby placing more competition on agricultural land for residential uses. Citizens will more likely become involved in local land use decisions that affect the farming community. Better communications will be needed between farmers and non-farm rural residents. Both the short and long-term goals of farmers will have to be considered within the framework of the changes occurring in agriculture. Agricultural preservation programs must therefore be designed to cope with these new and more complex evolutions that will shape the countryside in the years to come.

Evaluation Methodology

The evaluation methodology employed by the Project Team consisted of the following steps:

- Review of similar agricultural preservation programs in other states with special emphasis on agricultural districting, differential assessment, agricultural zoning or other agricultural preservation tools which could be relevant to the state of Minnesota.
- A brief overview of the history of agricultural preservation in Minnesota.
- An analysis of Metro Preserves Program.
- An analysis of the State Agricultural Land Preservation Program.
- Comparison with other Minnesota counties.
- Experience with New York's and Michigan's agricultural districting and relevance to Minnesota.

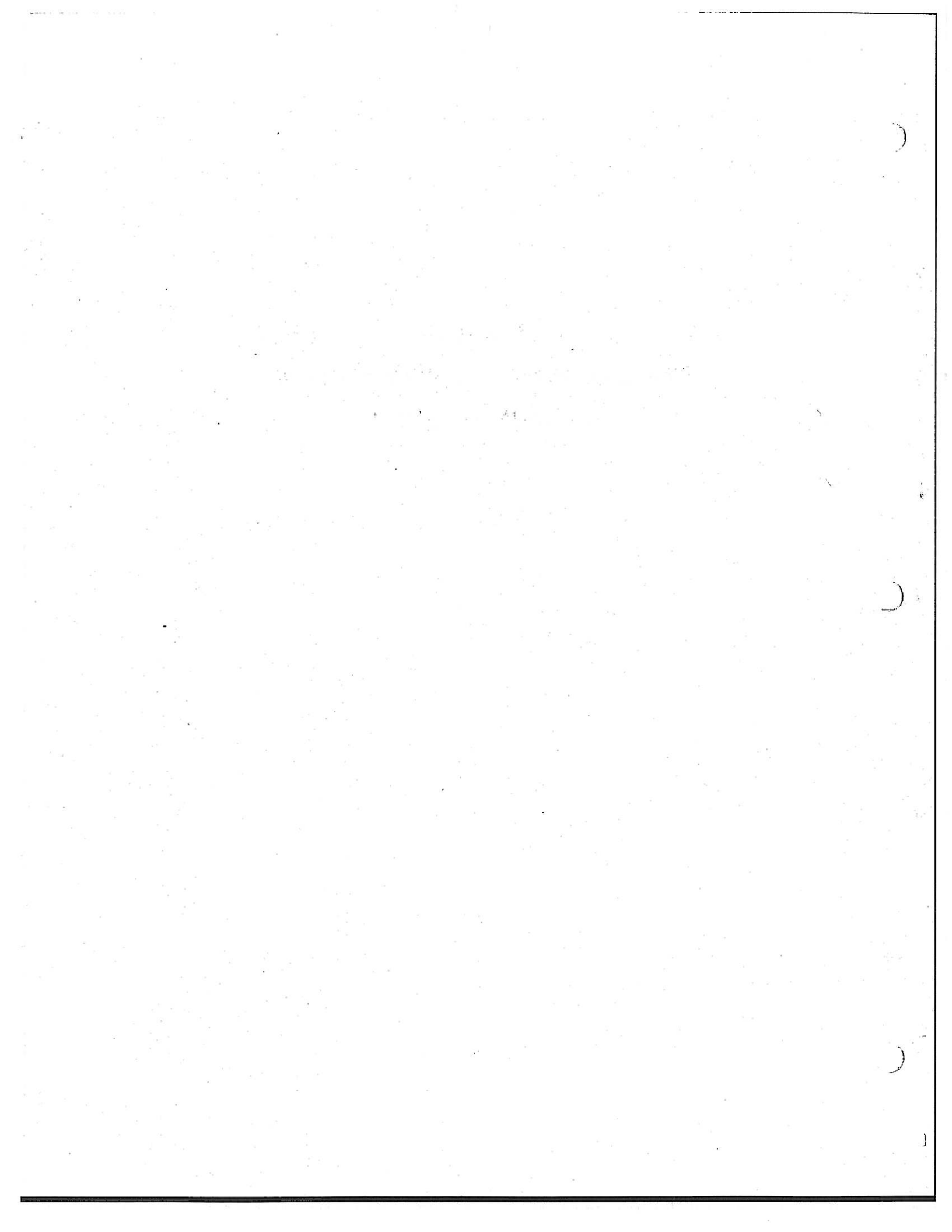
- Experience with agricultural zoning in Minnesota
- Experience with the Green Acres Program
- Experience with other important agricultural preservation tools and their potential adaptation to Minnesota:
 - Purchase of Development Rights
 - Transfer of Development Rights
- Stakeholder surveys with respect to Minnesota agricultural preservation.



SECTION II

THE PRESERVATION OF AGRICULTURAL LAND:

A NATIONAL OVERVIEW



THE PRESERVATION OF AGRICULTURAL LAND:

A NATIONAL OVERVIEW

Interest in the preservation of agricultural land by state and local governments has spanned more than three decades and has resulted in a number of programs and policies aimed at curbing the loss of agricultural land to urban uses.

For the most part, state governments and local jurisdictions have approached the preservation of agricultural land within a broader concept of growth management.

The overall approach to managing growth is well described in the recent Lincoln Institute of Land Policy publication entitled Planning and Growth Management. As stated, this approach should include: "strategies to discourage urban sprawl and encourage compact urban development, infill, redevelopment and the revitalization of central cities; the provision of infrastructure at the time the impact of development occurs; economic development strategies including efforts to promote economic development in areas that need it; and policies and programs that protect rural areas, including farm and forest lands, environmentally sensitive areas and open space".¹

The goals of agricultural preservation are fully in concert with growth management. Effective preservation programs must strengthen the economic viability of farming. The intrusion of incompatible non-farm uses into productive agricultural areas has to be kept to a minimum. Public investments for roads, sewage treatment, water supply facilities and related infrastructure projects should not be made in important agricultural areas where they would encourage urban development. In the same vein, the non-farm policies of state agencies should be compatible with agricultural preservation programs; i.e., state, county and municipal land development and taxation policies should be consistent with agricultural preservation policies. Finally, state and local governments should encourage strong community support for farmers and agriculture production.

The loss of agricultural land to urban and other non-farm uses nationally was first seriously addressed by the federal government in 1979 by the commencement of the National Agricultural Lands Study, (NALS) a study to determine the causes and extent of the conversion of agricultural land to non-agricultural uses. NALS, which was published in 1981, found that approximately one million acres of highly productive agricultural land was being converted to non-farm uses on an annual basis.² Subsequent analysis by USDA's 1992 National Resources Inventory confirmed that the trend in the loss of agricultural land to urban development continued.³ The USDA's National Resources Inventory also showed that Minnesota lost 240,000 acres of agricultural land to non-farm uses during the decade from 1982 to 1992.⁴

NALS provided the first good snapshot of the various programs being implemented at the state and local level to preserve agricultural land. The American Farmland Trust, a private non-

profit organization, recently updated the NALS findings in a publication entitled *Saving American Farmland: What Works?*. It determined that many different approaches to agricultural preservation programs have been utilized throughout the United States with varying degrees of success.⁵ A brief overview of the major programs follows.

Property Tax Relief

The earliest efforts to help reduce the rate of conversion of agricultural land and to improve the economic viability of farmers involved the passage of agricultural tax programs known as "differential assessments". The purpose of these programs was to assess agricultural land in its actual agricultural use as opposed to its potential value for residential, commercial or industrial development -- the latter more often referred to as "fair market value". The intent, of course, was to keep real estate taxes as low as possible since taxes often are a significant element of cost to farmers. Forty-nine states now have differential assessment programs in place.⁶ Minnesota passed the Green Acres Program in 1968 which provides for property tax relief to qualified land owners and is typical of other differential assessment programs available in other states. We will return to the Green Acres Program later in this report.

In addition to differential assessment programs, a few states have instituted programs that allow farmers to claim state income tax credits as another way of off-setting the costs of their property taxes.⁷ These state income tax credits are available when property taxes exceed a certain percentage of a farmers income. Therefore, they have become known as "circuit breaker" tax relief credits since they are tied to both the level of property taxes and farmer income.

Overall, property tax programs *by themselves* are not considered an effective tool for the preservation of agricultural land. By design, their purpose is to improve the economic viability of farmers by keeping property taxes in line with the actual agricultural use of the land and thereby lowering farm expenses. While property tax relief programs help indirectly to keep farmers on the land, they should be just one element of a larger context of more direct agricultural preservation programs that have been implemented across the country.

Differential tax assessment programs have been criticized in many states for providing a tax break to individuals who in reality may not be engaged in farming activities and who are using these programs primarily to hold agricultural land in speculation for future urban development. A discussion of these programs follows.

In summary, the economic benefits of tax relief programs must be carefully tailored and integrated with other agricultural preservation efforts in order to provide relief that is broadly effective.

Agricultural Zoning

Since public interest in the preservation of agricultural land first manifested itself in the late nineteen sixties and early seventies, agricultural zoning has emerged as the most widely utilized

preservation program by local governments throughout the U.S. Although many other agricultural preservation techniques have been employed for the purpose of reducing the rate and amount of conversion of agricultural land to non-agricultural uses -- no other program has enjoyed such widespread use as agricultural zoning. The NALS study found that 270 county, township and municipal jurisdictions instituted agricultural zoning as their primary preservation program during the 1970's.⁸ When the American Farmland Trust released its report in 1997, the number of local jurisdictions using agricultural zoning had grown to 700 in 24 states.⁹ In 1990, William Toner, a professor of environmental planning at Governors' State University in Chicago, produced an analysis which showed that almost all of the 270 local governments having agricultural zoning which were identified by the 1981 NALS study had strengthened the provisions of their agricultural zoning ordinances to make them more effective.¹⁰

The state of Minnesota has been at the forefront of states in the nation that have adopted agricultural zoning in many local jurisdictions. Zoning in Minnesota is discussed in Section IV, Part II (A) *infra*.

The purpose of agricultural zoning is to restrict the use of land primarily to agricultural uses. Essentially, this is done by limiting the intrusion of new, non-agricultural uses such as housing or commercial development into established agricultural areas. Most agricultural zoning ordinances allow for some non-farm dwelling units in the area zoned for agricultural use. However, densities may be limited to from one dwelling unit per twenty acres to as little as one dwelling unit per 160 acres. The most stringent agricultural zoning ordinances require that any dwelling units that are built must be built on small lots leaving most of the land exclusively for agricultural use.

Most of the agricultural zoning ordinances in Minnesota counties allow an owner to build one dwelling for each quarter of a quarter section (40 acres) of land. Thus, a farm having a quarter of a section of land (160 acres) is allowed to build four non-farm dwelling units.

Agricultural zoning can be used in conjunction with compatible agricultural preservation programs such as differential assessments and other economic incentives to be described later in this report. The technique fits well with these other planning and land use programs utilized to manage growth. It can be implemented relatively quickly and is an inexpensive way to preserve large blocks of agricultural land.

However, zoning does not provide permanent protection and can be changed if local government officials decide that residential or commercial development is more advantageous to the land use goals of the jurisdiction. Analysis of many agricultural zoning ordinances that have been in place over a number of years indicate that rezonings of agricultural land to permit other uses or the granting of variances to allow for higher densities of non-farm dwellings are not done very often.

Overall, zoning has established itself as the most popular and most commonly used agricultural preservation technique with a good track record for effectiveness.

Agricultural Districting Programs

The concept of designating specific tracts of land for long-term agricultural use coupled with economic incentives and other benefits to ensure favorable conditions for farming was first implemented in the early 1970's. New York State was the first state to pass an agricultural districting law which allowed for voluntary enrollment by landowners for a designated time period. The law provided additional property tax relief combined with other benefits such as protection from local government ordinances which might hinder farming operations and limitation of the acquisition of land by public agencies. Agricultural districts in their early stages generally did not place any compulsory controls on land uses as agricultural zoning does and were purely voluntary.¹¹ Now 16 states across the U.S. have agricultural districting programs, some in conjunction with zoning and some without.¹² New York State has achieved the highest level of land owner participation with 8.5 million acres enrolled.¹³

The purpose of agricultural district programs is to encourage land owners to make a long-term commitment -- in most cases a minimum of eight years -- to keep their land in agriculture in return for which the state government will ensure conditions for farming will remain as advantageous as possible. Land owners sign agricultural districting contracts with the state agency designated to administer the program.

The state of Minnesota, with the passage of the Metropolitan Agricultural Preserves Act in 1980, was one of the very first states to tie the various benefits of enrolling in the agricultural preserves program to the zoning of the land for long-term agricultural use. In the seven county Metro region covered by the Preserves Act, local governments were required to zone the agricultural land, permitting no more than one non-farm residence per 40 acres (otherwise known as quarter/quarter zoning). In signing a restrictive covenant agreement, land owners would agree to keep the land in agriculture for eight years. A number of benefits were made available to land owners in this program including some protection from eminent domain proceedings, limitations on annexation and the prohibition of local ordinances that might impact farming operations. The most important incentive was a reduction in property taxes, through a special tax rate or minimum credit applied to land enrolled in the program. To date, 201,927 acres in the Metro region are enrolled in the program, representing 40% of the 505,394 eligible acres of land. Equally as important, all of the eligible agricultural acreage has been zoned for agricultural use. In 1984, Minnesota continued its leadership in agricultural districting programs by passage of the Agricultural Land Preservation Policy Act. This new program expanded the agricultural districting approach statewide and included many of the innovative provisions embodied in the Metropolitan Agricultural Preserves Act. More than 155,000 acres are currently enrolled in the statewide Agricultural Land Preservation Program.

Agricultural districting programs have made a significant contribution to the preservation of agricultural land. Although they are limited in scope and are without the comprehensive land use planning and agricultural zoning, they nonetheless are an important element in agricultural preservation efforts nationally.

Purchase of Development Rights

Purchase of Development Rights programs (PDR's) have been instituted by 14 states and a number of local jurisdictions to provide protection for agricultural land.¹⁴ Use of PDR's to protect agricultural land from urban uses was first implemented in Suffolk County, Long Island, in 1976.¹⁵ Under the PDR program, a land owner is paid cash for relinquishing development rights. The land owner receives the difference between the appraised fair market value of the land and its appraised value for agricultural use. The land remains in agriculture and the land owner retains all other rights to the use of the land. The goal of this approach to agricultural land preservation is to ensure that the farm land will remain in agricultural use in perpetuity.

In the two decades that PDR programs have been employed in the U.S. -- primarily in the Northeast -- approximately 400,000 acres of agricultural easements or rights have been purchased at an estimated cost of \$737 million.¹⁶ PDR's have been instituted in a number of states and local jurisdictions primarily in the Northeast where growth pressures are very high and the acreage of available agricultural land has significantly dwindled. Participation in PDR programs by land owners is voluntary and states employ various criteria, including parcel size and the quality of the agricultural land to determine if the acreage is suitable for purchase.

The costs of purchasing individual development rights on a farm by farm basis is high and lack of uniform participation by land owners can result in a checker-board pattern of preserved land. State and local funding for PDR programs comes from a variety of sources including the issuance of bonds. (Table 1 that follows indicates the amount of acreage preserved by PDRs and the associated costs as calculated by AFT.)

Table 1

**Summary of Acres Protected and Funds Spend
on Purchasing the Development Rights
on Agricultural Land**

State	Acres Protected	Funds Spent to Date
Colorado	1,878	\$610,000
Connecticut	25,566	\$74,835,100
Delaware	15,961	\$18,950,000
Maine	464	\$430,000
Maryland	128,031	\$140,637,690
Massachusetts	39,334	\$95,000,000
Michigan	79	\$709,600
New Hampshire	11,732	\$10,449,008
New Jersey	34,972	\$167,826,221
Pennsylvania	91,813	\$186,000,000
Rhode Island	2,429	\$13,199,525
Vermont	54,466	\$29,071,276
Sub-total:	406,725	\$737,718,420
Local Programs:	84,912	\$165,266,838
Total:	491,637	\$902,985,258
<p>*Local programs in California, Colorado, Florida, Michigan, New York, North Carolina, Pennsylvania, Virginia, Washington & Wisconsin.</p> <p>Source: Saving American Farmland: What Works? American Farmland Trust, 1997.</p>		

Transfer of Development Rights

As the name implies, the "transfer of development rights" means that development rights may be transferred from one area where urban development is not wanted to another area where it is. The purpose of transferring development rights is to maintain land in agriculture, forestry, or open space areas and to compensate the owners of those lands for the loss of their rights to develop them.

The local government identifies those areas that are to be protected from development and those areas that are suitable for increased urban development. Owners of land in the areas to be preserved may sell their development rights to developers or land owners who thereby increase their number of development rights credits and can transfer those credits to build in other areas at higher densities than those that existing zoning would allow. The preserved areas are referred to as "sending areas" and the developable areas as "receiving" areas. These transactions are all done within the private sector and therefore do not require government funds as "purchase of development rights" programs do.

However, as previously stated, the local government must designate both the sending and receiving areas. Public infrastructure such as roads, water and sewer need to be available in the receiving areas. The receiving areas also should be able to accommodate higher densities. Further, local governments need to zone sending areas in order to establish a clear value of the development rights to be transferred. For example, if the "sending area" is zoned for a minimum of one dwelling unit per 20 acres, this would establish the number of development rights an individual land owner would have for sale.

Although the concept of transferring development rights has been around more than two decades, TDRs in practice have had widely varying applications. One major application worthy of note has been in Montgomery County, Maryland, where to date, 38,251 acres of agricultural land has been preserved through the transfer of development rights.¹⁷

A dozen other states and a number of local jurisdictions have established PDR programs. The concept is clear in theory but the process to purchase development rights from one land owner and then transfer these rights to another location of a town or county can be difficult and intricate to implement practically. Cooperation is necessary between private land owners and developers. The implementation of a TDR program also requires the commitment of a state or local unit of government to establish the parameters of the "receiving" and "sending" areas and the value involved in order to make it attractive for the private sector to participate.

In spite of the high degree of coordination involved, TDR's are useful in areas where there is an active real estate market and where development is occurring at a brisk pace.

Conservation Easements

Over the last several years, conservation easements have emerged as another tool for the preservation of agricultural land. A conservation easement is an easement that a land owner voluntarily places on a parcel of agricultural land so no development may occur on it. Once the easement is placed on a parcel of land, it is normally held by a nonprofit conservation organization or government agency. The land owner will retain rights such as continuing to be able to farm the land, erect buildings and engage in sound farming practices.

The advantage of conservation easements is that they are permanent and stay with the land if it is sold in the future. Not all land owners may fully benefit from the tax deductions offered by conservation easement and therefore they often are limited to individuals who are wealthy. Many private local land trusts operate in a number of states across the nation.

State Agriculture Land Preservation Policies

Ten states have enacted, either through legislation or through executive order of the governor, policies that require the state to review projects that would adversely affect agricultural land. These policies apply to state funded projects such as roads, water, sewer and other facilities. The purpose of these policies is to ensure that state government projects do not negatively impact local agricultural preservation programs by being placed in areas that are designated for long term agricultural use.

The State of Minnesota passed the State Agricultural Land Preservation and Conservation Policy Act in 1982 giving the Minnesota Department of Agriculture the authority to review state projects which would adversely affect any 10 acres or more of agricultural land.

No overall evaluation has been undertaken of the effectiveness of these state policies in the preservation of agricultural land.

Federal Farmland Protection Policy Act

In response to the findings of the National Agricultural Land Study, Congress passed the Farmland Protection Policy Act (FPPA) in 1981.¹⁸ The FPPA was intended to reduce the contributory role of federally funded programs on the conversion of agricultural land to non-farm uses.

Criteria were developed by USDA to identify the potential adverse effect of federal projects on farmland and to consider alternative actions that could lessen that effect. These criteria are embodied in the Land Evaluation Site Assessment (LESA). A LESA appraisal is required for any project which involves federal funding and which may have an impact on agriculture.

Although this law has been on the books for 17 years, there is very little evidence that it has either prevented or mitigated the impact of federal projects such as highways, airports and other types of facilities on the conversion of agricultural land.

Right to Farm Legislation

All 50 states have enacted "right to farm" laws designed to protect farmers from local ordinances that would restrict normal farming practices. A number of these state right to farm laws also provide farmers with some protection against private nuisance lawsuits by rural residents who object to noise, odor and other activities from a farming operation. Minnesota has such a Right to Farm law.

Overall, it is difficult to ascertain the effectiveness of right to farm laws in preventing nuisance suits. According to the American Farmland Trust, a review of state appellate court decisions showed that less than two dozen cases involving right to farm laws were adjudicated.¹⁹ Although little information is available on their implementation, the laws are nevertheless part of the overall effort to ensure that farming practices in agricultural areas are given priority.

A recent decision by the Iowa Supreme Court in Bormann et al. vs. Board of Supervisors in and for Kossuth County should be noted here.²⁰ In that decision, the court held that a statutory immunity from nuisance suits contained in the Iowa agricultural districting program resulted in a taking of private property for public use without just compensation in violation of federal and Iowa constitutional provisions. The court found that the Board's approval of the application for an agricultural area triggered the applicant's immunity from nuisance suits, since the law allowed an agricultural area to include activities such as the creation of noise, odor, dust or fumes. This immunity resulted in the Board's effective taking of easements in the non-farming neighbor's properties. It was found that these easements entitled the applicants to do acts on their property, which, were it not for the easements, would constitute a nuisance. This, the Iowa court found, constitutes the taking of private property for public use without payment of just compensation in violation of the Federal Constitution.

The breadth of the impact of this decision on Right to Farm legislation, either standing alone or incorporated within agricultural districting programs, is yet to be determined. However, it does clearly affirm that there are constitutional limitations that must be respected and/or costly compensation paid.

Summary

Interest in the preservation of agricultural land has continued at a steady pace in the past three decades. State and local governments employ an array of preservation tools as discussed in this chapter. The most successful programs use an integrated approach of economic incentives combined with land use controls such as agricultural zoning.

There are no precise estimates of how much agricultural land in total has been preserved through the efforts of state and local governments and the private sector. Given the dramatic increase in agricultural zoning in the past twenty years, it is possible that as much as 25 to 30% of the nations' 405 million acre agricultural land base has some type of preservation program in place. It is expected that the trend to consider agricultural land preservation as an important priority by government agencies at all levels will continue in the future. In addition, private non-profit

organizations have also become more heavily involved in agricultural preservation efforts in many local communities throughout the country.

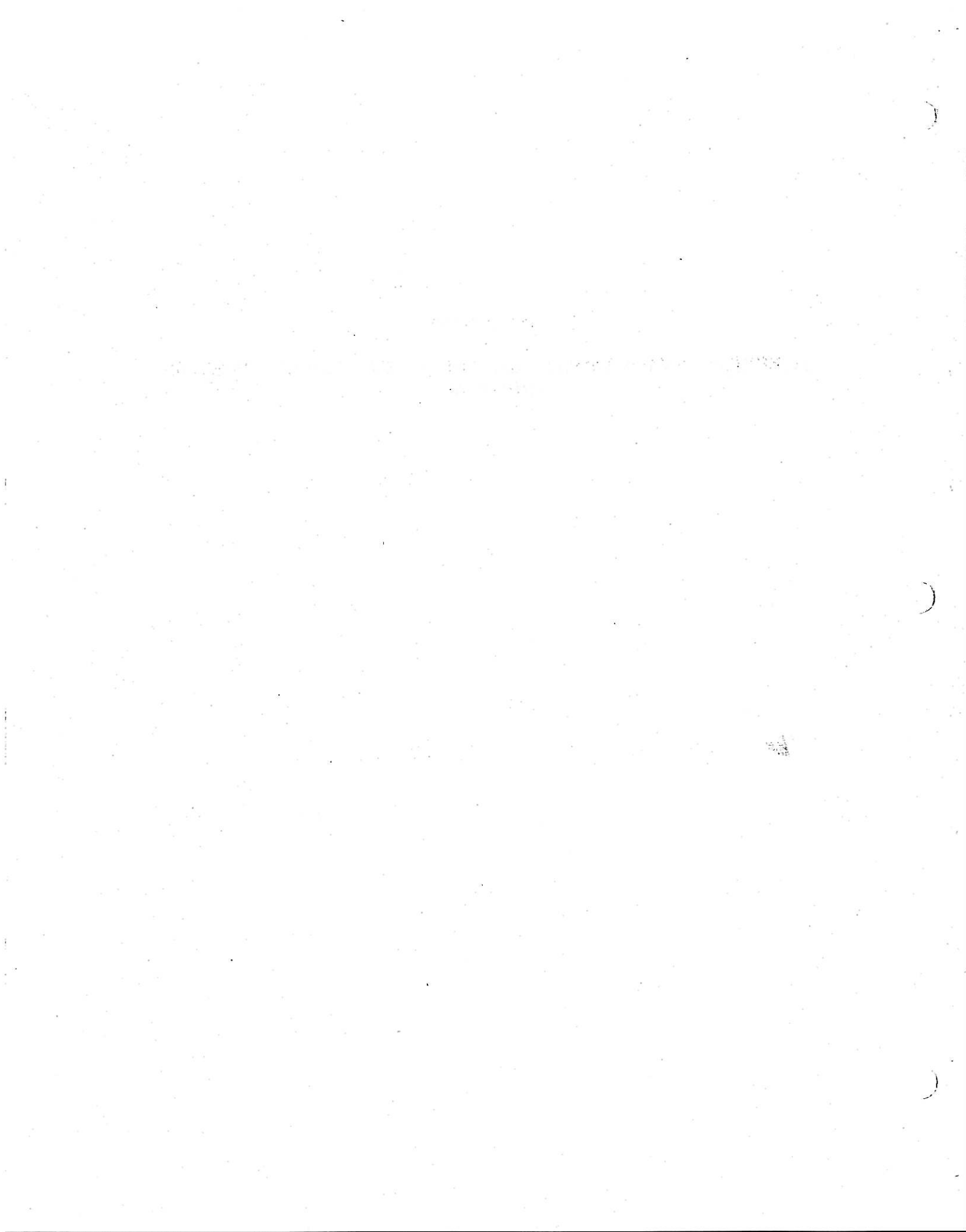
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SECTION III

**OVERVIEW OF MINNESOTA'S AGRICULTURAL LAND PRESERVATION
PROGRAMS**



OVERVIEW OF MINNESOTA'S AGRICULTURAL LAND PRESERVATION PROGRAMS

METROPOLITAN AGRICULTURAL PRESERVES PROGRAM (MINN. STAT. CH. 473H)

The Metropolitan Agricultural Preserves Act of 1980 established an agricultural land protection program in the Twin Cities Metropolitan Area. This program provides a package of benefits to enable farmers near urban areas to continue farming on an equal footing with those farmers located outside the metropolitan area without pressures to sell or convert their land to other uses. The intent of the law is to preserve important agricultural land in the Twin Cities metropolitan area from competing land uses, protect the local agricultural economy and support businesses, promote orderly and planned growth and development of urban and rural land uses, and allow farmers to make long-term agricultural investments with the assurance that their land can continue in agricultural use without interference from urban pressures. Through the Metropolitan Agricultural Preserves Act, local governments identify areas where agriculture is to be preserved, where non-farm growth will be permitted and what standards apply to each area. Farmers receive property tax credits and additional benefits by placing a restrictive covenant on their qualifying land, limiting its use to agriculture.

The Metropolitan Agricultural Preserves statute also contains a provision that local governments may not enact ordinances or regulations that restrict or regulate normal agricultural practices within an agricultural preserve unless the restriction or regulation has a direct relationship to public health and safety.

MINNESOTA AGRICULTURAL LAND PRESERVATION PROGRAM (MINN. STAT. CH. 40A)

Adopted in 1984, the program is modeled after the Metropolitan Agricultural Preserves Act. Any county located outside the Twin Cities metropolitan area is eligible to prepare a proposed agricultural land preservation plan and implementing controls under the program for the Commissioner of Agriculture's review. Elements which must be addressed by county plans and official controls are detailed in the statutes. Counties adopting agricultural land preservation plans and implementing controls may offer agricultural preserves. In a similar fashion to the Metropolitan Agricultural Preserves program, farmers receive property tax credits; additional benefits by placing a restrictive covenant on their qualifying land, limiting its use to agriculture or forestry; and protection for normal agricultural practices.

**STATE AGRICULTURAL LAND PRESERVATION AND CONSERVATION POLICY
(MINN. STAT. §17.80-17.84)**

Enacted in 1982, this law sets forth state policy on agricultural land preservation and conservation. The law also requires that, unless a project is already subject to the state environmental review process, any state or state-funded project or rule that adversely impacts ten acres or more of agricultural land must be reviewed by the Minnesota Department of Agriculture (MDA). Before the project can commence or the rule can be adopted, MDA must determine if other alternatives exist which would avoid converting agricultural lands.

**MINNESOTA AGRICULTURAL PROPERTY TAX LAW
(THE "GREEN ACRES" PROPERTY TAX DEFERMENT LAW,
(MINN. STAT. §273.111)**

Adopted in 1967, the Minnesota Agricultural Property Tax Law, commonly known as the Green Acres Law, provides for deferment of assessment and taxes payable on farm lands whose valuations have been increased due to residential or commercial development potential. For preferential/deferred assessment of agricultural land consisting of ten or more acres, property owners who are engaged in agricultural pursuits can apply for deferment of higher valuations and consequent taxes payable, including special assessments, and continue to have the property valued based upon its valuation for farm purposes.

**MINNESOTA'S RIGHT-TO-FARM LAW
(MINN. STAT. SEC. 561.19)**

Under the Right-To-Farm law an agricultural operation cannot be considered a nuisance if it has been in operation for two years. A nuisance is defined as "anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property..." The Right-To-Farm law protects from most public and private nuisance actions "agricultural operations" that have operated in substantially the same way for two or more years and that continue to operate according to "generally accepted agricultural practices".

"Agricultural operations" include facilities and their appurtenances for the production of crops, livestock, poultry, dairy products, but not a facility primarily engaged in processing agricultural products. An agricultural operation is not a nuisance if it is operating according to "generally accepted agricultural practices", located in an agriculturally zoned area, and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation. Some animal operations are exempt from the right-to-farm law protection, such as an animal feedlot facility with a swine capacity of 1,000 or more animal units or a cattle capacity of 2,500 animals or more.

**PURCHASE OF DEVELOPMENT RIGHTS
AND TRANSFER OF DEVELOPMENT RIGHTS**

During the 1997 legislative session, the Minnesota Legislature adopted amendments to the planning and zoning enabling laws for counties and municipalities which authorize local adoption of provisions for "purchase of development rights" and "transfer of development rights" programs. "Purchase of development rights" is authorized in the form of conservation easements, which are authorized under Minnesota Statutes, Chapter 84C.

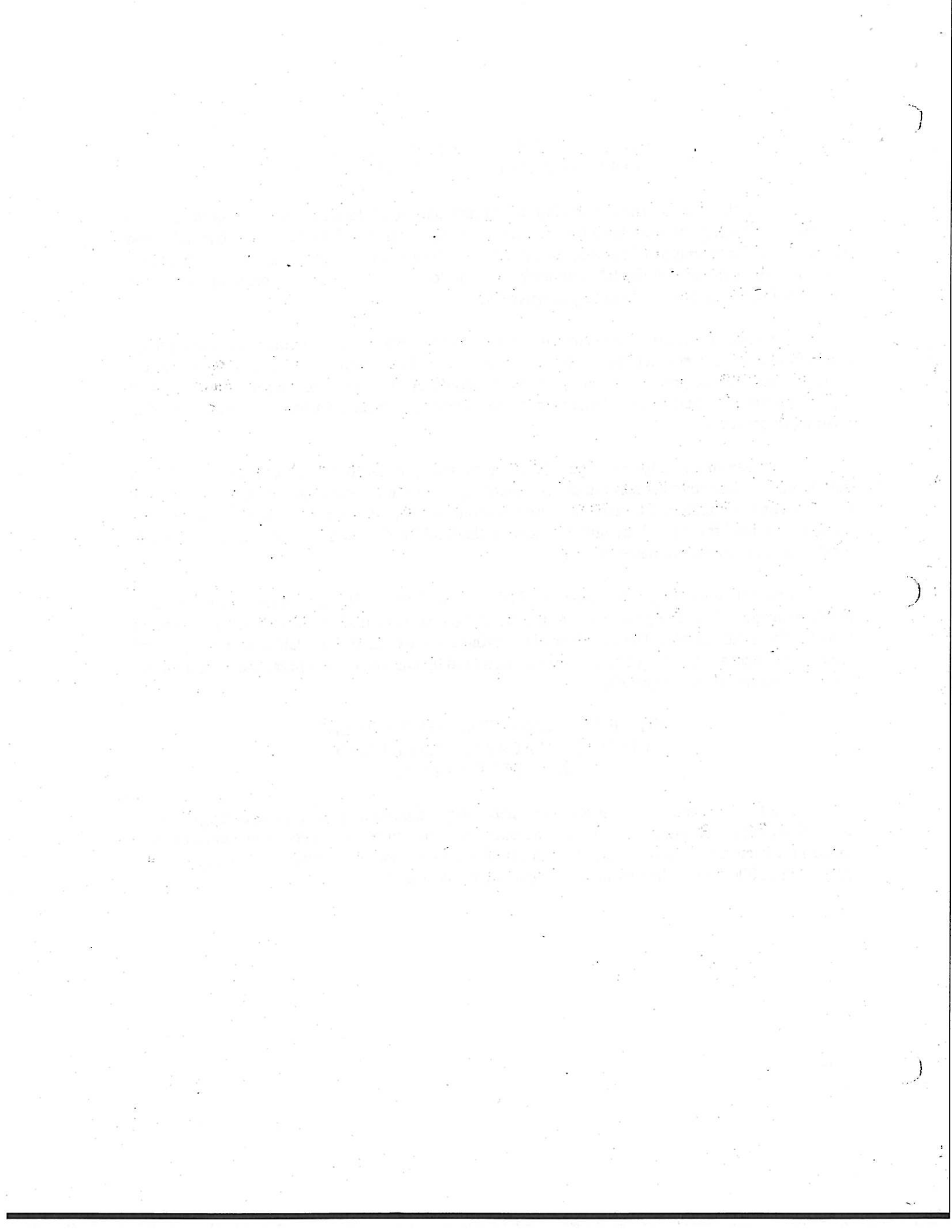
A conservation easement is a voluntary and permanent transfer of specified development rights from a landowner to a public or private organization. The easement is a restriction on a parcel of land, recorded as part of the land and deed records of the court. A conservation easement typically prevents development of land for residential, commercial, or industrial uses, while allowing farming to continue.

Purchase of development rights (PDR) programs pay farmers to protect their land from development. Landowners sell the development rights to a local government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its potential use, which is generally residential or commercial development.

Transfer of development rights (TDR) programs allow landowners to transfer the right to develop one parcel of land (referred to as the "sending area") to a different parcel of land (referred to as the "receiving area"). The sending and receiving areas are generally established through local zoning ordinances. TDR programs can protect farmland by shifting development from agricultural areas to areas planned for growth.

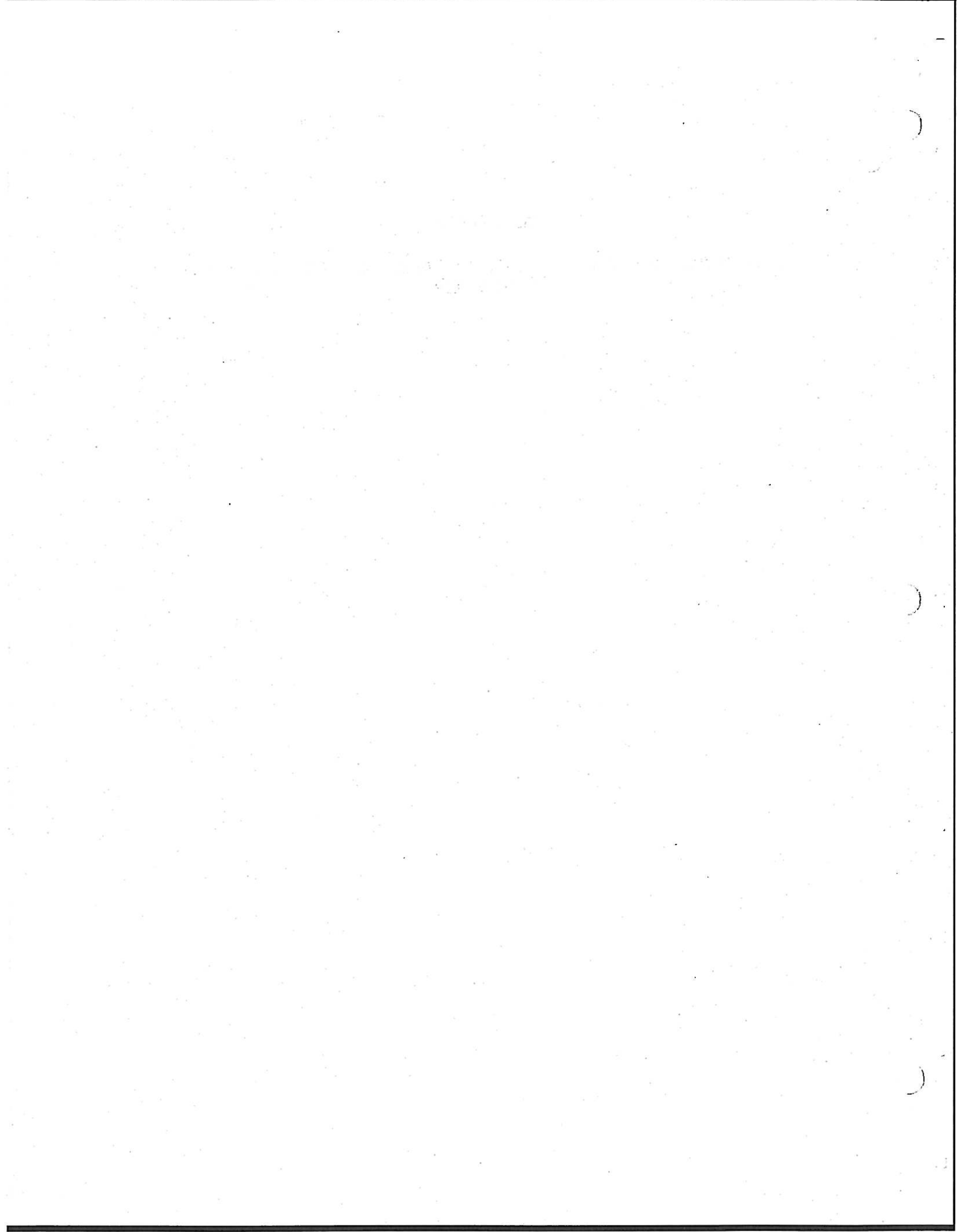
**NOTICE OF RESIDENTIAL DEVELOPMENT
ON CERTAIN AGRICULTURAL LAND
(MINN. STAT. §394.305)**

The 1997 Legislature also adopted an amendment to the county planning and zoning enabling law which requires provision of notice of a permit to construct four or more residential units on land zoned for agriculture (or agricultural land in counties without zoning) to owners of all agricultural land within 5000 feet of the perimeter of the proposed development.



SECTION IV

**ANALYSIS OF MINNESOTA AGRICULTURAL LAND PRESERVATION
PROGRAMS**



ANALYSIS OF MINNESOTA AGRICULTURAL LAND PRESERVATION PROGRAMS

Introduction

In the past three decades, a total of 16 states have enacted agricultural districting programs. All these programs have included provisions to encourage farmers to enroll their farm land in plans designed to sustain agriculture as the dominant land activity. It is estimated that a little more than 31 million acres of agricultural land have been enrolled in agricultural districts. This represents approximately six percent of the total of 508 million acres of cropland (382 million acres) and pasture land (126 million acres) in the United States identified by USDA's 1992 National Resources Inventory.¹

The primary focus of the present Section IV is to evaluate one of these 16 state programs, The Minnesota State Agricultural Land Preservation Program ("The Statewide Program") enacted in 1984. The evaluation of the Statewide Program will be made in Part I, in conjunction with and following a review of the Metropolitan Agricultural Preserves Program ("The Metro Program"). Part II will review other related agricultural preservation programs that are used or might be used in Minnesota, to wit:

- (1) agricultural zoning
- (2) the Green Acres Program (Minnesota Agricultural Property Tax Law)
- (3) transfer of development rights
- (4) purchase of development rights

The evaluations presented in Section IV incorporate findings and conclusions of county comprehensive land use plans, summary results of the stakeholder interviews as reported in Appendix B, and such other pertinent information as has been acquired. Where instructive comparisons or references will also be made to counterpart agricultural preservation programs in other states. The present section is intended to serve as a background setting for subsequent findings, conclusions and recommendations contained in Section V, the final section of this report.

Part I:**The Metropolitan Agricultural Preserves Program (1980) [The Metro Program]****A. Background**

As recounted in Section II, A National Overview, New York and Minnesota were two of the early states to enact agricultural districting legislation; New York in 1971, was the very first to do so and Minnesota enacted the Metro Program in 1980.² It is interesting to revisit the views of the officials involved in passing these respective laws in so far as they reflect differing attitudes at the time. New York officials in 1971 had an almost defensive view of initiating district programs; they appeared content simply to preserve a somewhat favorable environment for farming:

"Agricultural districts are not a preservation tool per se. They are not out to preserve agriculture forever. They are just trying to make it more feasible to remain in farming." (An officer of the New York Department of Environmental Conservation).³

"Districts help to facilitate the coexistence of farming and non-farming. They give farmers the option of continuing to farm if they want to. We'll make sure they won't be taxed or regulated out of existence." (One of the authors of the New York Agricultural District Program)⁴

By the time Minnesota was preparing to enact the Metro Program it was clear that those involved entertained a longer-term, more proactive view of the purposes of agricultural land preservation and the integrated role it should play in overall growth planning and management. In 1979 the Rural Area Task Force (RATF) reported to the Twin Cities Metropolitan Council that agricultural land in the seven county region should be preserved for the following cumulative reasons:⁵

- The majority of the farmers in the Metropolitan region were committed to farming.
- Much of the farm land was highly productive.
- Farmers had substantial capital investments in their farms.
- Much of the farm land had been carefully managed for productive farm use.
- Most of the land was not needed for urban development since there was more than enough land in the Metropolitan Services Area (MUSA) to support future development needs.

The members of RATF also felt that uncertainty about the future of agriculture was a significant factor in the decline of farming in the region. The Task Force noted a number of manifestations of this uncertainty for agriculture including:

- The postponement of farm management practices.
- The reluctance of heirs to take over farms.

These findings formed the background to enactment of the Metropolitan Agricultural Preserves Act in 1980, with the State Agricultural Land Preservation Program being enacted four

years later in 1984.

More specifically, enactment of the Metro program was a reaction to the finding of RATF that agricultural land was being steadily lost in the metropolitan region. The data showing the loss of agricultural land at that time came primarily from Agricultural Census information which showed that the acres in land in farms in the seven county metro region had been reduced by approximately 160,000 acres from 1964 to 1974. At that time, Agricultural Census data was the major source of information relating to the reduction in agricultural land use.

However, it should be pointed out the Agricultural Census data is prepared from a mail survey to land owners and therefore is subject to interpretation in terms of its accuracy as to the actual number of acres of agricultural land converted to non-agricultural uses. The Agricultural Census was not designed to specifically measure agricultural land converted to urban uses. But Agricultural Census data does show trends in terms of changes in land use. Consequently, it is a very valuable data set.

USDA's Natural Resources Conservation Service conducts what is known as the National Resources Inventory (NRI) every five years. In an earlier section of this report, it was noted that the NRI showed that the state of Minnesota lost 240,000 acres of cropland to urban uses during the time period from 1982 to 1992. The NRI is a snapshot of resource conditions throughout the United States and relies on a series of sample sites in which specialists and field personnel make specific observations at a selected location. Among other information collected at these sample sites is data relating to the conversion of cropland, pasture land, woodland and range land to non-agricultural uses. The 800,000 sample sites nationwide make the NRI statistically reliable to the national, regional, state and sub-state level.⁶

An analysis conducted by extension, university and resource inventory specialists showed the following decreases in agricultural land in the seven county metro region from 1982 to 1992 using NRI data:⁷

Decreases in Agricultural Land in Metro Region, 1982-1992

County	Acreage Reduction 1982-1992
Anoka	2,900
Carver	10,000
Dakota	27,200
Hennepin	29,100
Ramsey	8,700
Scott	10,700
Washington	11,600
Total:	100,200

Source: Farmland Loss: A New Measure Sheds New Light, Minnesota Agricultural Economist, Spring, 1996

However, this reduction in acreage in agricultural land included pasture and forest land as well as cropland. The analysis discussed above showed that the NRI data estimated that the acreage of cropland converted to urban uses from 1982 to 1992 was 59,400 acres.⁸ Therefore, in this ten year period the most reliable data showed a continuing trend of cropland being converted to residential and other urban uses in the Metro region. It should also be noted that Hennepin County, the most urbanized county in the Metro Region, showed the highest cropland loss over the ten year period. The data from the most recent NRI conducted in 1997 will be available later this year.

B. Summary Benefits and Requirements of Metro Program

The Metro Program as enacted in 1980 limited eligibility to landowners within the seven city metropolitan area immediately adjacent to the Twin Cities area. The counties that comprise this area are indicated in Table B hereafter. The program is administered by the Metropolitan Council. The Department of Agriculture has only supervisory duties with respect to the seven-county Metro Program, but does receive annual reports from the Council. The Department of Agriculture has direct responsibility for agricultural land preservation in the remainder of the state of Minnesota.

Principal Features of the Metro Program:

1) **Definition:** Agricultural districting is defined as the designation of specific tracts of agricultural land to be granted certain benefits and assurances to enhance conditions for farming. The Metro Program provides a number of such benefits and assurances with respect to agricultural preserves.

2) **Benefits and Assurances Provided Participants:**

- **Property Tax Credit:** Landowners participating in the land preservation program receive a minimum of \$1.50 per acre conservation credit for all land enrolled in the program. The credits in the Metro Program are based upon a formula which taxes metropolitan area preserves at a rate equal to 105% of the previous year's average statewide township tax rate. The difference between this tax rate and the local community tax rate equals the conservation credit or \$1.50 per acre, whichever is greater.

Tax credits supporting the Metro Program are funded through mortgage registrations and deed transfers. Each of the counties participating must levy a \$5.00 fee for all mortgage registrations and deed transfers. The counties retain \$2.50 from each transaction to support local preservation efforts. The balance of revenues (\$2.50) is forwarded to the state conservation fund.

The Metro Program includes a guarantee provision that if the conservation fund is insufficient to cover the tax credit, then funds will be appropriated from the state general fund.

- **Differential Assessments:** Agricultural land is assessed according to its value for agricultural production rather than its market value for development purposes.
- **Prohibition of local governments from enacting ordinances or regulations that restrict or regulate normal agricultural practices.**
- **Limitations on annexation proceedings affecting agricultural preserves.**
- **Eminent domain proceedings are limited and subject to public and administrative review.**
- **Benefits from public sanitary sewer systems, water systems, roads and drainage systems are prohibited in agricultural preserves. Land in a preserve may not be assessed for public projects built in the vicinity of the preserve-covenanted property unless the project is necessary to serve land primarily in agricultural use or the owner of the land chooses to use and benefit from the project.**

- 3) Prerequisites for Government Participation: In order to take part in the Metro Program and receive the benefits, a county or local unit of government must adopt:
- Agricultural land preservation plan and land use controls
 - Agricultural zoning regulations that restrict non-farm development in areas designated for long-term agricultural use. These agricultural zoning requirements allow one dwelling unit per 40 acres.
- 4) Prerequisites for Landowner Participation: In order to take part in the Metro Program and receive benefits, a landowner must agree to place an agricultural preserve restrictive covenant on his or her land which:
- Restricts the land's use to only agricultural or forest uses.
 - Follows with the land if it is sold or otherwise conveyed.

The agricultural preserve may be terminated by either the landowner or local unit of government but the termination process requires eight years before the agricultural preserve covenant expires.

C. Experience Related to the Metro Program

The Metropolitan Agricultural Preserves program was created to prevent the premature conversion of agricultural land to non-farm uses in the Twin Cities Region. Thus the program established tax and other incentives in exchange for keeping land in agriculture in the most rapidly urbanizing area of the state.

In addition to rapid urbanization, property taxes were also steadily increasing in the metropolitan area. The concept of the preservation program was to offer a tax rate to metropolitan farmers that was comparable to statewide township averages. The combination of land speculation and higher taxes increased the risk of farm loss in this high growth area.

The funding mechanism of the Metro preservation efforts has remained solvent for the number of counties that have utilized the program. Funding is subsidized, however, by larger participating counties which have lower agricultural land enrolled in the program.

Hennepin County, for example, contributed approximately \$69,000 (half of the total \$5.00 transaction fee revenue) to the State fund in 1997. The county's conservation credits to landowners was only \$21,070, which was easily covered by the county's \$69,000 share of revenues. Ramsey County generated approximately \$60,000 for the State fund in 1997, even though it has no landowners enrolled in the program.

On the other hand, Carver County generated \$13,700 for the State fund in 1997, while requiring \$154,488 in conservation credits for participating landowners. This resulted in a draw from the State fund of approximately \$140,000. Similarly, the three counties participating in the statewide preservation program contributed \$25,815 to the State fund, while requiring nearly \$234,000 in conservation credits in 1997, equating to a draw from the State fund of approximately \$208,000.

Table A sets forth the basic figures available to measure participation in the Metro Program from its first year of activity in 1982 through 1997.

Table A: Metropolitan Agricultural Preserves Program Participation: 1982-1997

Years	Acres Certified Eligible	Acres Enrolled with Covenants	Conservation Credit Per Acre	Percent Enrolled	Acres Pending Expiration	Conservation Credits
1982	483,905	61,817		13%	10,720	
1983	696,960	88,468	1.41	15%	16,011	\$125,054
1984	554,771	138,870	2.45	25%	39,812	\$340,215
1985	601,333	160,129	2.44	27%	49,450	\$390,855
1986	592,010	175,813	3.70	30%	63,972	\$650,582
1987	609,485	178,144	2.71	29%	60,991	\$482,676
1988	610,186	178,656	1.25	29%	62,967	\$223,623
1989	611,194	180,450	0.24	30%	66,397	\$43,684
1990	611,468	175,641	0.26	29%	62,541	\$45,885
1991	592,958	178,748	0.30	30%	64,269	\$52,851
1992	593,211	175,079	0.62	30%	63,363	\$108,162
1993	558,117	163,775	1.98	29%	48,507	\$325,037
1994	559,483	193,586	1.50	35%	70,383	\$288,808
1995	523,497	196,421	1.76	38%	74,546	\$346,662
1996	504,701	198,247	1.55	39%	75,530	\$306,943
1997	505,394	201,927	1.51	40%	73,582	\$305,076

Notes: 1. 1992 USDA Census of Agriculture identified total land in farms in the metropolitan area as 762,838 acres.

2. Minimum conservation credit of \$1.50 per acre was effective 1993

3. Maximum credit during program occurred in 1986 (\$3.70/acre).

Source: Metropolitan Council - Agricultural Preserves Program Status Reports, 1982-1997.⁹

Table A provides our best insight into the dynamics of participation in the Metro Program from its inception in 1982 through 1997. The table illustrates the eligible acreage (qualified by planning and zoning under Metro), enrolled acreage with covenants (eligible land with agricultural preserve covenants), conservation credit per acre, percent of eligible acreage enrolled, acreage pending expiration (eligible land for which withdrawal notice has been given), and annual total conservation credits.

As Table A indicates, participation in the Metro program can be measured or analyzed on a number of different levels. The data shown must be examined within the context of other information available on the program. No totally clear conclusions can be drawn from this data due to the many variables involved. However, there are some apparent relationships between acres enrolled and eligible, the value of the conservation credit and acres pending expiration.

(1) Acres Certified Eligible:

Large Fluctuations in the Beginning

The number of eligible acres has grown a total of 21,489 since the inception of Metro through 1997, but Table A indicates that there has been considerable fluctuation over the 16 year time period. For example, the number of acres certified eligible apparently increased dramatically early on from 1982 to 1983, increasing by 213,055 to a total of 696,960 acres, an increase of more than 44% in just one year.

Reporting and Recording Errors

The annual summary of acres certified eligible for participation is a function of "reporting" by participating communities and "recording" by the Metropolitan Council. Eligibility is based on the amount of land illustrated in a local comprehensive plan, which is designated at a maximum density of one house per forty (1:40) acres. The amount of eligible acres is subject to interpretation and estimation by the local community and/or by the Metropolitan Council. Once the estimate of acreage was determined, the data was recorded.

Over-estimates and Data Interpretation

Metropolitan Council staff have indicated that there were problems in interpreting and recording the data in the early years of the program, which is to be expected with a new program. It appears that some over-estimates were made because of recording some of the data twice. The data since 1984 is reported to be far more accurate, but remains subject to interpretation and recording.

Comprehensive Plan Updates

During the early 1990's, some communities were updating their comprehensive plans. All metropolitan area communities had prepared comprehensive plans in the 1979-1982 period, as required by the 1976 Metropolitan Land Planning Act. These plans were ten years old by the early 1990s and became subject to voluntary modifications. It is possible that this early round of plan modifications may have resulted in a partial reduction in the acres certified eligible during this period.

Changes in Agricultural Zoning Densities

Metropolitan Council staff have also noted that several communities in Hennepin County and Scott County modified their comprehensive plans in the mid 1990s, which did result in reductions in the acres certified eligible. These communities increased residential densities from 1:40 to 1:10. These decisions were reported to allow rural development options, but not to prohibit or discourage participation in the agricultural preserves program.

In Last Few Years, Certified Eligible Acreage Has Leveled Out

The foregoing observations may explain the larger variations in amounts of eligible acres. If one takes into consideration the fluctuations due to recording difficulties, updating of comprehensive plans, and some rezonings such as in Hennepin and Scott counties, it would appear that eligible acreage has, in fact, been relatively stable.

(2.) Acres Enrolled with Covenants and Conservation Credit Received Per Acre of Land Enrolled

High Level of Conservation Credits In Early Stages of Program

When the first acres were enrolled with eight-year covenants in 1982, the participation was 61,817 acres or about 13% of the acres certified eligible. Thereafter, the number of acres enrolled increased steadily going from 88,468 acres in 1983 to 138,870 acres in 1984 and then grew to 175,813 acres in 1986 which represented approximately 30% of the acres certified eligible. At the same time, the conservation credit that the landowners received per acre increased steadily as well. Starting at \$1.41 per acre in 1983, the credit received per acre increased from \$1.41 per acre to a high water mark of \$3.70 per acre in 1986. The conservation credit at that time was based on a formula which taxed metropolitan agricultural preserves land at a rate equal to 105% of the previous year's average statewide tax rate. The difference between this tax rate and the local community tax rate equaled the value of the conservation credit. During this time period, the tax rate in the metropolitan region was higher than the statewide average which generated an increasingly higher conservation credit for the landowners enrolled in the program.

Significant Reduction in Credits in Late 1980s

By 1988, the average statewide township tax rate began to increase which, in turn, reduced the conservation credit amount appreciably. The conservation credit dropped to \$1.25 per acre in 1988 and then dropped ever further to just \$0.26 per acre in 1990 and \$0.30 per acre in 1991. The credit rate increased to \$0.62 per acre in 1992 -- a value of just 17% of what it was at its high point in 1986. A landowner

with 300 acres in 1992 would have received a conservation credit of \$180 as compared to \$1,110 in 1986, a significant difference.

Relationship to Acres Enrolled and Conservation Credits

It is reasonable to find that this reduced economic incentive affected the acreage enrolled as there was a corresponding drop-off of 11,304 acres enrolled between 1992 and 1993. In 1992, the state legislature responded to the significant decrease in conservation credits received per acre by amending the Metro Preserves Act to establish a minimum conservation credit of \$1.50 per acre. Hence, the credit increased to \$1.98 per acre in 1993 and by 1994 enrollments had increased to 193,586, an increase of almost 20,000 acres over the 1993 level of 163,775 acres. This steadying of the conservation credit amount seems to have had a relationship to the acres enrolled. The acres enrolled increased in 1994, 1995, 1996 and 1997 by a total of 8,341 acres to the 1997 level of 201,927, the highest enrollment of the program's existence.

(3) Acres Pending Expiration

Signing In and Signing Out

Landowners have the right to file an expiration notice as soon as they have enrolled their land in the eight-year covenants. They then have the right, but not the obligation, to withdraw from the program eight years later. Local county officials who administer the program often referred to this process as "signing in" and "signing out". A county official interviewed as part of the Stakeholder Survey noted that it was easier to sign out than enroll in the program from an administrative point of view.

Trends in Expirations

Expiration notices grew regularly from the first year of enrollments in 1982 through 1989 when they covered 66,397 acres, or about 37% of acres enrolled. Since that time the percentage of acres pending expiration has basically held steady.

Relationship Between Withdrawal from the Program and Conservation Credit

However, a relationship seems to exist between the amount of the conservation credit and the acreage that withdraws from the program at the end of eight-year concurrent periods. When the conservation credit reached very low levels during 1989 through 1993, some landowners withdrew from the program as the number of acres enrolled dropped from 180,000 to 163,775. Acres pending expiration also dropped from

66,397 to 48,507, most likely reflecting acreage that was withdrawn from the program in 1993. Following restoration of the minimum conservation credit to \$1.50 per acre in 1993, the amount of acres enrolled increased by 30,000 and has gone up steadily ever since. The acres pending expiration have remained in the 75,000 acre range since 1995.

General Observations:

The Metro Program does in fact appear to have been influential in attaining the preliminary goal of "agricultural zoning", otherwise identified in Table A as "acres certified eligible" in the Metro Program. Although some counties had initiated agricultural zoning prior to 1980, the passage of the Metro Preserves Act seemed to encourage and buttress greater zoning efforts as discussed below.

The 1992 USDA Census of Agriculture calculated the total farmland in the metropolitan region was 762,838 acres. Table A indicates that in the very first year of operation of the metro program, 483,905 acres -- or over 63% of the total farm acreage -- was "certified eligible" or "zoned." The following year, 1983, an all time peak of 696,960 "certified eligible" acres was reached or 91% of total farm acreage. Since 1983 and through 1997 the percentage has remained fairly stable, fluctuating only between a low of 73% in 1984 and a high of 80% in 1990. The last year for which figures are available, 1997, 66% of total land was "certified eligible" or zoned for agricultural uses.

Clearly the Metro Preserves Program as implemented in 1980 served as one of the strong incentives for the townships and counties of the metropolitan region to initiate or at least retain agricultural zoning ordinances and with salutary consequences. An example is the case of Dakota County. The County has been subject to, and indeed continues to experience, intense urban growth pressure in the Twin Cities Metropolitan Region. A major loss of farm land occurred in the county from 1950 to 1977.¹⁰ By 1982, just two years after the enactment of Metro all 13 townships in Dakota County had passed zoning ordinances. Although the county has lost agricultural land since the 80's, those losses have been contained. The Metro Program requirement of implementing agricultural zoning has clearly steadied the decrease in farmland loss to non-agricultural uses.

Areas identified as rural and permanently agricultural in the late 1970's are generally the same in the late 1990's. The majority of unincorporated areas in Carver County and Dakota County have been planned and zoned at residential densities of one dwelling per 40 acres for the past 20 years. The largest concentration of agricultural land in the region has been preserved in these counties, while the region continues to grow.

"Acres enrolled with covenants" displayed in Table A is a measure of direct participation by landowners, as contrasted to government participation by certifying or qualifying land. Once land has been qualified as eligible, the decision then rests with individual landowners as to whether they wish to actually enroll their land, thereby subjecting it to an 8 year covenant of exclusively

agricultural use in return for conservation credits and the other benefits provided by the Metro Program. This decision is a highly personal one, requiring a landowner to weigh many interrelated factors, including the monetary value of the property tax credit, the farmer's expectations about farming income, and the revenue he or she could receive as a result of selling land free of use encumbrances, either now or in the future. Of course, non-monetary values are also deeply involved, such as attitude towards planning and growth management (government intervention) in general.

Table A shows that from the outset much more land has been made eligible, or zoned, for agricultural preserves protections under the Metro Program than has actually been converted by landowners into enrolled districts. The percentage of land enrolled (i.e., the percentage of the eligible land that was actually enrolled or covenanted by landowners) has fluctuated between 13% during the first year of the Metro Program and 40% in 1997. Table B shows that the percentage of eligible land enrolled in the six separate participating counties of the metro region (no land has ever been certified eligible or enrolled in Ramsey County) in 1997 varied widely between 15% in Scott County and 89% in Anoka City. The agricultural zoning adopted by Dakota townships as a prerequisite to eligibility for the Metro Program covers 203,399 acres, or three times the agricultural land acreage actually enrolled in the program.

Table B
Metropolitan Agricultural Preserves
1997 County Program Participation

Counties	Acres Certified Eligible	Acres Enrolled with Covenants	Percent Enrolled	Acres Pending Expiration	Conservation Credits
Anoka	3,288	2,723	89%	719	\$4,080
Carver	194,645	101,651	52%	44,420	\$154,488
Dakota	203,399	64,219	32%	20,030	\$95,870
Hennepin	33,381	13,876	42%	3,792	\$21,070
Scott	55,533	8,558	15%	3,293	\$13,231
Washington	15,148	10,900	72%	1,328	\$16,337
TOTAL	505,394	201,927	40%	73,582	\$305,076

- Notes: 1. No land has ever been certified eligible or enrolled in Ramsey County.
2. 1992 USDA Census of Agriculture identified land in farms in Metropolitan area as 762,838 acres.

Source: Metropolitan Council - Agricultural Preserves Program Status Reports, 1982-1997¹¹

An Individual Decision

It is clear that simply having land made eligible through zoning ordinances under the Metro program is not sufficient, in and of itself, to entice farmers to enroll. Rather they must be convinced, on a case-by-case basis, that the basket of benefits offered by Metro (including the conservation credits) is sufficient to be in their long-term interest. Apparently, the non-monetary benefits of landowner participation in Metro, such as limitations on annexation and eminent domain proceedings and protection from local ordinances or regulations that constrict or regulate normal agricultural practices, although important, do not have as direct an influence on landowner participation as does the amount of the conservation credit. Whatever the relative importance of the components of the Metro Program benefit basket, the fact is that by far more eligible land under the Metro Programs has been withheld by farmers than has been enrolled.

Education and Outreach Important

Promotion and education for metropolitan area agricultural land preservation is largely a function of local units of government. While the Metropolitan Council, several counties and several municipalities promoted agricultural preserves in the early and mid-1980's, there has been little

promotion or education concerning the Metro Program in the past 10 to 15 years. A revival of issues regarding long-term agricultural land preservation is occurring within the metropolitan area as communities update land use plans and official controls consistent with the Metropolitan Council's Regional Growth Strategy. Given the overall need to explain the benefits of the program to landowners, educational outreach is an important ingredient in potentially increasing enrollments. As discussed later on in this report, New York State's experience with educational efforts at the local level has been beneficial in increasing enrollment in that State's districting program.

The Minnesota State Agricultural Land Preservation Program (The Statewide Program)

A. *Background*

In 1984, four years after passage of the Metro Program, Minnesota continued its leadership in agricultural districting programs by passage of The Agricultural Land Preservation Policy Act. This new program expanded agricultural districting statewide. Eligibility is accorded to all counties in Minnesota, except the seven county metropolitan area served by the Metro Program. As we have noted, by far the greatest concentrated pressure for the urbanization of farm land exists in the Twin City Metro Region. The rest of the state has varying levels of urbanization, but generally less than the Twin Cities area.

The Department of Agriculture has provided Greater Minnesota counties with ongoing technical assistance in the areas of planning and zoning for agricultural land preservation and feedlot planning. The Department has published and distributed handbooks on land preservation feedlot controls and held statewide workshops on agricultural planning and zoning issues. However the Minnesota legislature has not provided funding for local assistance grants since the original agricultural preserves pilot program was established in 1984.

B. *Principal Features of the Statewide Program*

The Statewide Program is similar to the Metro Program in the following overall ways:

- both have the purpose and goal of agricultural land preservation
- both contain prerequisite requirements of local jurisdictions for local planning and zoning mechanisms to protect agriculture
- both require contracts or covenants from landowners to enroll land in the program
- both provide financial incentives, among other benefits, to induce participation by landowners

Summary of Specific Provisions of Statewide Program (Comparison References are to the Summary of Metro Program Provisions)

- 1) Definition of Purpose of Agricultural Districting (essentially same as Metro Program)
- 2) Benefits and Assurances Provided Participants:
 - Property tax credit: A flat \$1.50 per acre per year property tax credit. (Differs from adjustable rate with minimum offered by the Metro Program).
 - Funding: Funded through fees on mortgage registrations and deed transfers, essentially as with the Metro Program; however, there is no provision that in the event of a shortfall, funds will be appropriated from the general fund.
 - Prohibition of local governments from enacting ordinances or regulations that restrict or regulate normal agricultural practices (essentially the same as Metro Program).
 - Limitation on Annexations: (Essentially the same as in Metro Program)
 - Eminent Domain: (Essentially the same as Metro Program)
 - Public infrastructure: (Essentially the same as Metro Program but Statewide Program does not exempt the assessment of roads.)
- 3) Prerequisites for government participation: In order to take part in the Statewide Program and receive the benefits, a county must adopt:
 - An agricultural land preservation plan and land use controls (essentially the same as Metro Program).
 - Agricultural zoning regulations that restrict non-farm development in areas designated for long term agricultural use (essentially the same as Metro Program but no formal requirement that zoning be one dwelling unit per 40 acres).
- 4) Prerequisites for landowner participation:
 - In order to take part in the Statewide Program and receive benefits, a landowner must agree to place an agricultural preserve restrictive covenant on his or her land which:
 - Restricts the land's use to only agricultural or forest uses (essentially the same as Metro Program). But note that property tax credit is withdrawn immediately upon notice of expiration under the Statewide Program. This constitutes an important

difference from the Metro Program, where the landowner continues to receive the property tax credit after notice of expiration.

- Follows the land if it is sold or otherwise conveyed (essentially the same as Metro Program).

C. *Experience Related to the Statewide Program*

Upon the enactment of the Statewide Program in 1984, the Minnesota Department of Agriculture, in a pilot program, made financial assistance available to counties that were interested in implementing the program to help with start up costs. While there were several pilot counties that examined the program, ultimately the counties of Waseca, Winona, and Wright took advantage of this funding assistance. Participation in the Statewide Program remains limited to the three initial counties. Approximately 156,000 acres have been covenanted (enrolled) in those three counties out of a total potential eligible acreage (i.e., zoned to 1/40) of 979,000 acres..

Table C. County agricultural preserve covenants (number of covenants and acres under covenant.) Minnesota Agricultural Land Preservation Program

Year	Waseca		Winona		Wright		Totals	
	Covenants	Acres	Covenants	Acres	Covenants	Acres	Covenants	Acres
1988	160	25,712	0	0	0	0	160	25,712
1989	61	7,236	8	2,207	47	5,478	116	14,921
1990	850	68,074	1	543	25	2,368	876	70,985
1991	6	514	5	883	71	906	82	2,303
1992	25	2,079	96	22,753	1	62	122	24,894
1993	12	808	6	1,844	6	394	24	3,046
1994	8	7,669	6	2,877	0	0	14	10,546
1995	5	574	5	1,127	12	617	22	2,318
1996	5	558	0	0	0	0	5	558
1997	5	552	0	0	3	156	8	708
Totals	1,137	113,776	127	32,234	165	9,981	1,429	155,991

Source: January, 1999 Telephone Survey of Counties Participating in the Minnesota Agricultural Land Preservation Program¹²

The three counties implementing the registration and transfer tax had a total in 1997 of 10,326 transactions. At \$5.00 per recording, this generates \$51,630. At a straight \$1.50 per acre credit, the total subsidy for the statewide agricultural preserve was \$233,987. Thus, in 1997, the number of mortgage and deed transactions, the fee for the transactions, the number of acres enrolled in the preservation programs and rate of the conservation credit created a negative revenue balance in excess of \$180,000.

As demonstrated in Appendix A, Future Funding Analysis, changing any of the variables above will have a further impact on the stability of the program. A drop in mortgage and deed registrations, an increase in the number of acres enrolled, or an increase in the rate of the tax credit would result in greater revenue shortfalls. On the other hand, participating counties that have a high growth rate will tend to produce a revenue surplus, or at least a smaller revenue deficit, than participating counties with a lower growth rate. This would be so, provided enrollment is basically stable, because the number of mortgages and deed recorded are higher where there is stronger growth.

Perhaps as a result of "variables" such as this, in addition to the fact that the Statewide Program does not have the guarantee of the use of general funds as does the Metro Program, low confidence in the long-term-funding of the Statewide Programs has interfered with statewide expansion. According to the Department of Agriculture, Douglas County and Kandiyohi County withdrew their candidacy from the state pilot program because of concerns of long-term funding stability. Rice County evaluated program participation in 1992, but declined for the same reason. In an interview with the participating counties, it was pointed out by one county official that keeping track of the enrolled acreage was a difficult administrative task given the limited planning staff available at the county level.

Diversity of Counties Outside the Metro Region

As part of the review of the Statewide Program, it is useful to examine the diversity of growth pressures, agricultural preservation efforts and other factors in counties outside the metro region. Three counties were selected to highlight this diversity in the statewide region.

We have noted that the seven counties served by the Metro Program have at least one uniform characteristic in that they are all part of the rapidly growing Twin Cities area. An examination of three representative counties outside the Twin Cities area, in contrast, demonstrates the diversity of status, attitudes and growth situations that challenge the Statewide Program as it attempts to attract and to expand agricultural districting into other Minnesota counties.

Nicollet County

Nicollet County, located in South Central Minnesota, currently has 241,930 acres remaining in agricultural land use.¹³ Data from the county comprehensive plan show that since 1959 only 1063 acres of agricultural land were converted to non-agricultural use. Thus although the county is

located about one hour's driving time southwest of the Twin Cities Metro Region, Nicollet has experienced the steady to low growth more often associated with a rural county, and agriculture remains as one of the primary economic contributors to the business sector of the county. The county implemented an agricultural zoning ordinance in 1985, allowing one dwelling unit per 40 acres.¹⁴

Although Nicollet has chosen not to participate in the Statewide Program and is experiencing low growth, it has nevertheless made a strong commitment to the preservation of agricultural land. The county reports that there have been no major rezonings of agricultural land to residential or other non-agricultural uses in the 85% of the land area that has already been zoned for agriculture.

Stearns County

Stearns County is the largest of the three counties examined here, and also one of the largest agricultural counties in Minnesota. But due to its proximity to both the Metro Region and the city of St. Cloud the county is subject to higher growth pressures than Nicollet. Most of this pressure is in the form of rural development in five and 10 acre residential lots.

Stearns County, although under clear growth pressure, recently completed a comprehensive plan. Data from the county plan show that from 1991 to 1995 the average rural residential lot sizes have increased threefold in size, particularly in the eastern townships near St. Cloud.

The following excerpt from this new comprehensive plan of Stearns County reflects the level of concern that exists about the preservation of county agricultural land:

"Agricultural Protection/Viability

*The continued economic viability of agricultural activities was one of the most commonly stated issues in the various meetings. Several different threats to farming were identified, most of which were cultural rather than environmental. As farmlands, or portions of farms, are sold to non-farm residential users, the ability to put adequately sized farm parcels together, owned or leased, becomes a problem. Moreover, the non-farm dwellings demand different levels of services and have differing expectations of the environment than does the farmer. Even at densities as low as one non-farm dwelling per 40 acres, many who commented believed that agriculture was being fundamentally threatened."*¹⁵

Stearns County does not participate in the Statewide Program. However, it is an example of a county experiencing low density rural development that is converting agricultural land to non-agricultural uses incompatible with nearby farming operations. Twenty of the thirty-seven townships in the county have agricultural zoning ordinances with varying density requirements. The county is considering a more comprehensive agricultural zoning ordinance. Currently, there is a platting moratorium in Stearns County in order to slow down temporarily the increase of rural development on five acre or larger lots.

Grant County

Finally we consider Grant County, the most rural of the three non-Metro counties reviewed. Grant County has lost population in the last several years. It is located in the western/central part of Minnesota. The county is not considering the adoption of any agricultural preservation programs nor any planning and zoning at this time, and therefore is not eligible to participate in the Statewide Program.

All three counties, Nicollet, Stearns, and Grant do have one thing in common: none participate in the Statewide Program. Otherwise however they are very diverse with respect to growth/land preservation. To summarize:

Nicollet: low growth pressure but has planning and zoning for agricultural land preservation.

Stearns: high growth pressure/beginning stages of planning for agricultural land preservation.

Grant: limited growth pressure and therefore little focus on agricultural land preservation planning or other growth management devices at this time.

While the Metro Program was addressing a basically uniform area – the most rapidly urbanizing area of the state – the Statewide Program is currently attempting to embrace very diverse counties throughout the entire state – where, it might be stated, “one size will not and cannot fit all.” The diversity of the counties outside the Metro Region would seem to call for districting strategies tailored to their individual situations.

In the same vein, of the three currently participating counties in the Statewide Program, only Wright County is expected to grow appreciably. The Office of Strategic and Long-Range Planning estimates a population increase of 42% in Wright County from 1995 to 2025 compared to a 2% increase in Winona and a 6% decline in Waseca. Wright County is situated between the Twin Cities and St. Cloud. Waseca County and Winona County are not contiguous to the metropolitan area.

Experience with the New York State Agricultural Districting Program (N.Y. Program)

It is useful to compare briefly certain features of the Minnesota Statewide Program with the New York Agricultural Districting Program (the N.Y. Program), a program that has been established since 1971 and has a track record of success, at least as far as the amount of land covered is concerned.

- Both programs have similarities including:
 - limitations on the use of eminent domain;
 - protections against unreasonable regulations that would restrict normal farming

- operations;
 - limits on public investment for non-farm development in districts;
 - agricultural impact statements for public projects in districts.
- The economic incentives provided by the two programs are different, such that:
 - the Minnesota Statewide Program provides for a flat tax credit of \$1.50 per acre per year;
 - the New York State Program provides for "differential assessments" on agricultural land which means land is assessed at its agricultural use value for real estate tax purposes. In this respect, the New York Program is more similar to Green Acres than the Statewide Program .
- Both programs require participating landowners to agree to keep their land in agricultural use for a period of eight years.
- A clear distinction between the two programs is the requirement that local government in Minnesota implement agricultural zoning and planning before landowners can participate in the Minnesota Statewide Program. In New York there is no such requirement.
- In New York State, the agricultural districting legislation creates local agricultural advisory committees made up of farmers, extension agents, soil and water conservation district representatives and other local agricultural interests. The local committee provides:
 - technical assistance to landowners interested in enrolling in the program;
 - educational and promotional efforts to increase landowner awareness of the program;
 - a direct link with the local agricultural community to ensure greater acceptance of the program;
 - assistance to county planning offices in helping to get the program initiated and in easing the extra administrative burden on planning staffs with other land use and natural resource responsibilities;
 - Minnesota, by comparison, has relied upon the state agricultural department to provide technical assistance, educational materials and outreach concerning agricultural land preservation.
- The New York State Program has achieved an important degree of success in its 27 years of operation by enrolling 8.5 million acres or 85% of New York state's agricultural land in the districting program.¹⁶
- A major weakness in the New York state program is that much of the land most vulnerable to conversion to non-agricultural uses located near cities and suburban areas is not enrolled in the program.

New York has adopted a comprehensive and open approach to agricultural districting. The New York State Program, in contrast to that of Minnesota, does not require that agricultural land be zoned at the local level as a condition for landowner enrollment. This open approach, as implemented over time, has led to 85% of New York agricultural land area being enrolled in the system.

On the other hand, New York's program has not integrated local planning with zoning for the preservation of agricultural land. Therefore, if agricultural districts are terminated by landowners, there is no protective instrument in place to prevent the land from being converted to non-agricultural uses. Additionally, the incentives in New York's program have not been strong enough to encourage landowner participation near urban centers.

The most valuable insight to be gained from New York's program may be the creation and direct involvement of local agricultural advisory committees in helping educate landowners on the merit of enrolling in agricultural districts and in assisting in the enrollment process. This feature relieves local planning offices of some of that responsibility and, more importantly, it involves the agricultural community itself in the educational and enrollment process, thereby attaining higher levels of participation.

Michigan Experience

The State of Michigan has an agricultural districting program similar to New York's. This program, the Farmland and Open Space Preservation Program (PA 116) was passed by the state legislature in 1974 shortly after New York had enacted its own program.

The PA 116 program requires landowners to enter into 10 year covenants on their land and has very restrictive conditions for terminating those covenants. In return, landowners receive two primary benefits from enrollments. The landowner is entitled to claim an income tax credit in the amount by which the property taxes on the agricultural land covered by the agreement exceed 7% of household income. In addition, lands enrolled in the program are exempted from special assessments for sanitary sewer, water, lights or non-farm drainage.

Overall, Michigan has enrolled 4.3 million acres in the program since its inception in 1974.¹⁷ Unlike Minnesota's Metro and State agricultural preserves programs, Michigan's program does not require the implementation of agricultural zoning as part of comprehensive land use planning. Therefore, if landowners leave the program, no preservation device is in place to keep the land from being converted to non-agricultural uses. Much of the land enrolled in Michigan's program is not located near existing urban areas where growth pressures are most acute.

Both New York's and Michigan's experience have relevance to findings with respect to the Statewide Program.

Part II
Other Agricultural Land Preservation / Growth Management Tools As Applicable to Minnesota

This second part of Section IV will examine other agricultural land preservation or growth management tools as they are used, or could be used in Minnesota. Part II deals with the following:

- (1) Agricultural Zoning
- (2) The Green Acres Program
- (3) Transfer of Development Rights
- (4) Purchase of Development Rights
- (5) Right to Farm Laws

Agricultural Zoning

A. Background

The purpose of agricultural zoning is to restrict the use of land primarily to agriculture. Essentially, this is done by limiting the intrusion of new, non-agricultural uses such as housing or commercial development into established agricultural areas. Most agricultural zoning ordinances allow for some non-farm dwelling units in the area zoned for agricultural use. However, densities may be limited to from one dwelling unit per twenty acres to as little as one dwelling unit per 160 acres. The most stringent agricultural zoning ordinances require that any dwelling units be built on small lots leaving most of the land exclusively for agricultural use.

Agricultural zoning can be used in conjunction with compatible agricultural preservation programs such as differential assessments and districting programs similar to the Metro Program and the Statewide Program. Indeed the zoning technique fits well with these other planning and land use programs utilized to manage growth.

However, zoning does not provide permanent protection and can be changed if local government officials decide that residential or commercial development is more advantageous to the land use goals of the jurisdiction. Analysis of many agricultural zoning ordinances that have been in place over a number of years indicates that rezonings of agricultural land to permit other uses or the granting of variances to allow for higher densities of non-farm dwellings are not frequent or widespread.

Overall, zoning has established itself as the most popular and most commonly used preservation technique. We have seen that the NALS study found that 270 county, township, and

municipal jurisdictions instituted agricultural zoning as their primary preservation program during the 1970's. When the American Farmland Trust released its report in 1997, the number of local jurisdictions using agricultural zoning had grown to 700 in 24 states.¹⁸ A 1990 analysis has further demonstrated that almost all of the original 270 local governments that adopted zoning have since strengthened the provisions of their ordinances in order to make them more effective.¹⁹

B. *Experience with zoning in Minnesota*

Large Recent Increase in Agricultural Zoning

Just as in the country at large, the use of agricultural zoning as a major preservation tool has gained widespread acceptance and use in Minnesota. Almost 13.5 million acres of agricultural land in 45 counties is currently covered under some type of agricultural zoning (four counties are between 1:40/1:20 and 41 counties are 1:40 or greater).²⁰ Thus, more than 56% of the agricultural land in Minnesota as identified by the 1992 Census of Agriculture, USDA is zoned. Seventeen counties have implemented agricultural zoning ordinances since 1990 (see Map 1). Clearly Minnesota is at the forefront of states in the nation adopting agricultural zoning.

Many Statewide Counties Follow Metro Density Standards

These Minnesota zoning ordinances range from the allowance of one non-farm dwelling unit per 40 acres for the most part to one non-farm dwelling per 160 acres in a few counties. The standard, however, seems to follow the requirement for 1/40 acre agricultural zoning that was first established in the Metro Preserves Program in 1980. The Statewide Program has no formal 1/40 requirement, but in practice the standard under that program has turned out to be 1/40 as well.

Agricultural Zoning Has Worked in Rural Dakota Townships

We have already discussed the role that the Metro Program has provided in bringing and or retaining zoning to the seven county metro region. Zoning has indeed been the dominating factor in protecting farm land in Dakota County. The 1/40 zoning limitations have worked. In the thirteen rural townships within the county, an average of less than 100 housing units per year have been constructed over the period from 1975 to 1997 (see Table E). This is no more than is allowable under the 1/40 zoning restriction which has been enforced and maintained, and has not been relaxed.

Map I Agriculture Zoning Survey Residential Densities

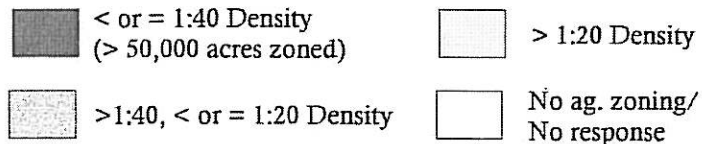
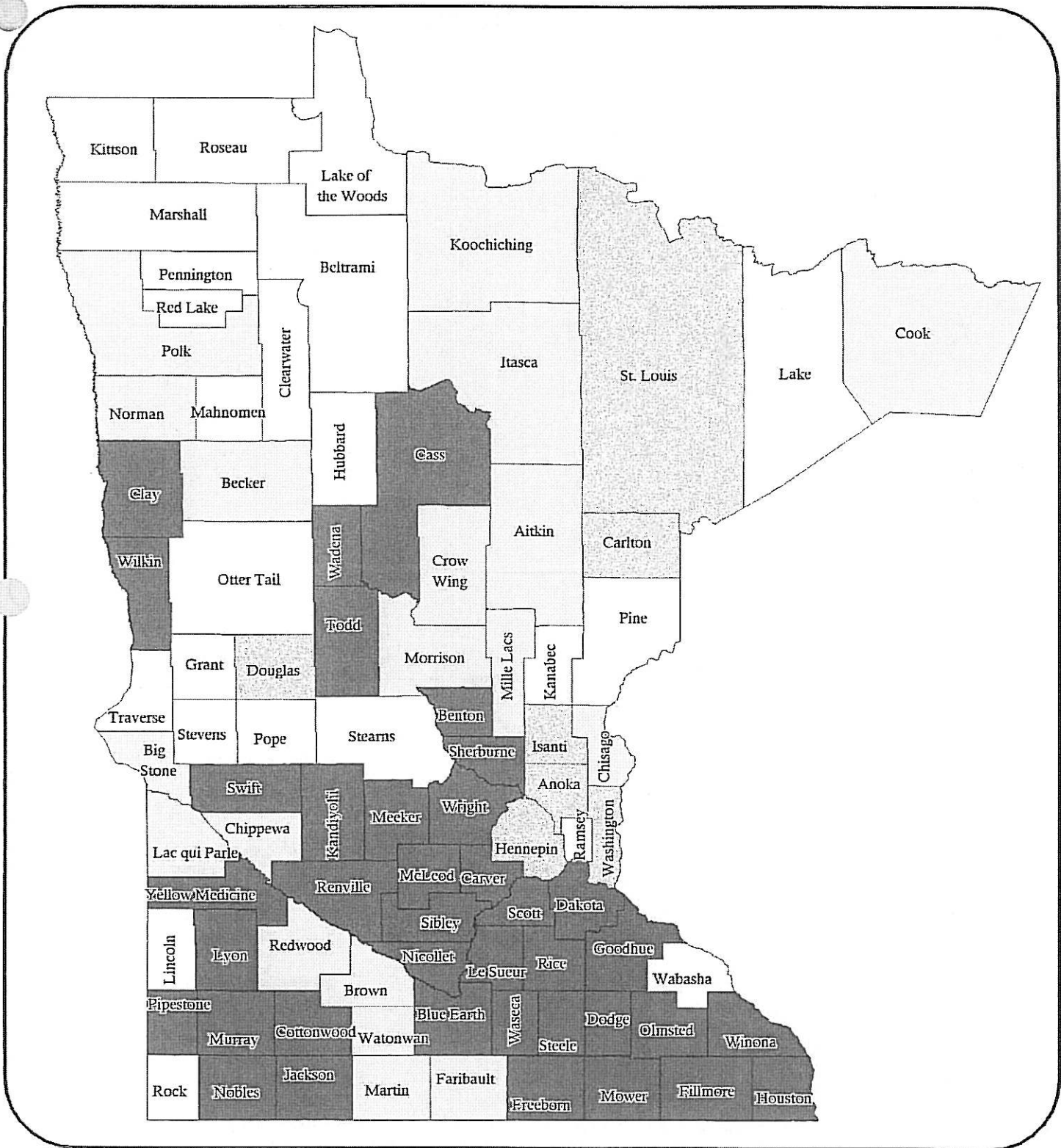




Table D - Dakota County Housing Units

Year	Number of Housing Units
1975	2,313
1980	2,853
1985	3,080
1990	3,317
1995	3,842
1997	4,065

Total Housing units added, 1975-1997: 1,752

Source: Dakota County Assessor's Office

The findings of the American Farmland Trust study confirms the strength of zoning. The study compares the number of building permits approved in Carver County with those approved in Anoka County between 1983 and 1993.²¹ During this period, triple the number of building permits were issued in the rural portions of Anoka county as issued in the rural townships of Carver. Significantly, Carver County implemented 1/40 acre agricultural zoning in the early 1980's in order to ensure that landowners were eligible for the Metro Program. Anoka County communities did not.

Even though landowner participation in the Metro Program has been essentially static in recent years, agricultural zoning has held intact. The question always remains whether or not agricultural zoning will hold in the future. According to the Metropolitan Council, Dakota County, for example, is projected to grow by 140,000 residents by the year 2020. Currently, more than 330,000 residents are concentrated in the northern one-third of the county.²² A total of 26% of Dakota County's land is inside the Metropolitan Urban Service Area (MUSA). The county comprehensive plan notes that in 1995, there were 21,000 acres of undeveloped land inside the MUSA.²³ There is little question that pressure for relaxing the agricultural zoning, particularly in those rural townships bordering the MUSA will become more intense. Although the county does not have zoning authority over the cities and townships, it is committed to preserving its agricultural land base. There have been some conflicts between the Metropolitan Council and the rural townships within the county as the Council recently designated areas within four of the townships for higher residential densities of 1 dwelling unit per 10 acres to accommodate projected metropolitan growth through the year 2040. Will Dakota County's rural townships "hold the line" on future growth pressures? The airport initiative in 1995 which would have consumed more than 14,000 acres of agricultural land in Dakota County is a good example of the vulnerability of open land near a major metropolitan region.

Rural development is another threat to the successes of zoning in Minnesota. One of the most perplexing obstacles in preserving a local community's agricultural land base is that of the existence and growth of large lot (5 to 10 acres or more) low density rural non-farm residences scattered in good agricultural areas. The problem has been identified in many agricultural communities throughout Dakota County. The situation was recently noted in the Land Use Policy Chapter of Dakota Communities Comprehensive Plans as follows:

"In the 1990's, over 3,000 housing units per year were built in the urban areas of Dakota County at the rate of approximately two to three units per acre. This residential development consumed over 1,000 acres of land per year. Although the number of new houses built in the rural areas was significantly less, the lot sizes are typically 5, 10, or 20 acres. At this rate and density, scattered rural development uses up an amount of land comparable to that used by suburban development."

"There are 40,700 acres (10%) of land devoted to single family housing units in the county. Large lot residential (with individual on-site wells and septic systems) uses 16,000 acres of this acreage. It is interesting to note that while a large percentage of the county's land use falls into the large lot residential category, there are only 3,300 homes that occupy this acreage."²⁴

This same category of concern is also found in the counties outside the Metro region as recently noted in the Stearns County Comprehensive Plan. Indeed, the inordinate amount of agricultural land experiencing this type of rural development is pervasive in many rural communities not only in Minnesota but throughout the U.S. Agricultural zoning ordinances that permit large lot development of non-farm dwelling units as an integral part of the ordinance only institutionalize this wasteful use of good agricultural land.

As an antidote, agricultural zoning ordinances referred to as area-based allocation zones require non-farm residences to be concentrated on a limited fraction of tracts of land leaving the remainder open and available for effective farming on relatively large units. Clearly, if the goal of a zoning ordinance is to preserve land for agriculture, an area-based allocation standard must be set so as to provide remainder areas comparable in size to typical commercial farming operations in the jurisdiction. Such area-based zoning allocations can be critical to developing and implementing a sound agricultural zoning ordinance.

Despite some problems, however, there are many reasons why local jurisdictions in Minnesota select agricultural zoning as a primary complement to other land uses, including residential, industrial, and commercial zoning.

The case of the small city of Miesville in Dakota County is demonstrative. The city has a population of about 200 and an area of about two square miles or approximately 1,280 acres.²⁵ One thousand acres are farmed in the Miesville environ.

When adopting its agricultural zoning ordinance in 1978, Miesville officials enunciated five specific methodologies for achieving their agricultural preservation goals:

1. Non-farm residential development in the agricultural area should be limited to one home per forty acres on a lot of one-half acre.
2. County and state tax assessors should be notified when the plan is implemented in order to reduce rising tax assessments on farm land. (The city was responding to the tax incentive established by the Metro Preserves Program.)
3. No water or sanitary sewer services should be extended into agricultural areas by public authorities.
4. Tax revenues should not be used to upgrade the level of public service to residents in the farming area during the following ten to fifteen years of the implementation of zoning.
5. Commercial and industrial uses should be discouraged in farming areas.

These policy methodologies assisted in the achievement of the goals this small Minnesota community had hoped to achieve. In fact, now twenty years later, Miesville has kept its agricultural zoning program in place and has done a remarkably good job in preserving the agricultural land located within its city limits.

In addition to agricultural land preservation, there are other important goals of agricultural zoning ordinances as implemented by diverse Minnesota counties. For example, Blue Earth County sees agricultural zoning as fostering environmental values. The ordinance states the importance of "preserving woodlands and other areas of aesthetic and scenic value which, because of their physical features, are desirable as water retention areas, natural habitats for plant and animal life, green space."

Other communities see the preservation of agricultural land as an important element in their overall land use goals. Since many counties in Minnesota have a very heavy economic investment in their agricultural industry, zoning is also used as a means to protect that investment.

Zoning, of course, is based on the police power, and is used as well to protect the public health, safety and welfare, to protect property values and to prevent conflicts among adjoining land uses.

C. *General Observations*

Agricultural zoning is not perfect. It does not provide permanent long-term protection to agricultural land. It can be changed through rezonings, variances and if not enforced properly in a

local jurisdiction, it simply will not work effectively.

However, it does form an extremely important underpinning to other agricultural preservation programs such as agricultural districting and the purchase and transfer of development rights which will be discussed later on in this report. It integrates land use planning for agricultural purposes with other long established zoning practices for residential, commercial and environmentally sensitive lands.

Agricultural zoning is an official expression by the implementing local jurisdiction that agriculture is the primary use of land in that portion of the county or township where it has been so designated.

The Green Acres Program

A. *Background*

The Minnesota Agricultural Property Tax Law (Green Acres Program) was implemented in Minnesota in 1967. The primary intent of the law was tax relief and not agricultural preservation. With the introduction of the Metro Program in 1980, followed by the Statewide Program in 1984, much more diversified and comprehensive approaches to agricultural preservation have emerged. In part this was a result of the inherent limitations and deficiencies of differential assessment as instituted by Green Acres.

The key factor which drove the establishment of differential assessment programs in the 1960's was the heavy increase in real estate taxes that farmers were experiencing on land farmed near rapidly expanding urban areas. State legislators were concerned that higher real estate taxes would force farmers off the land. Given that real estate taxes often account for as much as 2 to 5% of the total expenses incurred by a farmer on an annual basis there was a realistic basis for these concerns.

The Green Acres program provides that certain property owners (not necessarily "farmers") engaged in agricultural activities can apply for deferment from higher real estate tax valuations and continue to have the property taxed on the basis of its valuation for farm purposes. These deferments also encompass payments or any special assessments which local governments might levy based on water, sewer, and other public facility improvements that adjoin a landowner's property.

In order to qualify for the Green Acres program a landowner must own at least 10 acres that were used primarily for agricultural purposes in the year preceding the assessment. The land must either be the homestead of the applicant, farmed in conjunction with the homestead, or have been in the family for at least seven years. Additionally, the owner must be able to verify a minimum gross annual income of \$300 plus \$10 per tillable acre.

The Green Acres Program, unlike the Metro Program or the Statewide Program, does not require eight year or any length covenants on the land, nor does it specify that agricultural zoning must be in place as a prerequisite for enrollment in the program. It is simply an agricultural real estate tax abatement program with very limited enrollment qualifications required.

B. *Experience Under or Related to Green Acres*

As of 1997 the Green Acres Program has an enrollment of 1.2 million acres of land in 25 Minnesota counties.²⁶ Consistent with the overall purpose of the Green Acres Program to assist landowners near urban areas encountering higher real estate taxes, 70% of the acreage in Green Acres is in the seven county metropolitan region. The only county outside the metro region with significant acreage in Green Acres is Wright County which has 334,189 acres enrolled. As we have seen, Wright County, located to the northwest of the Twin Cities is one of the faster growing counties in Minnesota. It is also one of the three counties that has participated in the Statewide Program. (Appendix C shows the Green Acres effect on farm land market value taxes payable in 1997.)

Statewide, with the exception of Wright County, the Green Acres program has had little participation. Real estate taxes on agricultural land in most of greater Minnesota have been kept at a level that apparently has not attracted rural landowners into Green Acres.

In reviewing the enrollment of parcels in Dakota County in both the Green Acres and Metro Preserves programs no definitive patterns emerge which lead to any conclusions as to preferences of landowners participating in either program. In other words parcels in both programs are scattered throughout the county. Significantly 18% of the land (or 36,540 acres) in the thirteen rural townships is enrolled in neither program.²⁷

We have seen that enrollment in the Metro and Statewide Programs requires an eight year commitment on the part of landowners. No such commitment is required under Green Acres and the penalty for withdrawing (repayment of current deferred taxes plus interest and special assessments) is hardly enough to discourage landowners from selling agricultural land for urban uses if the price is right. The price could well be right: for example, non-irrigated land in Dakota County sells for \$1200 per acre while irrigated parcels can bring \$2,200 or more per acre.²⁸ However agricultural land near the MUSA which is developable will sell for as much as \$5000 to \$12000 per acre.²⁹ This is a healthy differential, and one the Green Acres program alone will not overcome.

C. *General Observations*

In 1978, the Research Department of the Minnesota House of Representatives prepared a report on the Green Acres Law. Their recommendations are equally relevant today as they were over twenty years ago.³⁰

Recommendations:

- (1) That legislators address and clarify the purpose of the Green Acres Law. A dichotomy of expectations arises over whether the law is to provide tax benefits to farmers or to preserve agricultural land from urban development.
- (2) That the legislature address the question of sporadic application of the Green Acres Law over the state and within jurisdictions. The fact that some counties or cities apply the law and others do not in comparable situations constitutes inequitable treatment of taxpayers.
- (3) That the legislature consider withholding Green Acres benefits from landowners who are gradually selling housing lots from their farms. Such persons obtain a substantial unfair advantage over landowners who are unable to qualify for Green Acres coverage. It is of dubious value to local jurisdictions to forego tax revenue and defer payment of special assessment for the sake of perpetuating the "farming" operation of a farmer developer.

Transfer of Development Rights**A. *Background***

Earlier in this report, the relationship of the preservation of agricultural land to the broader context of growth management was discussed. The concept of containing urban sprawl by encouraging more compact urban development, infilling of areas inside urban growth boundaries and improving the infrastructure and economic well being of inner cities were all mentioned as "growth management" antidotes to urban sprawl. Indeed, providing for water, sewer and suitable land uses for residential and other types of development to occur are similar effective strategies of growth management that also can contribute directly to the preservation of agricultural land. Growth management should be an integral part of agricultural land preservation.

It is within this framework that the transfer of development rights (TDR) should be viewed and has a level of currency. A balance is required: while there is a clear need to preserve agricultural lands, there is also a need for appropriate development in suitable domains. The transfer of development rights is a tool that can be used, if the circumstances are sufficiently propitious, to help with this balance.

As its name suggests, the transfer of development rights process allows development credits to be transferred from one area where development is not wanted to another area where it is. Local governments, working in concert, identify those areas that are to be protected from development and those areas that are suitable for development.

The transfer of development rights is a trading process that is not suitable to all jurisdictions. A TDR requires two essential elements:

- 1) Areas or districts that are to receive development rights must be so designated. These "receiving" areas are typically near existing development and where water, sewer, roads, and other public facilities and services are already in place or planned to serve the additional development. In addition, these areas should have a perceived need for the development so that it is financially attractive and feasible for developers to buy development rights and build there at higher densities.
- 2) The areas or districts that are to send development rights (sending areas) are usually in the process of being zoned for the first time or having the existing zoning strengthened. Landowners in such "sending" areas would, in compensation for the loss of equity due to the new zoning, be granted development rights or "credits". However, those rights could be sold only to realtors or developers for use in higher density development in the receiving areas.

In establishing these two categories of areas, "sending" and "receiving", the local governments should ensure that the total number of development rights made available for sale in the sending area is roughly equal to the total number that can be used in the receiving area. In this way, those who wish to sell development rights have a definable market. Once this rough balance is established by the local governments, the transfer of development rights depends upon a private negotiation between the landowner and the developer. The purchaser (developer) must determine the value he or she is willing to pay based on how many additional units he/she believes can be sold and at what price. The seller (landowner), of course, must be satisfied that the price is reasonable.

B. *Experience with TDRs.*

According to the American Farmland Trust, about 45 local jurisdictions have enacted ordinances allowing for the use of TDRs.³¹ The New Jersey Pinelands Commission has created a broad TDR program within that state to preserve farmland and environmentally sensitive lands.³² Of all these jurisdictions, Montgomery County, Maryland has had the most success. To date, 38,251 acres of agricultural land in Montgomery County has been preserved through the use of TDRs.³³ TDRs can serve as a potentially useful supplementary preservation tool in Minnesota.

Purchase of Development Rights

A. *Background*

The use of Purchase of Development Rights (PDR) as a way to permanently preserve agricultural land has grown steadily over the years. Starting with the first purchase in Suffolk County, Long Island, in 1976, the number of states implementing PDRs (otherwise called easements) has increased to twelve. A number of local jurisdictions have established their own programs as

well.

A quick overview of the nature of development rights is important to assessing their role as an agricultural preservation tool.

Owners have certain rights to the use of land but those rights can only be exercised within the framework of local, state and federal land use laws and regulations. Usually included among these basic rights are the following rights:

- to use the land for homestead purposes.
- to use the land for farming or forestry purposes.
- to extract minerals from beneath the land's surface.
- to fence or post the land to prevent public trespassing.
- to sell the land or to leave it to heirs.
- to develop the land for residential, industrial or commercial purposes.

The value of the right to develop, commonly referred to as the development right, depends on factors such as the amount of acreage and the existing zoning. Development rights for residential development are usually expressed in terms of the number of dwelling units allowed per acre or fraction of an acre. The development rights for commercial or industrial development is usually expressed in terms of square footage or as a ratio of floor to land area.

Development rights can be severed or removed from a parcel of land in a number of different ways. In all cases, the landowner retains ownership of the property and can exercise his/her other property rights subject to the conditions under which the development rights were removed. The landowner not only benefits financially from the removal of the development rights but also participates directly in preserving agriculture or other environmentally significant land.

These are the various selling options:

- A landowner may sell his/her development rights to a governmental agency including state, county or township governments which then retires the rights.
- A landowner may sell the development rights to a developer or builder who then can use them in a designated development location (see TDRs).
- A landowner may donate the development rights to a private land trust or other qualified organization to create a conservation easement on the land and receive a

federal tax credit on adjusted gross income (Donation of Conservation Easements).

In most cases, once removed from the land development (easement) rights are severed in perpetuity.

To qualify for a charitable deduction under the Internal Revenue Code, a conservation easement must be:

- granted in perpetuity;
- donated to a qualified organization or agency;
- donated exclusively for conservation purposes which includes the preservation of agricultural land.

The Internal Revenue Code allows a landowner to deduct in a single year an amount for the value of the donation that does not exceed 30% of adjusted gross income. If the donation value is greater than that amount, deductions (not to exceed the 30% limit) can be made in five succeeding years or until the full value has been deducted, whichever comes first.

B. *Experience with PDRs:*

Acreage Permanently Protected Is Small

Although 14 states and a number of individual counties have implemented Purchase of Development Rights programs over the past 20 years, the amount of acreage protected still remains relatively small.

Efforts to preserve agricultural land through the purchase of development rights has been bicoastal in nature with primary emphasis coming from a number of Northeastern states.

Cost Is a Factor

To date, slightly less than 500,000 acres of agricultural land has been preserved through these programs at a cost of over \$900,000,000.

Purchase of development rights programs have been used primarily in states and local jurisdictions that do not have comprehensive agricultural zoning. For example, when the state of Massachusetts implemented its PDR program in 1977, the state agriculture commissioner stated that one of the primary reasons this approach was taken is that landowners would not accept agricultural zoning. Therefore, many states and local jurisdictions that have implemented PDRs show a "checker board" pattern of land preserved that often is interspersed with land that has been developed. A number of states including Massachusetts, Connecticut, New Jersey and Vermont have not

implemented agricultural zoning to complement their PDR efforts. The state of Maryland has, however, and has achieved good degree of success by utilizing PDRs in conjunction with agricultural zoning.

The cost of purchasing development rights is high. Development right purchases have averaged \$2,000 per acre. Large blocks of land have not been preserved in many cases since the combination of eligibility requirements and the fact that each individual landowner must make a decision on whether to voluntarily sell their development rights means that it is very difficult to get large contiguous blocks under permanent protection. This is one reason why the state of Maryland tries to purchase at least one hundred acres of agricultural land as a minimum size requirement. If as much as 1,000 to 1,500 contiguous blocks of land can be purchased over a period of time, then it will prevent development from occurring on parcels interspersed with permanently protected agricultural acreage.

C. *General Observations*

Interest in PDRs continues to grow throughout the U.S. The idea of permanently preserving agricultural land has great currency among land use planners and private non-profit environmental organizations.

The donation of conservation easements, although providing permanent protection to agricultural land, is not a viable option to many farmers since they do not have high incomes and therefore cannot take advantage of the IRS provision which allows for a 30% deduction on their adjusted gross income. Consequently, this technique is more attractive to wealthy landowners.

The Purchase of Development Rights by state or local governments is, however, a viable preservation technique and certainly should be explored for potential use in Minnesota. However, as pointed out earlier, the costs are very, very high and a funding mechanism would have to be created.

The payment of conservation credits under the Metro Preserves and the Statewide Program cost about \$500,000 to \$600,000 per year to secure eight-year covenants on agricultural lands. PDR program costs would be much higher.

However, a very targeted PDR program that would permanently preserve agricultural land along the MUSA and near other rapidly growing urban areas statewide has relevancy within the current mix of preservation programs and should be explored.

Right to Farm Laws

A. *Background*

As discussed in Section II (National Overview), Minnesota has a statewide Right to Farm Law. It was also noted that some local jurisdictions including townships in Dakota County are passing their own local ordinances.

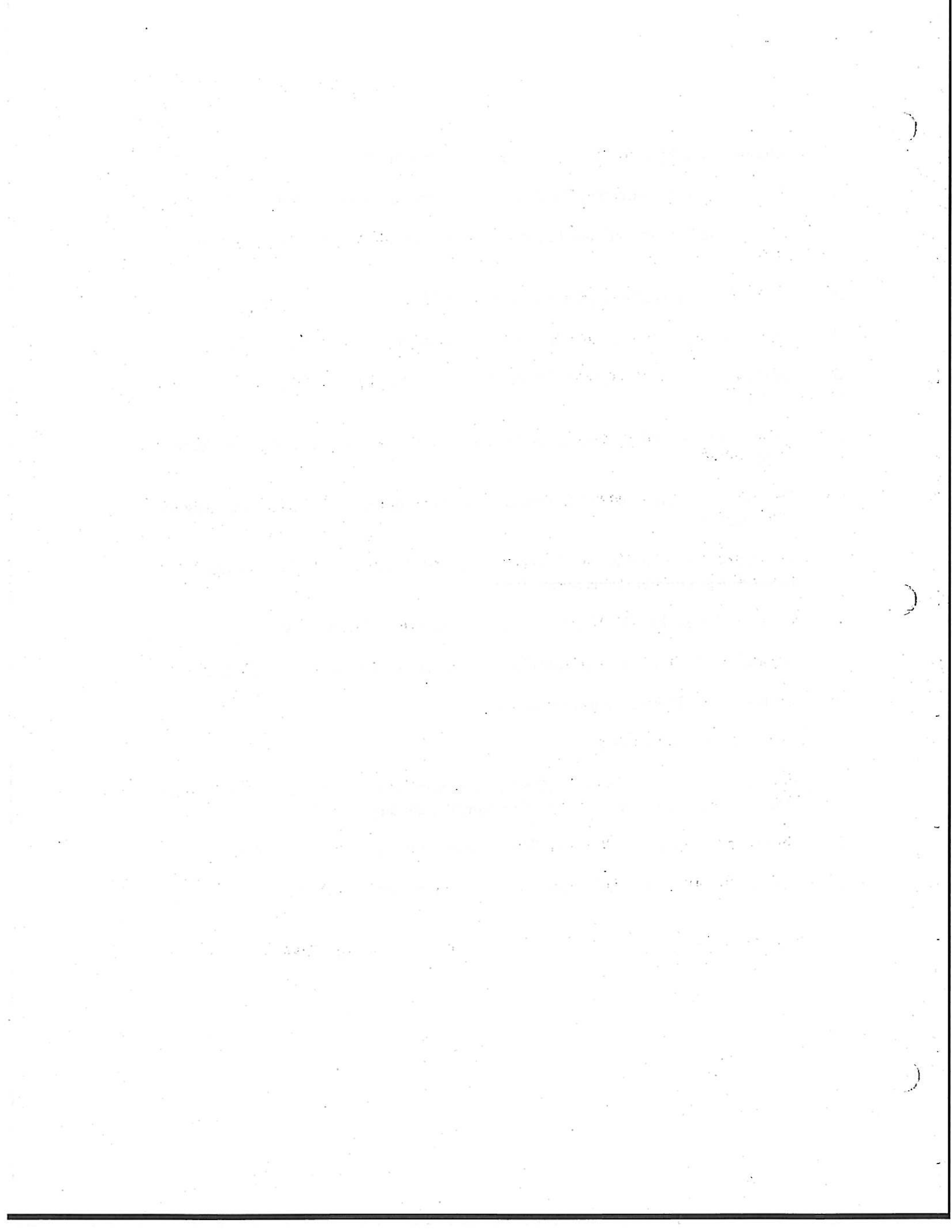
B. *Experience with Right to Farm Laws*

Little information is available on the enforcement and application of Right to Farm laws nationwide and in Minnesota. The Iowa court case as mentioned in Section II illustrates the most recent legal decision on the application of these ordinances at the local level. Given the potential increase on Confined Animal Feeding Operations in Minnesota, Right to Farm laws most likely will become very important in the future as conflicts between farmers and non-farm residents increase.

ENDNOTES

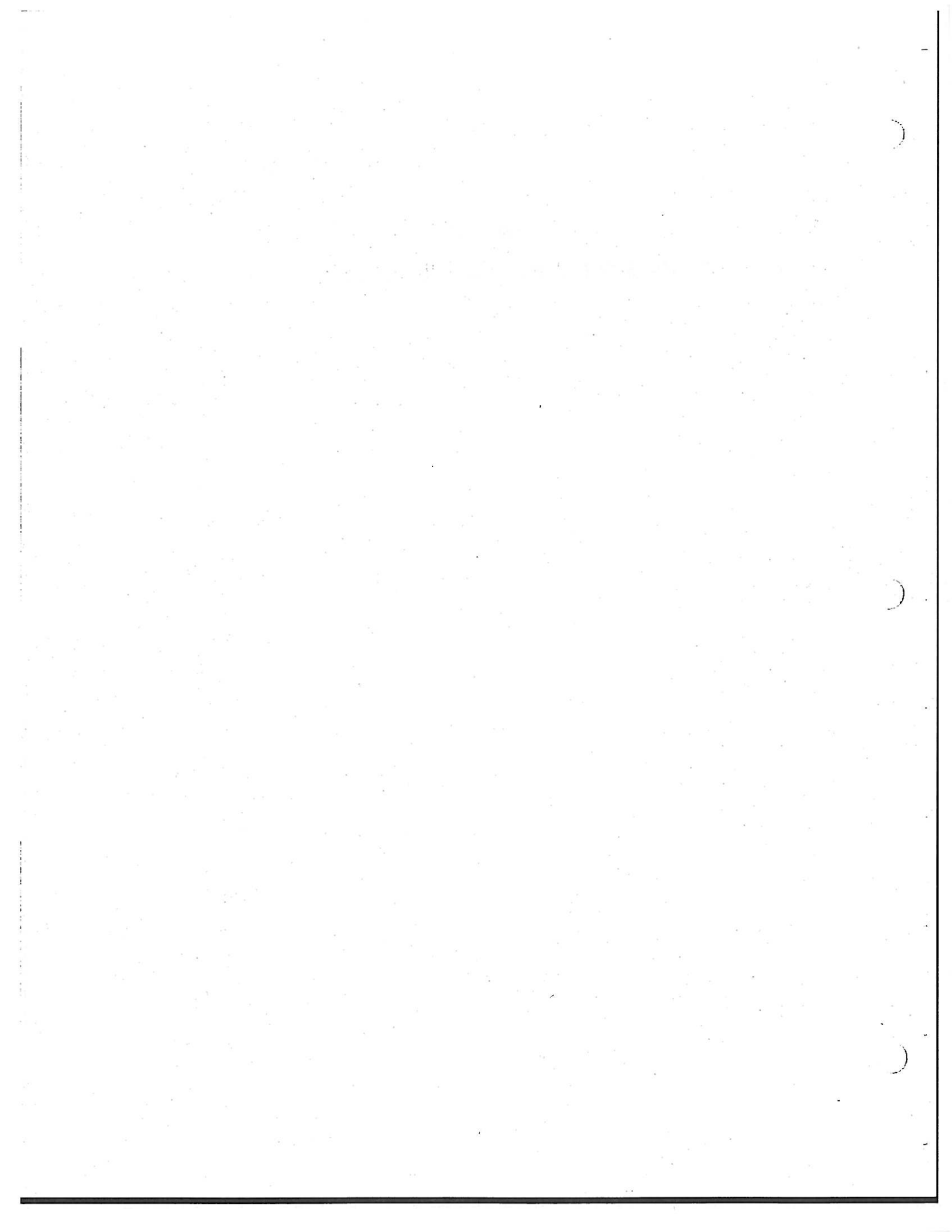
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SECTION V

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS



SECTION V

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

1. **Refocus the Statewide program:**

Findings:

- The Metro Program has been largely successful in serving as an important incentive for county and townships to designate land for long-term agricultural use in the Metro region. The program is for use exclusively in the rapidly urbanizing Twin Cities region.
- Unlike the Metro Program, which is targeted to uniformly high growth areas of the Metropolitan region, the State Program is targeted to the entire spectrum of the remainder of the state, including areas that are relatively vulnerable to development and also those with low development risk.
- The stakeholders have expressed opinions that the preservation programs apparently do not target areas that are truly at risk of conversion of productive agricultural land to other uses. In summary, the comments reflected the belief that benefits were provided in areas with low risk of land conversion, land was being preserved for insufficient periods of time and benefits were not sufficient to encourage participation in areas that should be targeted for participation.

Conclusions:

Given the limited resources for the entire gamut of agricultural land preservation programs, the Statewide Program should be refocused to serve primarily areas of the state of Minnesota with greatest need; the Metro Program already is largely successful with its built-in focus on the rapidly urbanizing Twin Cities region.

Generally, the Statewide Program needs to address in first priority those areas of Minnesota outside the metropolitan region that are experiencing the highest potential development growth in their proximities and have the stronger agricultural land base, production and investments to protect. Areas of lesser need and landowners with lesser exposures and incentives would be deferred. Refocusing on higher growth areas will have the added benefit of improving revenue to the state conservation fund from increased recordings of mortgages and deeds.

Recommendations:

Refocusing should be implemented specifically by targeting of the Statewide Program to specific counties and subregions based on the following criteria, and any others that would assist the targeting:

- **Projected population growth for the next 10 years for the county as a whole or communities within the county or growth nodes. Map II identifies and illustrates the location of these top growth areas. With the exception of Crow Wing County, the growth areas are contiguous to the seven county metropolitan area and form a continuous growth belt from Rochester to St. Cloud.**
- **Communities within counties along growth corridors in close proximity to the metro region:**
 - **Major highway corridors such as Interstates 94 and 35, US Highway 52, provide access to rural counties outside the Metro Region, stimulating the growth of bedroom communities and rural development of five and 10 acre residential lots. These major highway corridors should be considered in selecting the targeted counties that would be part of the refocused Statewide Program.**
- **Counties experiencing rural development around urban areas (one dwelling/five or 10 acre residential estates).**
 - **It is recommended that counties and communities with the highest projected population growth for the next ten years as previously discussed be examined for the growth patterns they are currently experiencing. If scattered rural development on large lots is occurring in the townships near urban centers, or growth corridors, then these communities should clearly be given consideration as targeted counties. For example, in the Stearns County Comprehensive Plan for the year 2020, it was noted that the average lot size has increased three-fold in the last few years increasing from 1.25 acres per lot to 4.16 acres. Furthermore, it was also pointed out that of the nine townships with the greatest number of acres platted, eight are within the eastern half of the county along a growth corridor.**
- **Counties having a strong agricultural land base, significant crop and livestock production and investment in agricultural infrastructure:**
 - **Given the diversity of agricultural production in Minnesota, it is difficult to establish specific benchmarks in terms of the agricultural land base, crop/livestock production and investment in agricultural infrastructure. Counties with heavy livestock production will have a much higher investment in buildings and other related facilities than those counties which are primarily in crop production. The exception would be in those crop producing counties which have large landowner investments in irrigation facilities. Counties with an average market value of agricultural products sold of \$20 million or more, as determined by the Agricultural Census, should be considered as a target county. Another consideration: at least one third of the land in the county in agriculture as defined by the "land in farms" category under the Agricultural Census. In addition, the estimated market value of land and buildings should be in excess of approximately \$100 million. These are suggestions only and**

should not prevent a small county with limited acreage in agriculture from being considered, particularly if this county is experiencing rural development pressures.

- **Counties that need to strengthen their agricultural preservation efforts.**
 - **In determining the level of agricultural preservation effort within a county which might be targeted, the following considerations should be taken into account:**
 - (1) **Has the county updated its comprehensive plan recently?**
 - (2) **Is there any commitment to agricultural preservation including the implementation of an agricultural zoning ordinance?**
 - (3) **If an agricultural zoning ordinance is in place, does it have a minimum density requirement of one dwelling unit per 40 acres? If a county has an outdated comprehensive plan and has not considered agriculture as a primary land use in its planning process, and has not implemented an agricultural zoning ordinance as many counties now have in Minnesota, the county should clearly be given consideration as a targeted community.**

2. Strengthening the Statewide Program.

Findings:

- The qualification of land (comprehensive plans and zoning) alone did not assure that individual landowners enrolled land in the Metro program system. The highest annual percentage of eligible land enrollment that has been reached is 40%. Decisions at the enrollment level are made by individual landowners on a case-by-case basis, weighing the basket of benefits they receive against the cost, both monetary and other, to them of covenanting.
- There is evidence of some positive correspondence between the amount of the property tax credit offered by the Metro Program, and the level of participation /enrollment of the landowner farmers. Obviously, the greater the tax credit the more appealing enrollment is, but other program benefits also enter in the equation for farmers.
- The Statewide Program has basically the same features as the Metro Program except the Statewide Program is limited to granting a flat monetary benefit of \$1.50 an acre.
- The stakeholders have expressed opinions that the preservation programs apparently do not target areas that are truly at risk of conversion of productive agricultural land to other uses. In summary, the comments reflected the belief that benefits were provided in areas with low

risk of land conversion, land was being preserved for insufficient periods of time and benefits were not sufficient to encourage participation in areas that should be targeted for participation.

Conclusions:

The landowners must be sufficiently enticed by the prospect of enrolling in an agricultural districting program to overcome many other interrelated considerations, including the farmers' expectations about farming income, the revenue he or she could receive as a result of selling land free of use encumbrances, either now or in the future.

There is a need to strengthen the Statewide Program for it to be more attractive for farmer participation. The amount of the property tax credit is obviously a major consideration, but the other farming commitment benefits offered by the Statewide Program should be reviewed as well.

Concurrently, changes should be considered to enforce or extend farmer commitments to the Statewide Program in order to provide a greater and longer benefit to those jurisdictions that endorse the program.

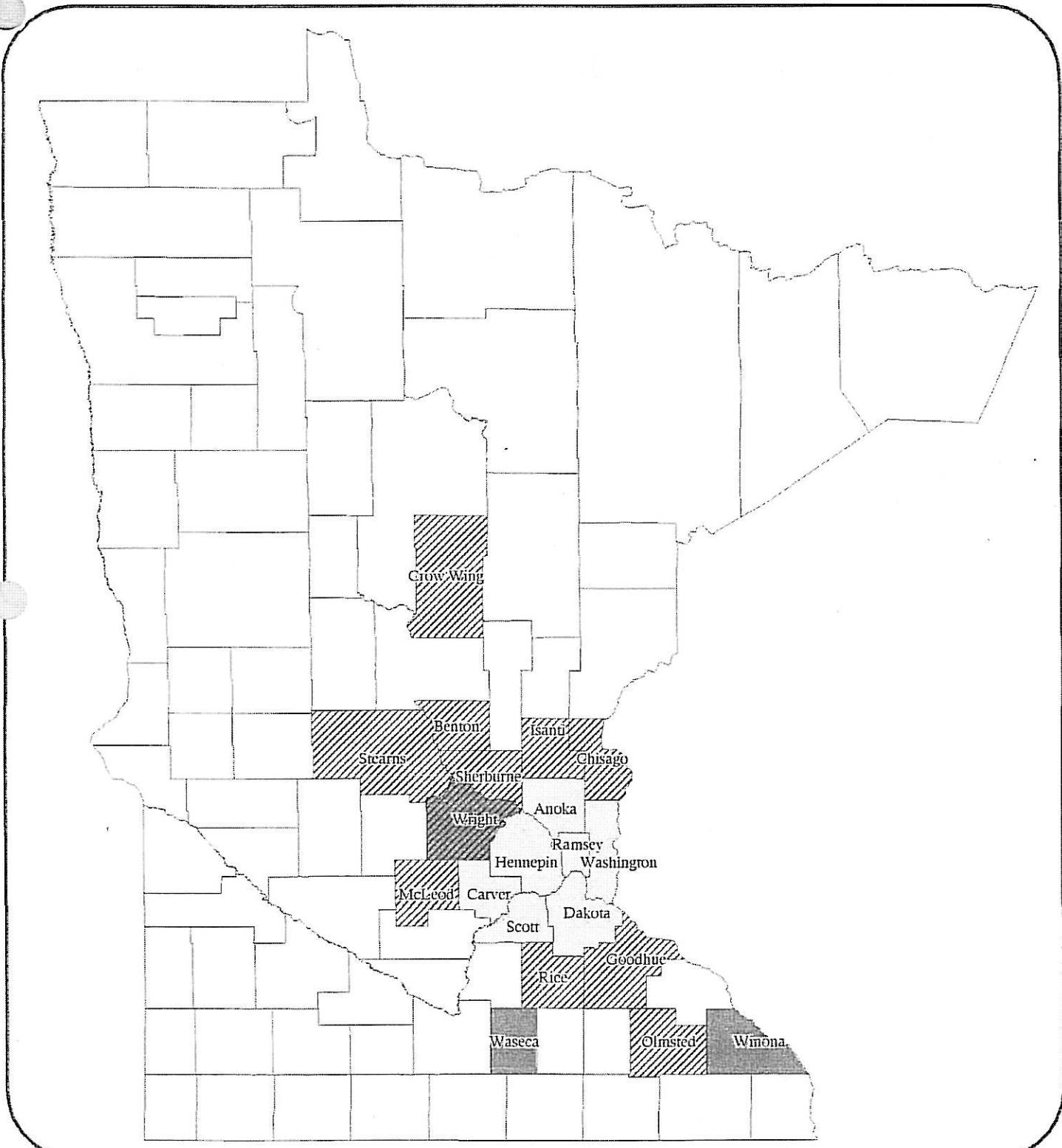
Recommendations:

It is suggested that consideration be given to the following modifications in the Statewide Program:

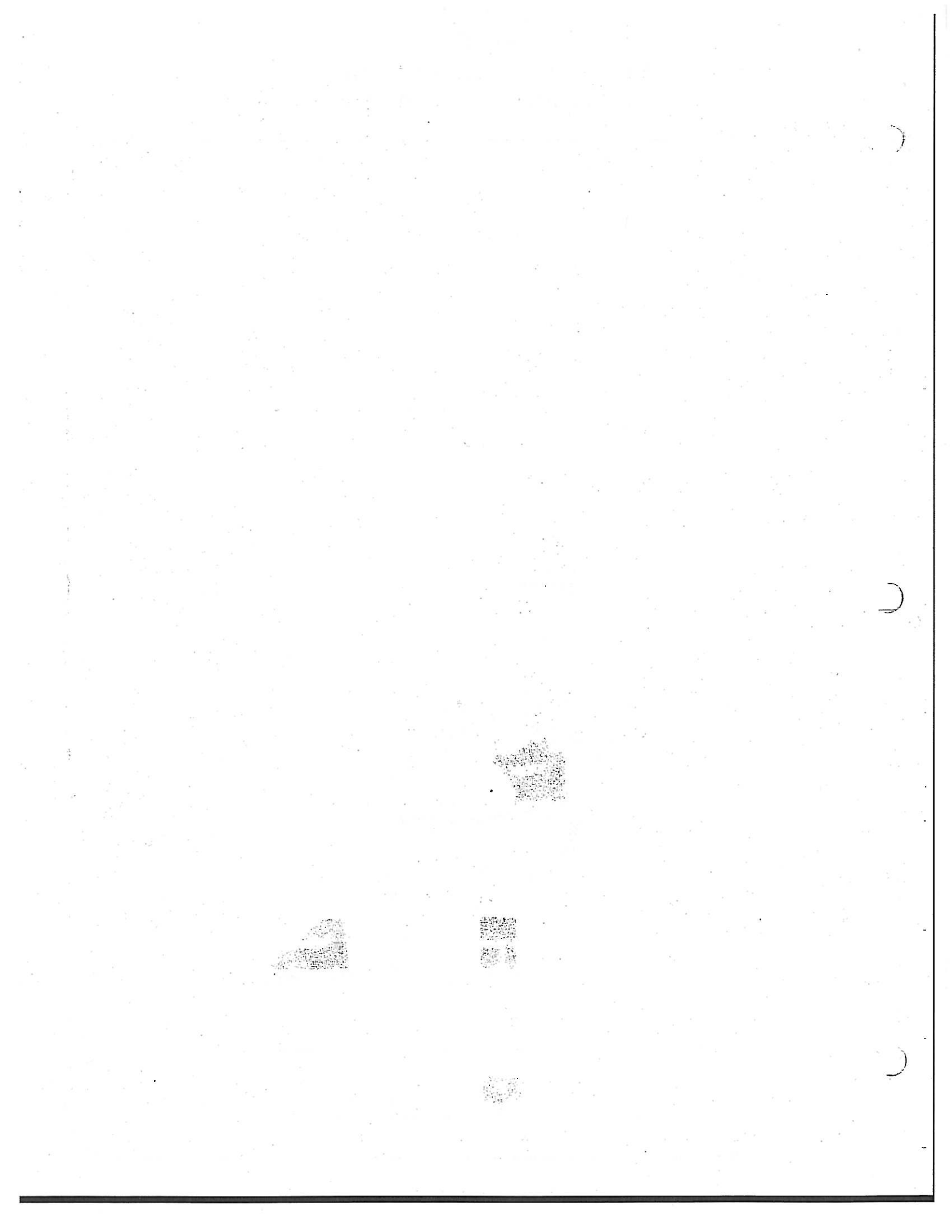
- **Increase the property tax credit from a flat \$1.50 per acre to approximately \$3.00 or more. Although such an increase will necessitate a source of increased revenue for the Statewide Program, it is believed that a tax credit increase is central to the attractiveness of the program to landowners. Of course, if the revenues supporting the program do not increase or increase at an insufficient rate, there is greater risk of program costs exceeding program revenues. Many variables are involved. (See in this regard the discussion below with respect to instilling confidence in the long-term funding of the Statewide Program.)**
- **Increase the enrollment period in the Statewide Program from eight to 10 years.**
- **Retain the feature for the automatic continuation of the enrollment period until the landowner files an expiration notice.**
- **Retain the feature which provides for an immediate suspension of the tax credit should the landowner file an expiration notice.**
- **Strengthen the prohibition of annexations of any land enrolled in the Statewide Program.**

Map II

Agricultural Preserve Counties Top Population Forecast Areas



11 Top Greater MN Population Gainers 1995-2020
 Statewide Agricultural Preserve Participants
 Metro Counties



- Continue to emphasize density based zoning with maximum lot size for non-agricultural use.
 - Provide for differential assessments as well as property tax credits.
3. Instill confidence in long-term funding of the Statewide Program:

Findings:

- The Metro Program has remained solvent for the time of its existence, although cross subsidization occurs among the counties involved.
- General confidence is held with respect to funding of the Metro Program since should there be a shortfall, funds will be appropriated from the general fund.
- The Statewide Program has basically the same features as the Metro Program except:
 - a) The Statewide Program is limited to granting a flat monetary benefit of \$1.50 an acre.
 - b) There is no provision in the Statewide Program to the effect that should the conservation fund be insufficient to cover the tax credit, then funds will be appropriated from the general fund.
- The Statewide Program has been limited to the three pilot counties. Three other counties have declined to participate in the Statewide Program because of concerns over long term financing.
- Long term financing of the Statewide Program is less secure than the Metro Program.

Conclusions:

Confidence in the long-term solvency of the Statewide Program, just as in the Metro Program, is equally important to local governmental jurisdictions as to the landowners themselves. The farmers are being required to sign eight-year covenants to participate in the Statewide Program, and yet have no assurances that funding will be sufficient to assure them adequate conservation credits over that period of time. Counties that have declined to participate in the program cited concerns over encouraging long-term landowner commitments to preservation without having reciprocal funding guarantees by the State. Counties would be liable to cover the costs of conservation credits which exceed the revenue generated through the local mortgage and deed transaction fee. Confidence in the long-term funding for the Statewide Program must be instilled.

Recommendations:

It is recommended that:

- **The fundamental long-term soundness and feasibility of funding the Statewide Program from the mortgage and deed fees be examined. While the conservation fund has remained solvent over the years, changes in the many variables affecting the land preservation programs could alter viability. For example, a substantial increase in the number of acres enrolled in the preservation programs will cause a corresponding increase in the value or costs of conservation credits. If the revenues supporting the programs do not increase or increase at a slower pace than the rate of participation, there is a risk of program costs exceeding program revenue. Such potential shortfalls would be covered by the state general fund in the Metro Program, but only by county general funds in the Statewide Program.**

A similar potential impact would result if the amount of the conservation credit to landowners increased, say from \$1.50 per acre to \$3.00 per acre, but the program revenues did not increase. On the other hand, when revenues increase there is a potential for increasing the amount of acres enrolled.

A Future Funding Analysis for the Minnesota Conservation Fund has been prepared to set out some of the various variables involved, their interrelatedness, and monetary consequences under certain limited specified assumptions and circumstances. This analysis constitutes Appendix A of the present study. While it in no way is to be interpreted as a forecast, the analysis contains several examples of outcomes that could be expected under differing assumptions:

Exhibit A - 3 to the analysis shows that, under certain specific assumptions, 2020 revenue and expenditures from conservation funds for the Agricultural Land Preservation counties and the Rapid Growth counties, with the conservation fee retained at \$5.00 and the conservation credit at \$1.50 per acre, could be expected to result in a deficit for the Minnesota Conservation Fund on the order of \$475,000.

Exhibit B- 3 shows that, again under specified assumptions and circumstances, but with the Conservation Fee increased to \$10.00 per transaction, the Minnesota Conservation Fund for the same counties in 2020 would register a \$261,000 surplus, with enrollment at approximately 900,000 acres.

Finally, Exhibit C-3 demonstrates that with acreage enrollment at the same level as in Exhibit B, but with the conservation credit doubled to \$3.00 an acre, the conservation fee set at \$17.00 per transaction would show 2020 Minnesota Conservation Fund net revenue of about \$108,000.

The "estimates" of program income contained in Appendix A and Exhibits are presented solely for illustrative purposes. There are virtually limitless illustrations that can be prepared for future analysis by changing the variables. The primary variables which affect future program funding include the amount of acres enrolled in the preservation programs, conservation fund revenues and the amount of conservation credits. Evaluating a variety of illustrations may be useful in determining the funding implications of certain goals for the amount of land to be enrolled in preservation programs. Conversely, adjustments in either the conservation fee or conservation credit can be evaluated in terms of impacts on program enrollment.

- A sliding scale conservation fee be considered. With a sliding scale, mortgage registrations and deed transfers involving progressively higher amounts would pay progressively higher fees.
- Provision should be made for the availability of state general funds if tax credit costs exceed available revenues for the Statewide Program.

4. Education and outreach benefits

Findings:

- The New York State Program has apparently incorporated a successful feature in the creation of local agricultural advising committees which help educate landowners on the value of enrolling in agricultural districts and assist in the enrollment process. This has helped to increase participation in the program.
- As the stakeholder interviews concluded, the strength of the agricultural economy is a key element in maintaining Minnesota's agricultural land base, and indirectly, key to the success of a program such as Metro.

Conclusion:

Real opportunities should be provided by the Statewide Program in terms of education and outreach, particularly to those areas that will not be targeted in the refocus efforts. Education and outreach may be equally important for land preservation enthusiasm as the monetary and tangible benefits discussed in (2) and (3) above.

Recommendations:

Funds should be provided by the state legislature to the Minnesota Department of Agriculture for the following:

- Provide for competitive grants from the Department of Agriculture in order to encourage agricultural land preservation efforts.

- **Provide for the creation of local agricultural preservation committees which would:**
 - **Increase awareness of agricultural land preservation.**
 - **Work closely with the state Department of Agriculture to identify and preserve agricultural land through zoning.**
 - **Encourage the development and improvement of the agricultural economy through promotion of marketing and other agricultural income enhancing enterprises.**
- **Establish a Voluntary Agricultural Preserves Program to foster recognition of agricultural preservation efforts.**
- **Establish a separate fund for use by the Department of Agriculture to create promotional materials for increasing awareness of agricultural preservation programs.**
- **Reserve a portion of competitive grants to allow for research and analysis of additional tools and incentives for agricultural land districting and preservation.**
- **Encourage counties, private non-profit organizations, and others, to look at alternative or supplementary preservation tools such as TDRs and PDRs.**

Agricultural Zoning

Findings:

- The Metro Program has been most instrumental in serving as an important incentive for county and townships in the Metro region to adopt comprehensive plans and agricultural zoning. The program is targeted at the rapidly urbanizing Twin Cities region.
- The comprehensive plans and zoning adopted have steadied the decrease in farmland loss to non-agricultural uses in the region, which is represented by high urban development pressures.
- The greater the enrollment by farmers in the Metro Program, the more likely they are to continue to support the comprehensive plans and zoning that underlie eligibility of land, and constitute the backbone of farm land preservation.
- Experience with the New York State Program indicates that while considerable land has been districted because of an "open policy" which does not require local zoning and planning, this has left much of the New York land near cities and suburban areas unprotected. Moreover, should the New York agricultural districts be terminated, there is no protective mechanism in place to prevent the land from being converted to non-agricultural uses. The same

findings are made with respect to the Michigan agricultural land districting program.

- Agricultural zoning has become the most used land preservation tool in Minnesota and the U.S. at large.
- Zoning works best in conjunction with other agricultural land and growth management tools.
- Many stakeholders expressed belief that a traditional density restriction of 1 per 40 is insufficient by itself and must be combined with other growth management tools.
- Districting programs, including the success of the Metro Program, have served to buttress the widespread use of agricultural zoning in Minnesota. In addition, the Statewide Program has encouraged comprehensive planning and agricultural zoning the three participating counties, as well as over a dozen other counties.
- In fact, rezoning and variances have not been pervasive in Minnesota, but pressure will build in the high growth rate areas.
- Landowners with land enrolled in the Metro or Statewide Programs will tend to reinforce the political will to maintain zoning and hold the line against developmental efforts.
- Rural development (on large lots) constitutes a threat to zoning which can be countered by the use of area-based allocation zones.
- Zoning is used in Minnesota not only for purposes of agricultural land preservation, but for environmental and economic preservation purpose, as well as other purposes within the purview of the police power.

Conclusion:

One of the basic values of the Statewide Program is expressed in its requirement that zoning be in place before land can become eligible. This relationship between agricultural districting and zoning should be enhanced by the Statewide Program in all ways possible.

Recommendations:

- **The Statewide Program should require density based zoning with maximum lot size provisions and clustering of non-farm residential units, one or two acre maximum parcels in the 1/40 agricultural zone (i.e. area based allocation zones).**
- **Formal maximum zoning densities of 1/40 acres should be incorporated into the Statewide Program.**
- **Grants should be provided to help produce model agricultural zoning ordinances.**

Green Acres Program

Findings:

- By itself, the Green Acres program is primarily a tax relief tool, and does not encourage zoning or long term commitments to farming by farmers.
- However, it enjoys significant enrollment in Minnesota where it has been in place for thirty years.
- Green Acres, by itself, will not seriously discourage landowner sales of agricultural land for non-farm use if real opportunities for development present themselves.
- To add new requirements, such as zoning, to an established program such as Green Acres would be extremely difficult politically, unless done in a larger context.
- Stakeholders criticize the Green Acres program as one which provides benefits to those whose intentions are to develop land at a later date and one which provides few impediments to doing so.

Conclusion:

The methods and goals of the Green Acres program should be made progressively more in sync with the Metro and Statewide Preserves program. The overall goals of the preservation programs should be predominant.

Recommendations:

- **Strengthen eligibility requirements for Green Acres as to parcel size and the gross agricultural income level including:**
 - **Require that the sales of agricultural products from Green Acres land generate at least \$200/acre.**
 - **Require that 51% of the land in Green Acres be qualified as tillable acres.**
 - **Require that the total acreage of land enrolled in the Green Acres Program by a landowner be a minimum of 20 acres.**
 - **Require that eligibility for Green Acres should be conditioned as is the Statewide Program; i.e., agricultural zoning required (1/40 acres).**
- **Land inside the MUSA currently in the Green Acres Program should be phased out over a five year period.**

Transfer of Development Rights

Findings:

- Overall, TDRs have not been utilized as much as they should be in the U.S. due to the complexities involved in the assignment of development rights to landowners and due to administrative procedures required to remove the development rights on property in one area of a local jurisdiction and move them to another property located elsewhere in the county or township.
- The supply of available development rights must be sufficient to attract developers to bid on these rights with individual landowners and, conversely, the demand for residential development must be strong enough to stimulate interest on the part of builders that the purchase of these rights is economically justified in their overall development plans.
- TDRs work most effectively in areas of a county or township that have no zoning or liberal zoning of one dwelling unit per five or 10 acres. TDRs would be created to serve as compensation to landowners for a significant strengthening of zoning.
- TDRs could be one more agricultural land preservation tool useful for bringing new zoning or strengthened zoning to well defined "sending" areas in Minnesota, provided that matching "receiving" areas can be identified where additional growth can be accommodated.
- TDRs can work effectively in certain cases to preserve open space and environmentally sensitive areas.
- In Minnesota, TDRs are being utilized to preserve land in the Green Corridor Project.

Conclusion:

There are opportunities for the use of TDRs in Minnesota. These opportunities should be identified and pursued.

Recommendation:

The Minnesota Department of Agriculture should analyze and summarize the effectiveness of TDR programs as an agricultural land preservation tool, based upon similar programs around the country. The Department should also summarize efforts currently in progress through the Green Corridor Project in Chisago and Washington counties, with respect to TDR concepts. The Green Corridor Project has received funding through the Legislative Commission on Minnesota Resources (LCMR) and will result in the development of a TDR program concept in Chisago County. Preliminary funding has been committed for future implementation strategies for the Green Corridor Project, including the TDR concept.

The Department should incorporate its findings on TDR applicability for agricultural

land preservation in Minnesota with the initiatives of the Green Corridor Project. The Department may wish to update the "Alternative Tools" section of the 1996 "Planning for Agricultural Land preservation in Minnesota" handbook with these findings. Such information would be appropriate for redistribution to all counties in the state. The information would be relevant for direct consultation with the high growth counties which have been targeted for land preservation efforts, particularly those with weaker growth management controls.

Depending upon the above analysis and findings, the Department may develop an essential role in assisting counties with TDR education, program guidelines and model regulations.

Purchase of Development Rights

Findings:

- The PDR tool is expensive to use.
- In many, but not all cases, PDRs are not used in conjunction with comprehensive, protective agricultural zoning..
- PDRs have not preserved large contiguous blocks of agricultural land.
- The application of PDRs in Minnesota which has a large agricultural base is more limited.
- Conservation easements can be effectively utilized in instances where landowners are willing to voluntarily donate their development rights and receive a tax deduction through the Internal Revenue Service.

Conclusion:

Just as with TDRs, opportunities must be explored for the use of PDRs in Minnesota. The PDR program should be integrated as fully as possible into the overall agricultural land preservation campaign.

Recommendations:

The Minnesota Department of Agriculture should analyze and summarize the effectiveness of PDR programs as an agricultural land preservation tool, based upon similar programs around the country. The analysis should include funding options and the relationship to funding issues for the State Agriculture Preserves Program. The Department

should also summarize efforts currently in progress through the Green Corridor Project in Chisago and Washington counties, with respect to PDR concepts. The Green Corridor Project has received funding through the Legislative Commission on Minnesota Resources (LCMR) that will result in the development of a PDR model program for Washington County. Preliminary funding has been committed for future implementation strategies for the Green Corridor Project, including the PDR program.

The Department should incorporate its findings on PDR applicability for agricultural land preservation in Minnesota with the initiatives of the Green Corridor Project. The Department may wish to update the "Alternative Tools" section of the 1996 "Planning for Agricultural Land Preservation in Minnesota" handbook with these findings. Such information would be appropriate for redistribution to all counties in the state. The information would be relevant for direct consultation with the high growth counties which have been targeted for land preservation efforts, particularly those with weaker growth management controls.

Depending upon the above analysis and findings, the Department may develop an essential role in assisting counties with PDR education, program guidelines and model regulations. The Department should also investigate the eligibility for program activity funding assistance through the U.S. Department of Agriculture.

Right to Farm Laws

Findings:

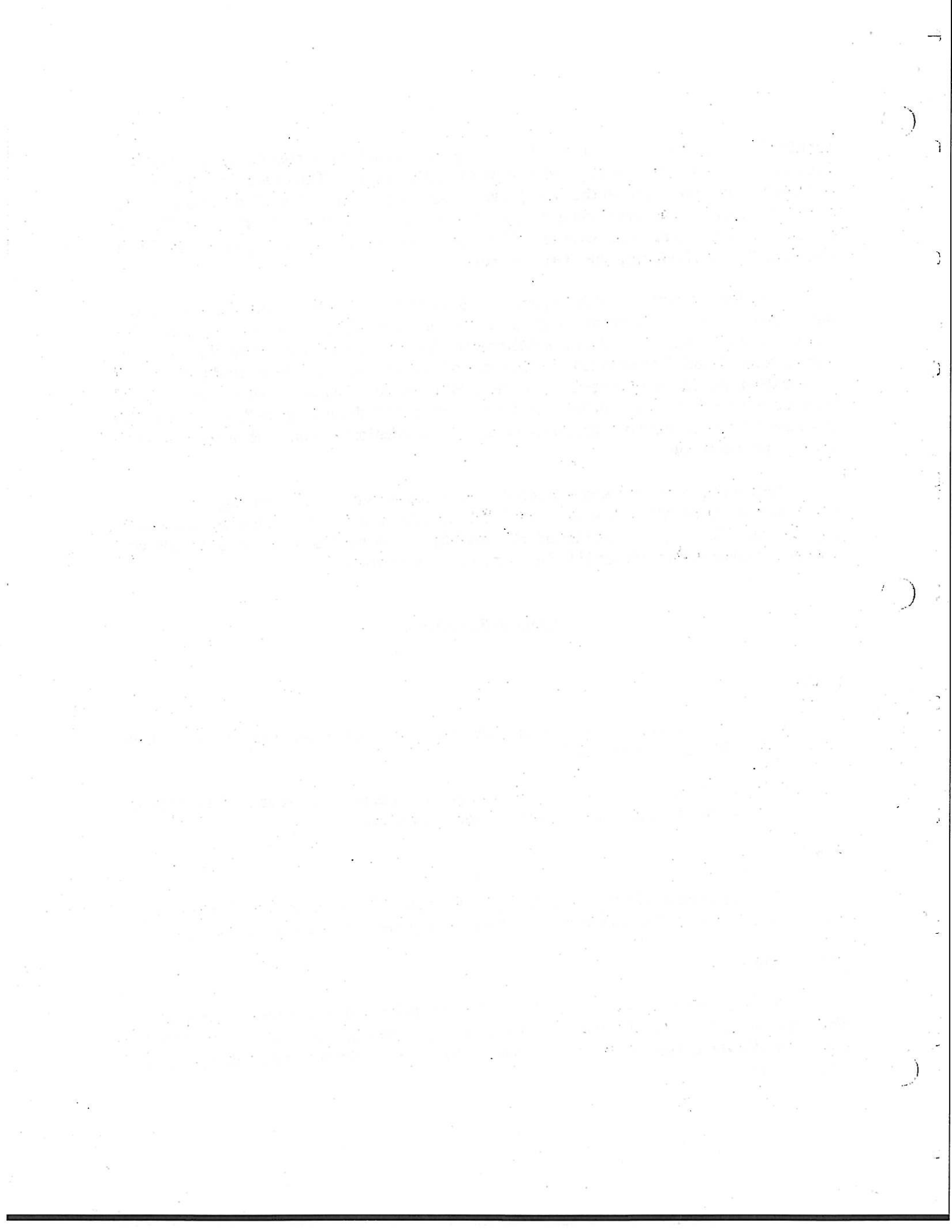
- Little information is available on the enforcement and application of Right to Farm laws nationwide and in Minnesota.
- It is likely that Right to Farm laws will have greater focus in the future as conflicts between farming operations and rural non-farm residents increase.

Conclusion:

The importance of Minnesota's state Right to Farm law will become more evident as changes occur in agricultural production practices and rural development patterns in the future.

Recommendations:

The Minnesota Department of Agriculture should review the current state Right to Farm law to determine if modifications are necessary to strengthen it and to ensure that it conforms with the changes in agriculture production and agricultural preservation programs within the state.



Appendix A
Minnesota Conservation Fund
Future Funding Analysis



APPENDIX A

MINNESOTA AGRICULTURAL LAND PRESERVATION PROGRAM EVALUATION

Minnesota Conservation Fund Future Funding Analysis

This report has been prepared to summarize the funding mechanisms, which currently support agricultural land preservation programs in Minnesota. The report is also intended to analyze the potential impacts on the Minnesota Conservation Fund, as a result of expanding the number of counties that are participating in the programs. The following analysis includes assumptions about future program participation and introduces variables for revenues and expenditures, in order to evaluate potential funding implications in the year 2020.

Background

Funding to support the Minnesota Agricultural Land Preservation Program (MALPP) and the Metropolitan Agricultural Preserves Program (MAPP) is generated through surcharges on mortgage registrations and deed transfers. Counties which elect to participate in either land preservation program must collect a \$5.00 transaction fee or "conservation fee" for all mortgage registrations and deed transfers. The counties retain half of the revenue from each transaction (\$2.50) in a special fund (the county conservation fund) and forward the balance (\$2.50) to the Minnesota Department of Revenue for deposit in the Minnesota Conservation Fund.

Landowners participating in either land preservation program receive a minimum "conservation credit" of \$1.50 per acre of land enrolled in the program. The actual credits in the MAPP are based upon a formula which calculates property taxes in metropolitan area preserves at a rate equal to 105 per cent of the previous year's average statewide township tax rate. The difference between this calculated tax rate and the community's actual tax rate equals the conservation credit, with a minimum conservation credit of \$1.50 per acre. Participants in MALPP simply receive a straight credit of \$1.50 per acre.

The metropolitan program includes a legislative provision that if the conservation fund is insufficient to cover the tax credits, the balance will be appropriated from the State General Fund. There is no such safeguard or guarantee in the statutes governing the statewide preservation program. The viability of funding for the statewide program has been a criticism by counties evaluating the potential for participation in MALPP. Counties that have declined to participate in the program cited concerns over encouraging long-term landowner commitments to preservation without having reciprocal funding guarantees by the State. Counties would be liable to cover the costs of conservation credits which exceed the revenue generated through the local mortgage and deed transaction fee.

Both programs require that the revenue loss to the county from the conservation credits to landowners first be deducted from the respective county conservation fund, the revenue source of which is the county's share (\$2.50 per transaction) of conservation fee revenue. Counties may only draw from the Minnesota Conservation Fund when the value of the conservation credits exceeds the balance in the county conservation fund. On the other hand, any surplus balance in the county conservation fund after payment of conservation credits may be retained by the county and used for other conservation purposes. According to statute, the conservation purposes are;

- “(1) agricultural land preservation and conservation planning and implementation of official controls under this chapter or chapter 473H;
- “(2) soil conservation activities and enforcement of soil loss ordinances;
- “(3) incentives for landowners who create exclusive agricultural use ones;
- “(4) payments to municipalities within the county for the purposes of clauses (1) to (3).” Minn. Stat. § 40A.152, Subd. 2.

The Minnesota Conservation Fund and county conservation funds have been sufficient to cover the costs of the land preservation programs since MALPP was established. Funding within several counties, metropolitan area and statewide, is subsidized by conservation fund contributions from some of the more populated counties. Hennepin County, for example, contributed approximately \$69,000 (half of the total \$5.00 transaction fee revenue) to the

Minnesota conservation Fund in 1997. The county's conservation credits to landowners was only \$21,070, which was easily covered by the county's \$69,000 share of revenues. Ramsey County generated approximately \$60,000 for the Minnesota Conservation Fund in 1997, even though it has no landowners enrolled in the program.

On the other hand, Carver County generated \$13,700 for the Minnesota Conservation Fund in 1997, while requiring \$154,488 in conservation credits for participating landowners. This resulted in a draw from the Minnesota Conservation Fund of approximately \$140,000. Similarly, the three counties participating in the statewide preservation program contributed \$25,815 to the Minnesota Conservation Fund while requiring nearly \$234,000 in conservation credits in 1997. This equates to a draw from the Minnesota Conservation Fund of approximately \$208,000.

While the Minnesota Conservation Fund has remained solvent over the years, changes in the many variables affecting the land preservation programs could alter funding viability. For example, a substantial increase in the number of acres enrolled in the two programs will cause a corresponding increase in the costs of conservation credits. If the revenues supporting the programs do not increase or increase at a slower pace than the rate participation, there is a risk of program costs exceeding program revenue. Such potential shortfalls to counties in the MAPP could be reimbursed by the state General Fund in the Metropolitan program. However, counties would not be reimbursed by the State under the statewide program.

A similar potential impact would result if the amount of the conservation credit to landowners increased—for example, from \$1.50 per acre to \$3.00 per acre—without a corresponding increase in revenue.

The following analysis is intended to summarize existing program funding issues and evaluate future funding issues. The analysis will include the impacts on program funding when variables such as program participation levels and program costs are increased. A number of assumptions are presented in this analysis in order to project future funding issues. The assumptions are a best guess at a reasonable future scenario and should be considered as variables themselves.

Methodology

This analysis projects future net revenue (revenue from mortgage and deed transactions minus expenditures by counties for reimbursement of conservation credits) for the following counties;

- Metropolitan counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington)
- Counties currently participating in the MALPP (Waseca, Winona, and Wright)
- Other counties recommended by the evaluation report to be targeted by the MALPP (the eleven most rapidly growing counties: Benton, Chisago, Crow Wing, Goodhue, Isanti, McLeod, Olmsted, Rice, Sherburne, and Stearns – Wright County is already participating)

Both future gross revenue (from mortgage and deed transaction surcharges; the “conservation fee”) and future expenditures for conservation credits, are influenced by many variables and are difficult to predict with any certainty. This analysis forecasts a single set of mortgage and deed transactions and a single set of county acreage amounts enrolled with agricultural preserves. Each of these forecasts is based on a single set of assumptions explained below. No attempt was made to vary these assumptions to generate, for example, “high” and “low” forecasts. Instead, these variables were held constant throughout and the amount of the conservation fee and the amount of the conservation credit were varied to test policy options.

Revenue Forecast

The current program funding mechanism does not lend itself to making reliable or predictable forecasts for future revenues. The number of mortgage registrations and deed transfers appears to be affected by a number of variables which make forecasting rather subjective.

Statewide, and in many of the counties, there appears to be a gradual upward trend in mortgage and deed transactions. This is thought to correspond with population growth. However, there is also a high degree of fluctuation in transactions year-to-year on a statewide level. Examining individual counties, the greatest fluctuation appears in the more populous and rapidly-growing counties, and is most pronounced in the Metropolitan Area. It is thought that these fluctuations are due to variations in interest rates and other economic factors.

This analysis uses a "factor" for each county which, when multiplied by a county's 2020 estimated population, yields a forecast of 2020 mortgage and deed transactions. The factor is a ratio of county mortgage and deed transactions in 1997 to 1997 county population. In this way, a different factor is calculated for each county.

A comparison was made to the population within counties and the number of transactions that occurred. The percent of mortgage and deed transactions to total population for 1990, 1995 and 1997 was calculated for the counties currently participating in the agricultural preservation programs and the eleven fastest growing counties.

Table 1 illustrates the population changes of each county, the number of transactions occurring in each time frame and the percent of transactions to population (the "factor") for each year. While the counties experienced population increases from 1990-1995 and 1995-1997 (except Waseca), the individual number of mortgage and deed transactions varied more dramatically. For example, the number of transactions dropped in Dakota County (9.28%) and Hennepin County (50.09%) between 1990 and 1995. The number of transactions also dropped in Washington County (39.59%) from 1995 to 1997.

For the purposes of estimating future program income, the "factor" identified in 1997 for all of the counties was applied to future population forecasts to establish the projected number of transactions. In other words, the percent of transactions to population in 1997 in each county was applied to a 2020 population forecast for each county to determine the number of potential transactions in 2020.

To test three different sets of assumptions for conservation fees and conservation credits, three sets of tables are used to illustrate potential future program participation and funding implications. These tables are contained in Exhibits A through C attached to this report. Tables A-1, B-1, and C-1 identify the existing agricultural preserve counties and rapid growth counties, where new agricultural land preservation may be targeted. The tables include the number of mortgage and deed transactions, the 1997 "factor" and 2020 population forecasts prepared by the Metropolitan Council or the Minnesota Office of Strategic and Long Range Planning. The factor, when applied to the 2020 forecast, creates the potential number of transactions in each

Table 1
Agriculture Preservation Counties and
Rapid Growth Counties
Population 1990 - 1995

Counties	1990 Pop.	1995 Est. Pop.	1997 Est. Pop	1990 Transactions	1995 Transactions	1997 Transactions	1990 Factors % ¹	1995 Factors % ¹	1997 Factors (%) ¹
Anoka	243,688	272,636	285,271	9,671	14,385	19,369	3.97%	5.28	6.79%
Benton	30,185	33,362	34,057	900	1,565	2,200	2.98%	4.69	6.46%
Carver	47,915	57,010	61,377	2,590	4,142	5,480	5.41%	7.27	8.93%
Chicago	30,521	36,045	38,937	1,620	2,685	2,796	5.31%	7.45	7.18%
Crow Wing	44,249	48,437	50,578	2,622	3,424	4,502	5.93%	7.07	8.90%
Dakota	275,186	316,272	332,657	13,819	12,536	25,098	5.02%	3.96	7.54%
Goodhue	40,690	42,477	42,987	1,900	2,230	2,928	4.67%	5.25	6.81%
Hennepin	1,032,431	1,063,631	1,075,907	42,556	21,241	27,613	4.12%	2.00	2.57%
Isanti	25,921	28,664	29,603	1,321	2,251	2,618	5.10%	7.85	8.84%
McLeod	32,030	33,803	34,493	1,201	1,801	2,385	3.75%	5.33	6.91%
Olmsted	106,470	113,968	116,537	5,549	5,951	8,224	5.21%	5.22	7.06%
Ramsey	485,783	494,674	497,423	14,416	18,936	24,282	2.97%	3.83	4.88%
Rice	49,183	52,232	53,514	2,401	2,746	3,030	4.88%	5.26	5.66%
Scott	57,846	69,303	75,009	2,328	5,398	7,441	4.02%	7.79	9.92%
Sherburne	41,945	51,328	56,682	401	3,579	4,756	0.96%	6.97	8.39%
Stearns	118,791	126,912	130,574	4,264	5,700	7,488	3.59%	4.49	5.73%
Waseca	18,079	18,031	18,626	670	941	1,123	3.71%	5.22	6.03%
Washington	145,880	175,441	187,475	8,256	25,032	15,122	5.66%	14.27	8.07%
Winona	47,828	48,987	49,485	1,723	2,176	2,697	3.60%	4.44	5.45%
Wright	68,710	77,232	82,493	3,297	4,834	6,506	4.80%	6.26	7.89%
Total	1,909,286	2,046,305	3,253,685	121,505	141,553	175,658	4.28%	5.58	7.00%

¹ Factors are a percent of transaction to population for the years shown.

Source: U.S. Census; Mn Office of Strategic and Long Range Planning; Metropolitan Council

county in 2020. Potential gross revenue, multiplying the number of transactions by the assumed transaction fee is also illustrated. Three transaction fees are tested: the current \$5.00 fee, a \$10.00 fee, and a \$17.00 fee.

Expenditure Forecast

Tables A-2, B-2, and C-2 illustrate assumptions and estimates for the level of participation in the preservation programs and the corresponding value of conservation credits in 2020. In order for the calculations to be made, a number of assumptions have to be made. Again, these assumptions are not meant to be forecasts, but serve to highlight potential implications for program participation and funding in the future. As variables, the assumptions can be modified and an analysis can be made on the resulting outcomes. There are literally limitless combinations of the variables that can be made. This report will only highlight a few outcomes.

The first column in Tables A-2, B-2, and C-2 regard 1997 acreage that is eligible for participation in the agricultural land preservation programs. In the metropolitan area, these include only the acreage that is currently planned and zoned for agriculture at a maximum residential density of one home per forty (1:40) acres. The acreages for 1997 are provided by the Metropolitan Council.

Table 2 illustrates the eligible acreage, enrolled acreage (land with agricultural preserve covenants), percent of eligible acreage enrolled, acreage pending expiration, and conservation credits in the metropolitan area from 1982 to 1997. According to Metropolitan Council staff, there were some reporting and recording errors made in the first three years of the program, which led to inaccurate summaries of total eligible acres in those years. The data since 1984 should be accurate and reveal stability in the eligible acres for a number of years, then a decline in eligible acres since 1990 of about 17%.

During the same period, actual acreage in covenants rose throughout the 1980's, dropped in the early 1990's, and rose again in the mid-1990's. The drop in participation corresponds with the dramatic drop in conservation credits to farmers. The more recent increase corresponds with the introduction of the minimum credit of \$1.50 per acre, which became effective in 1993.

Table 2

**Metropolitan Agricultural Preserves
Program Participation: 1982-1997**

Year	Acres Certified Eligible	Acres Enrolled with Covenants	Percent Enrolled	Acres Pending Expiration	Conservation Credits
1982	483,905	61,817	13%	10,720	
1983	595,960	88,358	15%	16,011	\$125,054
1984	554,771	138,870	25%	39,812	\$340,215
1985	601,333	160,129	27%	49,450	\$390,855
1986	592,010	175,813	30%	63,972	\$650,582
1987	609,485	178,144	29%	60,991	\$482,676
1988	610,186	178,656	29%	62,967	\$223,623
1989	611,194	180,450	30%	66,397	\$43,684
1990	611,468	175,641	29%	62,541	\$45,885
1991	592,958	178,748	30%	64,269	\$52,851
1992	593,211	175,079	30%	63,363	\$108,162
1993	558,117	163,775	29%	48,507	\$325,037
1994	559,483	193,586	35%	70,383	\$288,808
1995	523,497	196,421	38%	74,546	\$346,662
1996	504,701	198,247	39%	75,530	\$306,943
1997	505,394	201,927	40%	73,582	\$305,076

Notes:

1. 1992 USDA Census of Agriculture identified total land in farms in metropolitan area as 762,838 acres.
2. Minimum conservation credit of \$1.50 per acre was effective 1993.
3. Maximum credit during program occurred in 1986 (\$3.70/acre).

Source: Metropolitan Council - Agricultural Preserves Program Status Reports, 1982-1997.

The drop in eligible acres and increase in acres covenanted resulted in an overall increase in the percent of eligible acres which are enrolled in the program. According to the Metropolitan Council staff, recent declines in eligibility reflect major portions of a few communities, which were redesignated from 1:40 densities to 4:40 densities in comprehensive plan amendments. In most instances, the communities were not discouraging landowners from participating in the program, but they were relaxing development restrictions for those that did not participate in the program. These actions resulted in a reduction of over 50,000 eligible acres in the last three years, but no corresponding decrease in participation.

For the purposes of this analysis, it is assumed there will be no change in eligible acres and the percent of enrollment, between 1997 and 2020, in the metropolitan area. This is an assumption, not a prediction, but is used, in part, because it would be equally speculative to increase or decrease these acreages. These numbers were also left unchanged because the majority of participating communities have already completed 2020 comprehensive plan amendments, which indicate 1:40 acreages will remain static. It is also apparent that growth within the region can be accommodated without further impacting these areas in the next 20 years. As variables, these assumptions can be adjusted by others to gauge alternative program outcomes and implications.

The statewide program does not currently require maximum densities for eligibility or participation in the program. An assumption suggested by Minnesota Department of Agriculture staff was to use the metropolitan area planning and zoning criteria for the existing and potential statewide program participants. This will allow for values to be placed in the model for evaluation. It will also allow for parity in the criteria for program participation and comparisons between the land preservation programs.

Since there is no requirement in the statewide program to certify eligible acres, another assumption has to be made. The amount of eligible acreage for the statewide counties was based upon the estimated acres in each county that are currently designated at a 1:40 density. These estimates were obtained from the survey of counties completed in 1998. A spreadsheet of the counties and the acreages is attached as **Exhibit D**.

Another assumption made regards the change in eligible acres in the statewide counties from 1997 to 2020. In the instances where existing acreages are shown for 1997, there is no change assumed in 2020. In those instances where there are no values for 1997 (Crow Wing, Chisago, Isanti, and Stearns counties) an arbitrary value was established for potential 2020 eligible acres. In the absence of any rational criteria, a modest 15% of the 1992 agriculture census estimate of total farm acreage was assigned as the 2020 eligible acreage in these counties.

The final variable to be established is the percent of eligible land in the statewide counties that could be enrolled in the land preservation program. As illustrated earlier, the percentage in the metropolitan area program for 2020 was left at 40%. The percent enrollment of the three current

statewide participating counties varies from 46% to 3% for an average of 16% (the percentages of eligible land enrolled in the program in the individual counties are: Waseca, 46%; Winona, 9%; and Wright, 3%).

For the sake of evaluation, a 25% participation rate is used for the statewide counties in 2020 (except Waseca, which was left at 46%). This rate is higher than the existing average statewide county participation rate, but lower than the metropolitan area percentage.

Net Revenue Forecast

Tables A-3, B-3, and C-3 illustrate the net effect of the variables selected on the current funding mechanisms of the agricultural land preservation programs. Table A-3 is based upon the current \$5.00 transaction fee and a straight \$1.50 per acre conservation credit.

Exhibit B is an illustration in which the conservation fee was increased from \$5.00/transaction to \$10.00/transaction. No other assumptions were changed. The resulting effects include adjustments to 2020 gross revenue (Table B-1) and the county and Minnesota Conservation Fund revenues shown on Table B-3. There are no changes to the acreage assumptions or conservation credits illustrated on Table B-2.

A final illustration (Exhibit C) establishes the conservation credit at \$3.00 per acre, or double the current rate. In order to maintain a positive balance in the Minnesota Conservation Fund in 2020, the conservation fee would have to be raised from the current rate of \$5.00/transaction to \$17.00/transaction. The resulting net revenue is a positive \$108,884 to the Minnesota Conservation Fund.

Neither of the illustrations in Exhibits A, B or C represent cumulative fund balances. They are a snapshot of a single year using the variables identified.

Summary

This report summarizes current program funding mechanisms and establishes assumptions about future program participation in order to identify funding implications. The primary variables which affect future program funding include the amount of mortgage and deed transactions, the

amount of acres enrolled in the preservation programs, the conservation fund amount, and the conservation credit amount.

Exhibits A through C illustrate various assumptions for the existing MALPP and MAPP participating counties, as well as ten additional MALPP participants. Each exhibit assumes a constant level of mortgage and deed transactions (223,593 transactions) and acreage enrolled in agricultural land preservation programs (903,351 acres). The exhibits vary from each other in the values assigned to the conservation fees and the conservation credits.

Exhibit A incorporates the existing conservation fee of \$5.00/transaction and conservation credit of \$1.50/acre. With over 900,000 acres enrolled, the net revenue in the 2020 Minnesota Conservation Fund is a negative \$475,869.

Exhibit B adjusts the conservation fee from \$5.00/transaction to \$10.00/transaction. The effect of doubling the conservation fee is a positive net revenue to the 2020 Minnesota Conservation Fund of \$261,197.

Exhibit C doubles the conservation credit from \$1.50/acre to \$3.00/acre and adjusts the conservation fee from \$5.00/transaction to \$17.00/transaction. This scenario illustrates what whole dollar conservation fee would be necessary to support the increase in the conservation credit, while maintaining a positive 2020 Minnesota Conservation Fund balance (forecast to be \$108,884).

There are virtually limitless illustrations that can be prepared by changing the variables. Evaluating a variety of illustrations such as these exhibits may be useful in determining the funding implications of certain goals for the amount of land to be enrolled in preservation programs. Conversely, adjustments in either the conservation fee or conservation credit can be evaluated in terms of potential impacts on program enrollment.

Conservation Fee Used: \$5.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE A-1

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Population, Mortgage/Deed Transactions, and Revenue

Counties	1997 Trans- actions	Est. 2020 Pop.	% of Trans- actions to Pop. (based on 1997)	Potential 2020 Trans-actions	Est. Revenue
Anoka	19,369	350,410	6.79%	23,792	\$118,959
Beaton	2,200	46,980	6.46%	3,035	\$15,174
Carver	5,480	104,420	8.93%	9,323	\$46,615
Chisago	2,796	52,670	7.18%	3,782	\$18,911
Crow Wing	4,502	59,730	8.90%	5,317	\$26,583
Dakota	25,098	456,160	7.54%	34,416	\$172,080
Goodhue	2,928	47,290	6.81%	3,221	\$16,105
Hennepin	27,613	1,216,480	2.57%	31,221	\$156,104
Isanti	2,618	33,910	8.84%	2,999	\$14,994
McLeod	2,385	40,310	6.91%	2,787	\$13,936
Olmsted	8,224	129,490	7.06%	9,138	\$45,690
Ramsey	24,282	537,340	4.88%	26,231	\$131,153
Rice	3,030	58,560	5.66%	3,316	\$16,579
Scott	7,441	137,910	9.92%	13,681	\$68,404
Sherburne	4,756	91,620	8.39%	7,688	\$38,438
Stearns	7,488	144,050	5.73%	8,261	\$41,304
Waseca	1,123	17,150	6.03%	1,034	\$5,170
Washington	15,122	288,670	8.07%	23,285	\$116,423
Winona	2,697	50,350	5.45%	2,744	\$13,721
Wright	6,506	105,550	7.89%	8,324	\$41,622
Total	175,658	3,969,050	N/A	223,593	\$1,117,965

Conservation Fee Used: \$5.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE A-2

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Agricultural Preserve Acreage and Conservation Credits

Counties	1997 Eligible Acreage	Assumed Amount Change, 1997 to 2020	2020 Eligible Acreage	Assumed % of Eligible Acreage	2020 Estimated Agricultural Preserves	2020 Estimated Conservation Credit
Anoka	3288	0	3288	40	1,315	\$1,973
Benton	171795	0	171795	25	42,949	\$64,423
Carver	194645	0	194645	40	77,858	\$116,787
Chisago	0	20789	20789	25	5,197	\$7,796
Crow Wing	0	19602	19602	25	4,901	\$7,351
Dakota	203399	0	203399	40	81,360	\$122,039
Goodhue	399680	0	399680	25	99,920	\$149,880
Hennepin	33381	0	33381	40	13,352	\$20,029
Isanti	0	19734	19734	25	4,934	\$7,400
McLeod	291150	0	291150	25	72,788	\$109,181
Olmsted	188820	0	188820	25	47,205	\$70,808
Ramsey	0	0	0	0	0	\$0
Rice	264080	0	264080	25	66,020	\$99,030
Scott	55533	0	55533	40	22,213	\$33,320
Sherburne	144050	0	144050	25	36,013	\$54,019
Stearns	0	96564	96564	25	24,141	\$36,212
Waseca	249390	0	249390	46	114,719	\$172,079
Washington	15148	0	15148	40	6,059	\$9,089
Winona	369630	0	369630	25	92,408	\$138,611
Wright	360000	0	360000	25	90,000	\$135,000
Total	2943989	156689	3100678	N/A	903,351	\$1,355,026

Conservation Fee Used: \$5.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE A-3

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Revenue and Expenditures from Conservation Funds

Counties	2020 County Cons. Fund Revenue	2020 Estimated Conservation Credit	2020 County Cons. Fund Net Revenue	2020 Charge to Minn. Cons. Fund	2020 Minn. Cons. Fund Revenue	2020 Minn. Cons. Fund Net Revenue
Anoka	\$59,479	\$1,973	\$57,507	\$0	\$59,479	\$59,479
Benton	\$7,587	\$64,423	\$0	(\$56,836)	\$7,587	(\$49,249)
Carver	\$23,308	\$116,787	\$0	(\$93,479)	\$23,308	(\$70,172)
Chisago	\$9,455	\$7,796	\$1,659	\$0	\$9,455	\$9,455
Crow Wing	\$13,292	\$7,351	\$5,941	\$0	\$13,292	\$13,292
Dakota	\$86,040	\$122,039	\$0	(\$36,000)	\$86,040	\$50,040
Goodhue	\$8,053	\$149,880	\$0	(\$141,827)	\$8,053	(\$133,775)
Hennepin	\$78,052	\$20,029	\$58,023	\$0	\$78,052	\$78,052
Isanti	\$7,497	\$7,400	\$97	\$0	\$7,497	\$7,497
McLeod	\$6,968	\$109,181	\$0	(\$102,213)	\$6,968	(\$95,245)
Olmsted	\$22,845	\$70,808	\$0	(\$47,962)	\$22,845	(\$25,117)
Ramsey	\$65,576	\$0	\$65,576	\$0	\$65,576	\$65,576
Rice	\$8,289	\$99,030	\$0	(\$90,741)	\$8,289	(\$82,451)
Scott	\$34,202	\$33,320	\$882	\$0	\$34,202	\$34,202
Sherburne	\$19,219	\$54,019	\$0	(\$34,800)	\$19,219	(\$15,581)
Stearns	\$20,652	\$36,212	\$0	(\$15,559)	\$20,652	\$5,093
Waseca	\$2,585	\$172,079	\$0	(\$169,494)	\$2,585	(\$166,909)
Washington	\$58,211	\$9,089	\$49,123	\$0	\$58,211	\$58,211
Winona	\$6,860	\$138,611	\$0	(\$131,751)	\$6,860	(\$124,891)
Wright	\$20,811	\$135,000	\$0	(\$114,189)	\$20,811	(\$93,378)
Total	\$558,983	\$1,355,026	\$238,809	(\$1,034,852)	\$558,983	(\$475,869)

Conservation Fee Used: \$10.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE B-1

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Population, Mortgage/Deed Transactions, and Revenue

Counties	1997 Trans- actions	Est. 2020 Pop.	% of Trans- actions to Potential Pop. (based on 1997)	2020 Trans- actions	Est. Revenue
Anoka	19,369	350,410	6.79%	23,792	\$237,917
Benton	2,200	46,980	6.46%	3,035	\$30,348
Carver	5,480	104,420	8.93%	9,323	\$93,231
Chisago	2,796	52,670	7.18%	3,782	\$37,821
Crow Wing	4,502	59,730	8.90%	5,317	\$53,166
Dakota	25,098	456,160	7.54%	34,416	\$344,159
Goodhue	2,928	47,290	6.81%	3,221	\$32,211
Hennepin	27,613	1,216,480	2.57%	31,221	\$312,208
Isanti	2,618	33,910	8.84%	2,999	\$29,989
McLeod	2,385	40,310	6.91%	2,787	\$27,872
Olmsted	8,224	129,490	7.06%	9,138	\$91,381
Ramsey	24,282	537,340	4.88%	26,231	\$262,306
Rice	3,030	58,560	5.66%	3,316	\$33,157
Scott	7,441	137,910	9.92%	13,681	\$136,809
Sherburne	4,756	91,620	8.39%	7,688	\$76,875
Stearns	7,488	144,050	5.73%	8,261	\$82,608
Waseca	1,123	17,150	6.03%	1,034	\$10,340
Washington	15,122	288,670	8.07%	23,285	\$232,845
Winona	2,697	50,350	5.45%	2,744	\$27,441
Wright	6,506	105,550	7.89%	8,324	\$83,244
Total	175,658	3,969,050	N/A	223,593	\$2,235,930

Conservation Fee Used: \$10.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE B-2

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Agricultural Preserve Acreage and Conservation Credits

Counties	1997 Eligible Acreage	Assumed Amount Change, 1997 to 2020	2020 Eligible Acreage	Assumed % of Eligible Acreage	2020 Estimated Agricultural Preserves	2020 Estimated Conservation Credit
Anoka	3288	0	3288	40	1,315	\$1,973
Benton	171795	0	171795	25	42,949	\$64,423
Carver	194645	0	194645	40	77,858	\$116,787
Chisago	0	20789	20789	25	5,197	\$7,796
Crow Wing	0	19602	19602	25	4,901	\$7,351
Dakota	203399	0	203399	40	81,360	\$122,039
Goodhue	399680	0	399680	25	99,920	\$149,880
Hennepin	33381	0	33381	40	13,352	\$20,029
Isanti	0	19734	19734	25	4,934	\$7,400
McLeod	291150	0	291150	25	72,788	\$109,181
Olmsted	188820	0	188820	25	47,205	\$70,808
Ramsey	0	0	0	0	0	\$0
Rice	264080	0	264080	25	66,020	\$99,030
Scott	55533	0	55533	40	22,213	\$33,320
Sherburne	144050	0	144050	25	36,013	\$54,019
Stearns	0	96564	96564	25	24,141	\$36,212
Waseca	249390	0	249390	46	114,719	\$172,079
Washington	15148	0	15148	40	6,059	\$9,089
Winona	369630	0	369630	25	92,408	\$138,611
Wright	360000	0	360000	25	90,000	\$135,000
Total	2943989	156689	3100678	N/A	903,351	\$1,355,026

Conservation Fee Used: \$10.00
 Conservation Credit Used: \$1.50

EXHIBIT A: TABLE B-3

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Revenue and Expenditures from Conservation Funds

Counties	2020 County Cons. Fund Revenue	2020 Estimated Conservation Credit	2020 County Cons. Fund Net Revenue	2020 Charge to Minn. Cons. Fund	2020 Minn. Cons. Fund Revenue	2020 Minn. Cons. Fund Net Revenue
Anoka	\$118,959	\$1,973	\$116,986	\$0	\$118,959	\$118,959
Benton	\$15,174	\$64,423	\$0	(\$49,249)	\$15,174	(\$34,075)
Carver	\$46,615	\$116,787	\$0	(\$70,172)	\$46,615	(\$23,556)
Chisago	\$18,911	\$7,796	\$11,115	\$0	\$18,911	\$18,911
Crow Wing	\$26,583	\$7,351	\$19,232	\$0	\$26,583	\$26,583
Dakota	\$172,080	\$122,039	\$50,040	\$0	\$172,080	\$172,080
Goodhue	\$16,105	\$149,880	\$0	(\$133,775)	\$16,105	(\$117,669)
Hennepin	\$156,104	\$20,029	\$136,075	\$0	\$156,104	\$156,104
Isanti	\$14,994	\$7,400	\$7,594	\$0	\$14,994	\$14,994
McLeod	\$13,936	\$109,181	\$0	(\$95,245)	\$13,936	(\$81,309)
Olmsted	\$45,690	\$70,808	\$0	(\$25,117)	\$45,690	\$20,573
Ramsey	\$131,153	\$0	\$131,153	\$0	\$131,153	\$131,153
Rice	\$16,579	\$99,030	\$0	(\$82,451)	\$16,579	(\$65,873)
Scott	\$68,404	\$33,320	\$35,085	\$0	\$68,404	\$68,404
Sherburne	\$38,438	\$54,019	\$0	(\$15,581)	\$38,438	\$22,857
Stearns	\$41,304	\$36,212	\$5,093	\$0	\$41,304	\$41,304
Waseca	\$5,170	\$172,079	\$0	(\$166,909)	\$5,170	(\$161,739)
Washington	\$116,423	\$9,089	\$107,334	\$0	\$116,423	\$116,423
Winona	\$13,721	\$138,611	\$0	(\$124,891)	\$13,721	(\$111,170)
Wright	\$41,622	\$135,000	\$0	(\$93,378)	\$41,622	(\$51,756)
Total	\$1,117,965	\$1,355,026	\$619,707	(\$856,768)	\$1,117,965	\$261,197

Conservation Fee Used: \$17.00
Conservation Credit Used: \$3.00

EXHIBIT A: TABLE C-1

**Agricultural Land Preservation Counties and
Rapid Growth Counties
2020 Population, Mortgage/Deed Transactions, and Revenue**

Counties	1997 Transactions	Est. 2020 Pop.	% of Transactions		Est. Revenue
			to Pop. (based on 1997)	Potential 2020 Transactions	
Anoka	19,369	350,410	6.79%	23,792	\$404,459
Benton	2,200	46,980	6.46%	3,035	\$51,592
Carver	5,480	104,420	8.93%	9,323	\$158,492
Chisago	2,796	52,670	7.18%	3,782	\$64,296
Crow Wing	4,502	59,730	8.90%	5,317	\$90,383
Dakota	25,098	456,160	7.54%	34,416	\$585,071
Goodhue	2,928	47,290	6.81%	3,221	\$54,759
Hennepin	27,613	1,216,480	2.57%	31,221	\$530,753
Isanti	2,618	33,910	8.84%	2,999	\$50,981
McLeod	2,385	40,310	6.91%	2,787	\$47,383
Olmsted	8,224	129,490	7.06%	9,138	\$155,348
Ramsey	24,282	537,340	4.88%	26,231	\$445,920
Rice	3,030	58,560	5.66%	3,316	\$56,367
Scott	7,441	137,910	9.92%	13,681	\$232,575
Sherburne	4,756	91,620	8.39%	7,688	\$130,688
Stearns	7,488	144,050	5.73%	8,261	\$140,434
Waseca	1,123	17,150	6.03%	1,034	\$17,578
Washington	15,122	288,670	8.07%	23,285	\$395,837
Winona	2,697	50,350	5.45%	2,744	\$46,650
Wright	6,506	105,550	7.89%	8,324	\$141,516
Total	175,658	3,969,050	N/A	223,593	\$3,801,081

Conservation Fee Used: \$17.00
 Conservation Credit Used: \$3.00

EXHIBIT A: TABLE C-2

Agricultural Land Preservation Counties and
 Rapid Growth Counties
 2020 Agricultural Preserve Acreage and Conservation Credits

Counties	1997 Eligible Acreage	Assumed Amount Change, 1997 to 2020	2020 Eligible Acreage	Assumed % of Eligible Acreage	2020 Estimated Agricultural Preserves	2020 Estimated Conservation Credit
Anoka	3288	0	3288	40	1,315	\$3,946
Benton	171795	0	171795	25	42,949	\$128,846
Carver	194645	0	194645	40	77,858	\$233,574
Chisago	0	20789	20789	25	5,197	\$15,592
Crow Wing	0	19602	19602	25	4,901	\$14,702
Dakota	203399	0	203399	40	81,360	\$244,079
Goodhue	399680	0	399680	25	99,920	\$299,760
Hennepin	33381	0	33381	40	13,352	\$40,057
Isanti	0	19734	19734	25	4,934	\$14,801
McLeod	291150	0	291150	25	72,788	\$218,363
Olmsted	188820	0	188820	25	47,205	\$141,615
Ramsey	0	0	0	0	0	\$0
Rice	264080	0	264080	25	66,020	\$198,060
Scott	55533	0	55533	40	22,213	\$66,640
Sherburne	144050	0	144050	25	36,013	\$108,038
Stearns	0	96564	96564	25	24,141	\$72,423
Waseca	249390	0	249390	46	114,719	\$344,158
Washington	15148	0	15148	40	6,059	\$18,178
Winona	369630	0	369630	25	92,408	\$277,223
Wright	360000	0	360000	25	90,000	\$270,000
Total	2943989	156689	3100678	N/A	903,351	\$2,710,052

Conservation Fee Used: \$17.00
 Conservation Credit Used: \$3.00

EXHIBIT A: TABLE C-3

Agricultural Land Preservation Counties and
 Rapid Growth Counties

2020 Revenue and Expenditures from Conservation Funds

Counties	2020 County Conservation Fund Revenue	2020 Estimated Conservation Credit	2020 County Conservation Fund Net Revenue	2020 Charge to Minnesota Conservation Fund	2020 Minnesota Conservation Fund Revenue	2020 Minnesota Conservation Fund Net Revenue
Anoka	\$202,230	\$3,946	\$198,284	\$0	\$202,230	\$202,230
Benton	\$25,796	\$128,846	\$0	(\$103,050)	\$25,796	(\$77,255)
Carver	\$79,246	\$233,574	\$0	(\$154,328)	\$79,246	(\$75,082)
Chisago	\$32,148	\$15,592	\$16,556	\$0	\$32,148	\$32,148
Crow Wing	\$45,191	\$14,702	\$30,490	\$0	\$45,191	\$45,191
Dakota	\$292,535	\$244,079	\$48,457	\$0	\$292,535	\$292,535
Goodhue	\$27,379	\$299,760	\$0	(\$272,381)	\$27,379	(\$245,001)
Hennepin	\$265,377	\$40,057	\$225,319	\$0	\$265,377	\$265,377
Isanti	\$25,491	\$14,801	\$10,690	\$0	\$25,491	\$25,491
McLeod	\$23,691	\$218,363	\$0	(\$194,671)	\$23,691	(\$170,980)
Olmsted	\$77,674	\$141,615	\$0	(\$63,941)	\$77,674	\$13,733
Ramsey	\$222,960	\$0	\$222,960	\$0	\$222,960	\$222,960
Rice	\$28,184	\$198,060	\$0	(\$169,876)	\$28,184	(\$141,693)
Scott	\$116,287	\$66,640	\$49,648	\$0	\$116,287	\$116,287
Sherburne	\$65,344	\$108,038	\$0	(\$42,693)	\$65,344	\$22,651
Stearns	\$70,217	\$72,423	\$0	(\$2,206)	\$70,217	\$68,011
Waseca	\$8,789	\$344,158	\$0	(\$335,369)	\$8,789	(\$326,580)
Washington	\$197,919	\$18,178	\$179,741	\$0	\$197,919	\$197,919
Winona	\$23,325	\$277,223	\$0	(\$253,897)	\$23,325	(\$230,572)
Wright	\$70,758	\$270,000	\$0	(\$199,242)	\$70,758	(\$128,484)
Total	\$1,900,541	\$2,710,052	\$982,145	(\$1,791,656)	\$1,900,541	\$108,884

Minnesota County Planning and Agricultural Zoning Summary

County	Date of Comprehensive Plan	Agricultural Zoning District	Residential Density (not or minimum lot size)	Density Equivalent for Ranking	Note	Percentage of County Zoned Agriculture	Percentage of County 1:20 or more restrictive(?)	Size of County (acres)	Approximate Zoned Acres or Certified Acres (?)
Aitkin	1972 (being updated)	Farm Residential	16:40	2.5	2.5-acre min. lot.	50%	0%	1,276,900	0
Anoka	Being updated.	local zoning	1:40	40.0	3,288 acres certified			285,200	3,288
Becker	1967 (being updated)	General Agriculture	16:40	2.5	5-acre min. lot.	80%	0%	924,300	0
Beltrami	n/a	n/a						1,955,600	0
Benton	1989	A1	1:40	40.0	1:40 is permitted; up to 4 units with conditions	65 to 70%	65%	264,300	171,795
Big Stone	1971	AP-1 (prime); AP-2 (marginal)	5-acre lot	5.0		90-95%	0%	338,100	0
Blue Earth	1998	Agriculture	1:40	40.0		75%	75%	490,200	367,650
Brown	1992	Agriculture	2.5-acre lot	2.5		95%	0%	395,900	0
Carlton	1967	Limited Ag/Forest							
Carver	1998	Conservation	20-acre lot	20.0		45%	45%	560,500	252,225
Cass	1993	Agricultural	1:40	40.0	194,645 acres certified	95%	95%	240,500	194,645
Chippewa	1972	Agriculture/Forestry	1:40	40.0		15%	15%	1,545,600	231,840
Chisago	1996	AG-1; AG-2	3-acre lot	3.0	Being amended.	85-90%	0%	376,000	0
Clay	1980	Agriculture	8:40	5.0		70%	0%	283,100	0
Clearwater	1967	APQ1	4:160	40.0		95%	95%	674,200	640,490
Cook	1997	n/a						658,900	0
Cottonwood	1997	Agriculture	5-acre lot	5.0		90%	0%	1,033,100	0
Crow Wing	1995	Agriculture	6:640	106.7		98%	98%	415,200	406,896
Dakota	1998	Agriculture	15-acre lot	15.0		33%	0%	739,800	0
Dodge	1995	local zoning	1:40	40.0	204,000 acres certified			375,500	204,000
Douglas	1986 (currently updating)	Agriculture	1:160	160.0		90%	90%	281,200	253,080
Faribault	n/a	Agriculture	1:10; 1:20	20.0		60%	30%	460,600	138,180
Filmere	1994	A-1; A-2	5-acre lot; 5-acre lot	5.0		??	0	461,500	0
Freeborn	1988	Agriculture	1:40	40.0		90%	90%	551,700	496,530
Goodhue	1989	Agriculture	6:640	106.7	6 non-farm homes per section	70%	70%	462,700	323,890
Grant	being updated	A1 (Ag Preserves); A2 (Agriculture); A3 (Urban Fringe)	4:640; 12:640; 35-acre lots	120.0		80%	80%	499,600	399,680
Hennepin	being updated (Transportation and Park/Rec components only.)	local zoning	1:40	40.0	33,381 acres certified			389,000	33,381
Houston	1967 (being updated)	A1 (Ag Preserves)	1:40	40.0	One per quarter quarter section.	100%	100%	364,200	364,200

Minnesota County Planning and Agricultural Zoning Summary

County	Date of Comprehensive Plans	Agricultural Zoning Districts	Residential Density (per acre or minimum lot size)	Density Equivalents For Ranching	Notes	Percentage of County Zoned Agriculture	Percentage of County 1:20 or more restrictive(1)	Size of County (acres)	Approximate Zoned Area or Certified Area (2)
Hubbard	n/a	n/a						639,900	0
Isanti	1995 (being updated)	Agriculture	2:40	20.0	Two homes per quarter section.	60-65%	60%	289,600	173,760
Itasca	1978 (being updated)	Farm/Residential	2.5-acre lot	2.5		16%	0%	1,874,000	0
Jackson	1978	Agriculture	1:80	80.0		85%	85%	460,600	391,510
Kanabec	n/a	n/a						341,500	0
Kandiyohi	1972	AP, General Ag.	1:40; 5-acre lot	40.0		40%; 30%	40%	552,200	220,880
Kitson	1996	Agriculture	No standard.			95%+	0%	707,000	0
Koochiching	n/a	AF-1 (Ag/Forest)	2.5-acre lot	2.5		25%	0%	2,018,600	0
Lac Qui Parle	1998	Agriculture	3-acre lot	3.0		90-95%	0%	498,200	0
Lake	1995	no agricultural districts						1,466,500	0
Lake of the Woods	1978 (being updated)	Agriculture/Natural Environment	No standard.			35%	0%	1,138,200	0
Le Sueur	1996	Agriculture; Ag/Residential	1:40/1:6:6:40; 1:40/24:6:40	40.0	Up to 24 per section under certain conditions in Ag/Res.	75%	75%	302,900	227,175
Lincoln	1999	n/a						351,100	0
Lyon	1982	Agriculture	1:40	40.0	1 non-farm dwelling per 40	90%+	90%	461,800	415,670
Mankato	n/a	n/a						373,300	0
Marshall	n/a	n/a						1,160,300	0
Martin	1970	Agriculture	1-acre lot	1.0		80-90%	0%	467,000	0
McLeod	1995 (being updated)	Agriculture	1:40	40.0	Density can be higher when farming is difficult.	90%	90%	323,500	291,150
Meeker	1983	A1 (Ag Preserves); A2 (General Agriculture)	1:80; 1:40	80.0		90%	90%	412,800	371,520
Millie Laca	1990	A1	2.5-acre lot	2.5		60%	0%	436,400	0
Morrison	1989	Agriculture; Agriculture/Forest	5-acre lot; 10-acre lot	10.0		85%	0%	738,300	0
Mower	1993	Agriculture	1:160	160.0		95%	95%	455,000	432,250
Murray	1972	Agriculture	1:40	40.0		85%	85%	460,500	391,425
Nicollet	1985	Agriculture	1:40	40.0		85-90%	85%	298,800	253,980
Nobles	1982	AP	1:40	40.0	2.5-acre min. lot split	90%	90%	462,000	415,800
Norman	n/a	Agricultural	3-acres	3.0	Lot can be 60% of required size.	95%	0%	561,300	0
Olmstead	1995 (currently updating)	A1/A2 (Ag Preserves); A3/A4 (Urban Expansion)	3:160 to 1:35	53.3		45%	45%	419,600	188,820
Other Tail	1975	n/a (Shoreland only.)			62 townships; 22 have some type of zoning rule...don't know density....; half county covered by shoreland regs....1,049 lakes; Bob Storms, U Extension, local guy-- 218-739-7130			1,423,300	0

Minnesota County Planning and Agricultural Zoning Summary

County	Date of Comprehensive Plan	Agricultural Zoning Districts	Residential Density (net or minimum lot size)	Density Equivalent for Ranking	Notes	Percentage of County Zoned Agriculture	Percentage of County 1:20 or more restrictive(1)	Size of County (acres)	Approximate Zoned Acres or Certified Acres (?)
Pennington	Developing one. 1993	n/a (Shoreland only.)						395,400	0
Pine		n/a (Shoreland only.)						918,100	0
Pipestone	1978	Agriculture; A1 (urban expansion)	2:160; 35-acre lot	80.0		90%; 1%	90%	298,200	268,310
Polk	1997	Agriculture	1.5-acre lot	1.5	About 10 of 51 townships do more restrictive zoning. (e.g., 1:5 or 1:40).	90%	0%	1,278,000	0
Pope	Developing one (1998)	Will develop following Comp. Plan. (Only Shoreland currently.)			feedlot regs in development			459,100	0
Ramsey	1998	n/a						108,900	0
Red Lake	n/a	n/a						277,000	0
Redwood	1970	Agriculture	3:40	13.3	3 non-farm dwellings per 40 acres	98%	0%	564,200	0
Renville	1995 (Land Use Plan)	Agriculture-1,-2,-3,-4	1:40	40.0	1 per quarter quarter section	almost all	95%	632,100	600,495
Rice	1995	General Agriculture; A-1 (Urban Expansion)	1 per quarter-quarter (35-acre min. lot); 35-acre lot size	40.0	Additional 2.5 acre lot allowed in Gen. Ag. if located on poor soils or in woods.	80%+	80%	330,100	264,080
Rock (information not available)								309,100	0
Roseau	n/a	n/a						1,073,800	0
Saint Louis	components vary; some current	FAM land use (Forestry/Agriculture Management)	1:35; 1:17; 1:9	35.0	35-acre lot size requirement encompasses 10-15% of county and includes public land.	35%	10%	4,315,900	431,590
Scott	1996	A-1, A-2, A-3	40-acre lot, 10-acre lot, 1:40 (can cluster)	40.0	55,553 acres certified	11 townships: 2/3 in A2 and 1/3 in A1	33%	236,000	55,553
Sherburne	being updated	Agriculture	1:40	40.0	5-acre lots can be platted in non-fermable land	50%	50%	288,100	144,050
Sibley	1997	Agriculture; Conservancy	1:40; 1:5	40.0	1:5 may become 1:2	95%; 3%	95%	384,100	364,895
Stearns	1998	Developing zoning ordinance.			There is a platting moratorium while they develop ordinance. Twenty of 37 townships do zoning; new ordinance will be preservation oriented.			889,700	0
Steele	1998	Agricultural; Interim Agriculture	1 per quarter-quarter; 40-acre lot	40.0		65-70%; 2%	67%	276,600	185,322
Stevens								367,800	0
Swift	1993	A-1/A-3 (prime); A-2/A-4 (non-tillable)	40-acre lot, 2.5-acre lot	40.0		60%; 20%	60%	481,200	288,720

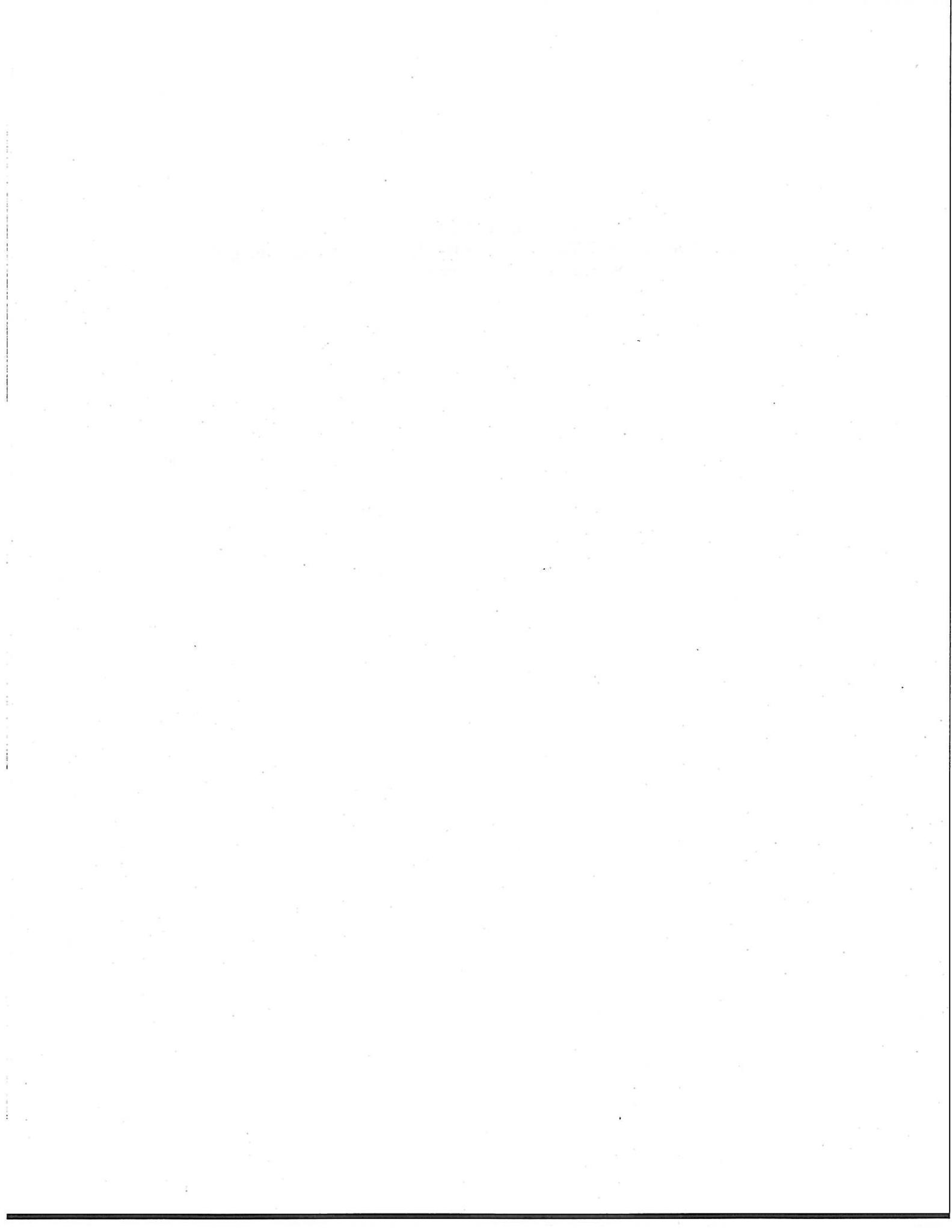
Minnesota County Planning and Agricultural Zoning Summary

County	Date of Comprehensive Plans	Agricultural Zoning Districts	Residential Density (sq ft or minimum lot size)	Density Equivalent for Rezoning	Notes	Percentage of County Zoned Agriculture	Percentage of County 1:20 or more restrictive(1)	Size of County (acres)	Approximate Zoned Acres or Certified Acres (2)
Todd	1970 (currently being updated)	Agriculture	1:40	40.0	minimum 1-acre lot	60%	60%	627,000	376,200
Traverse	n/a	n/a (Shoreland only)						375,700	0
Wabasha	1998	n/a (Shoreland only)			7 of 17 townships have zoning.			351,900	0
Wadena	being updated	A-1 (transitional); A-2 (forestry, fishing); A-3 (general)	1:40	40.0		95%	95%	347,500	330,125
Waseca	1987 Ag Preservation Plan only	A-1	1 non-farm per quarter section; 1 acre min. lot	160.0	Applying for CBPA grant; Need plan to address issue of pre-existing lots being allowed to develop.	90%	90%	277,100	249,390
Washington	1995	AP; A-1; A-2; A-4	40-acre lot; 40-acre lot; 20-acre lot; 10-acre lot	40.0				270,500	15,148
Watonwan	n/a	Agriculture	5-acre lot	5.0	15,148 acres certified	95-98%	0	281,300	0
Wilkin	n/a	Ag.	One non-farm per quarter-quarter.	40.0	2.5-acre minimum lot	90%	90%	481,000	432,900
Winona	being updated	Agriculture/Natural Resources	1:40	40.0	One non-farm per quarter quarter section.	90%	90%	410,700	369,630
Wright	General plan; 1988; Township component; ongoing	General Agriculture; Agricultural/Residential	1:40; 4:40	40.0	360,000 acres certified	60-70%; 15-20%	60%	456,800	360,000
Yellow Medicine	1970's	Rural Preservation	One non-farm per quarter-quarter.	40.0	3-acre minimum lot	90%	90%	488,400	439,560
						Grand Total		54,016,900	13,431,698

(1) Low end of range quoted.

(2) Approximate zoned acres is calculated by multiplying the percentage of County 1:20 or more restrictive by the size of the County. If certified acres are used, it is noted in the "Note" column.

Appendix B
STATE AGRICULTURAL LAND PRESERVATION PROGRAMS
Summary of Stakeholder Interviews



STATE AGRICULTURAL LAND PRESERVATION PROGRAMS

Summary of Stakeholder Interviews

Introduction

This study included a survey of various stakeholders regarding their awareness and opinions about the principal agricultural land preservation programs and policies in the State of Minnesota. The backgrounds of the individuals include policy makers, public officials, farmland advocates and individuals involved in commercial agriculture. The survey questionnaire is attached as Exhibit 1.

Stakeholders answered a variety of questions that addressed the Metropolitan Agricultural Preserves Program, the Statewide Agricultural Preserves Program, the Green Acres Program, the Right to Farm Law, planning programs and legislation, and the State Agricultural Land Preservation and Conservation Policy.

Importance of Agricultural Economy

All stakeholders see the strength of the agricultural economy as key in maintaining the State's agricultural land base. Stakeholders identified many interrelated factors that influence the decision of a landowner to maintain agricultural production. These include farmers' expectations about income (including their retirement nest egg), the market value of their products, and income that they could receive as a result of selling their land (either now or in the future).

Effectiveness of State Programs

Some stakeholders focused on the intent and educational aspects of the State's agricultural land preservation programs and policies, as well as their belief that the programs provide real benefits to individual farmers and help to maintain a base of farmland in places where participation is commonplace.

Many responders, however, reflect the belief that State programs do not comprehensively or effectively address agricultural land conversion. Stakeholders felt that programs do not appropriately target areas that are truly at risk of conversion from productive agricultural land to other uses. While some view land use covenants as preservation in and of itself, most stakeholders believe that the program is ineffective when participation does not preserve land that is at risk of being developed. Alternatively, they criticize the program because it can provide benefits to those whose intentions are to develop the land at a later date. In summary, comments reflected the belief that benefits were provided in areas with low risk of land conversion, land was being preserved for insufficient periods of time, and that benefits were not sufficient to encourage participation in areas that should be targeted for participation.

Importance and Difficulties of Local Planning

Stakeholders generally believe that individual tools of agricultural land preservation, such as density restrictions, tax breaks, and use covenants, are insufficient substitutes for planning. They also believe that planning at the local level must be backed up by a community commitment to the preservation of agriculture. Responders noted this as a challenge because some land owners often see planning as an unnecessary or inappropriate interference in their lives. Stakeholders also have concerns about the lack of resources for local government to use and enforce the tools of agricultural land preservation. In addition, some believe there may be insufficient political will at the local level to enforce strict controls, especially during periods of economic decline and/or when there are opportunities for development.

Concerns About State and Regional Agencies

Stakeholders had mixed reactions about the role and effectiveness of state and regional agencies, often identifying conflicting public policies. Concerns include perceptions that programs would interfere with the ability of county and local officials to plan appropriately for transportation and other infrastructure improvements. Some expressed concern about the commitment or ability of the Metropolitan Council to protect agricultural land, raising such issues as conflicting policies regarding a new regional airport and the potential for leapfrog development in adjacent counties. Another common concern of stakeholders from Greater Minnesota regards the future solvency of the program. Others emphasize the importance of state and regional planning agencies in providing support for and direction in identifying and preserving long-term agricultural areas.

Role of State Programs and Policies

Most stakeholders feel that State programs should focus on supporting efforts at the *local* level to plan for the preservation of agriculture, targeting, *financial* assistance to those (farmers) in need and supporting educational and other programs that help the State's agricultural economy overcome competitive disadvantages. Although some responders believe that local communities will not support agricultural land preservation if left to their own devices, most don't see new State mandates as being effective unless they have broad support at the local level *and* can be enforced at the local level. Most stakeholders, particularly from Greater Minnesota, were unaware of or unfamiliar with the State Right to Farm Law, State Agricultural Land Preservation Policy, and Green Acres Program, characterizing them as initiatives with good intentions, but ineffective as public policy. Many suggested greater financial support for voluntary local and regional planning efforts.

Suggestions for Use of Tools

Apart from the need for local planning and commitment, stakeholders offered a number of specific suggestions for improvements to tools that could be used to preserve agricultural land. Suggestions included targeting areas for State Program participation with increased benefits rather than providing weak benefits to areas that are at relatively low risk of losing agricultural land. Many believe that a traditional density restriction of 1 per 40 is insufficient by itself, while one stakeholder noted that the character or economic viability of an area can still change at low densities. Some suggested reducing allowable density to either 1 per 80 or 1 per 160. Most responders had some knowledge about programs such as transfer and purchase of development rights (TDR/PDR), but expressed concerns about the cost or complexity of such programs on a broad scale.

Stakeholders Survey Instrument

**Prepared by the Project Team
for Evaluation of Minnesota Agricultural
Land Preservation Programs**

Respondent Case No. _____

Interviewer: _____

Date: _____

I. Introduction

As part of its overall evaluation of the Minnesota Agricultural Land Preservation Program, the Project Team is undertaking a survey of key stakeholders in the state. The objectives of the interviews will be to identify potential issues, concerns and suggestions related to implementation and effectiveness of the state's agricultural preservation program. The survey is intended to identify existing mechanisms and policies used by local jurisdictions related to preservation of agricultural land and identify perceptions and opinions regarding the usefulness of the program.

The survey will include a broad cross-section of state and local officials and the private sector. The selection of key stakeholders to be interviewed will include but not be limited to the following individuals and organizations:

- County Planning and Zoning Administrators
- County Assessors
- Natural Resource Conservation Service
- Soil and Water Conservation Districts
- State Department of Agriculture and other affected state agencies
- University of Minnesota's Extension Service
- Metropolitan Council of the Twin Cities
- Non-profit groups associated with agricultural land preservation
- Home builders' associations
- Local jurisdictions
- Members of the State Legislature

A. Metropolitan Agricultural Preservation Program

Note: Interviewer comments to respondent: I will be asking your views on a number of state, regional and local policies and related agricultural programs.

As you know, the Metropolitan Agricultural Preserves Act of 1980 established an agriculture protection program in the Metropolitan Region. Briefly, this program encourages the continuation of agriculture in the Metropolitan Region by incorporating a special price index for taxation of agricultural land meeting the following requirements. The overall provision of the program are as follows:

- The land must be certified as long term agricultural land by the local government in its comprehensive plan.
- The local government must have zoned the land for long term agriculture use, permitting no more than 1 residence per quarter/quarter (1 house per 40 acres).
- The property owner(s) must have signed a restrictive covenant agreement, agreeing to retain the land in agriculture. Enrolled land remains in an agricultural preserve status indefinitely, or until an expiration notice is filed. Actual expiration of the covenant and benefits of the program will not occur until eight years after the notice is filed.
- The parcel must be 40 acres or more in size, or less than 40 acres if certain specific requirements are met (i.e., 20 acres if surrounded on 2 sides by eligible land and meets certain soil type requirements).
- Land enrolled in the Metro Agricultural Preserves Program has some protection from eminent domain proceedings.
- There are also limitations on annexation of land in the agricultural preserves program.
- Local governments are also prohibited from enacting ordinances in agricultural preserves which would unreasonably interfere with normal farming practices unless the restriction is directly related to the public health and safety.
- Land enrolled in the Metro Agricultural Preserves Program does not receive benefits for any public improvement projects including utilities or streets. There can be no special assessments levied against land enrolled under the agricultural preserves program.
- All seven Twin Cities metropolitan area counties and other counties participating in this program are required to charge a \$5 fee on each recording or registration of all mortgages and deeds subject to the mortgage and deed taxes. One-half of the fee must be deposited in a special conservation account in the county general revenue fund and one-half must be

transferred to the Commissioner of Revenue to be credited to the Minnesota Conservation Fund. Money from the county conservation account must be used to reimburse the county and taxing jurisdictions within the county for the agricultural preserves property tax credit. If the cost of the property tax credits exceeds fund available in the county conservation account, the county is reimbursed from the Minnesota Conservation Fund for the amount the tax credits exceed the county account.

- A special tax rate is applied to farmland enrolled in the Metropolitan Agricultural Preserves Program. This rate is equal to 105 percent of the previous year's statewide average tax rate for townships outside of the metropolitan area. If the local tax rate is higher, the difference is paid in the form of a property tax credit by the county or state conservation fund. Program participants are guaranteed minimum property tax credit of \$1.50 per acre each year.

Questions Relating to Both the State and Metro Program

1. In your opinion, how well overall has the Minnesota Metropolitan Agricultural Preserves Program functioned over the past 18 years?

If yes, in what way and to what end?

If no, explain your concerns and problems you see with the program.(s)

Let's talk about some of the specifics of the program(s).

2. Do you believe that the allowance of one house per 40 acres as a requirement for agricultural land in the program has been an effective zoning tool to protect agricultural land?
3. Is the restrictive covenant agreement of retaining the land in agricultural use for a minimum of eight years an effective component of the program?
4. Is the minimum tax credit of \$1.50 per acre per year an effective incentive to encourage landowners to enroll in the program?
5. What is your opinion of the process for landowners who are interested in enrolling in the program?
 - What are the strengths and weaknesses of this process?

6. In your opinion, does the program have political support from state and local elected officials?
7. In your opinion, has the program(s) been well administered?
8. How important in your opinion is the agricultural economy in maintaining land in agricultural use?
9. How well do you think the funding system for the agricultural preserves has functioned?
10. What other aspects of the program(s) would you like to comment on? (List some items but these are not intended to be all inclusive.)
 - Legal aspects
 - Unintended impacts of the program
 - Benefits to farmers
11. In your opinion, do you believe this program(s) has been successful
 - Yes, explain.
 - No, explain.
12. Do you believe the Metro Agricultural Preserves Program supports or conflicts with other growth management programs in the Metro region?
13. In your opinion, what has been the impact of the Metropolitan Land Planning Act on agricultural land preservation in the Metropolitan area?

14. In your opinion, what will be the impact of the Regional Blueprint on agricultural land preservation in the Metropolitan area?

B. Statewide Agricultural Land Preservation Program

The Agricultural Land Preservation Policy Act of 1984 provides for a statewide agricultural land preservation program consisting of:

- tools for agricultural land preservation at the local level, including guidelines for agricultural land preservation planning and official controls, voluntary "agricultural preserve" restrictive covenants, and property tax incentives for their creation;
- a program to foster awareness of agricultural land preservation and conservation issues;
- a program of technical and financial assistance to local government.

The central feature of the program is the "agricultural preserve". The 1984 Agricultural Land Preservation Act makes it possible for owners of qualifying land to receive property tax credits of \$1.50 per acre per year, and other benefits as well, in return for agreeing to preserve their farms for long-term agricultural use.

To be able to offer the benefits of agricultural preserves to property owners, a county must adopt (and have approved by the Minnesota Department of Agriculture) an agricultural land preservation plan and official controls. An agricultural land preservation plan is a part of a comprehensive land use plan that designates land for long-term agricultural use, while also providing for expected growth around urbanized areas. The official controls are land use regulations, usually zoning and subdivision provisions, that restrict uses to agriculture, and require low nonfarm residential densities (typically one dwelling unit per 40 acres) in areas designated for long-term agricultural use.

Once an agricultural land preservation plan and official controls are adopted and approved by MDA, persons owning land in a long-term agricultural zoning district of a participating county may voluntarily place "agricultural preserve" restrictive covenants on their property. The agricultural preserve covenant restricts that land's use to only agricultural or forest uses. The covenants are ongoing and run with the land, even if the land is sold. The agricultural preserve may be terminated by either a landowner or the local unit of government by initiating a termination process. This termination process takes eight years to remove the agricultural preserve covenant. The zoning classification must also be changed in order for the property to be converted to some other use that what is permitted in the long-term agricultural zoning district. Owners of land with agricultural preserve covenants receive the following benefits or protections:

- A \$1.50 per acre per year property tax credit,
- Local governments cannot enact ordinances or regulations that restrict or regulate normal agricultural practices.
- Annexation proceedings affecting agricultural preserves are limited and must meet certain additional criteria.
- Eminent domain proceedings are limited and subject to public and administrative review.
- Public sanitary sewer systems, public water systems, and public drainage systems are prohibited in agricultural preserves. Land in a preserve may not be assessed for public projects built in the vicinity of the preserve-covenanted property unless the project is necessary to serve land primarily in agricultural use or if the owner of the land chooses to use and benefit from the project.

Additionally, the statute permits property currently receiving "Green Acres" property tax and special assessment deferrals to convert to an agricultural preserve covenant without having to repay deferred tax differentials. Special assessments outstanding against the property would still have to be repaid if the agricultural preserve covenant were ever terminated.

The owners of land with agricultural preserve covenants are required to manage the land with sound soil conservation practices.

The funding system (of conservation fees on mortgages and deeds, and county (state) conservation funds to reimburse counties for property tax credits) is the same as in the Twin cities Metro area. Please see Pages 2 - 3 under "A. Metropolitan Agricultural Preserves Program".

Questions Relating to the Statewide Agricultural Preserves Program

1. In your opinion, how well overall have the Statewide Agricultural Preserves Programs functioned over the past 14 years?

If yes, in what way and to what end?

If no, explain your concerns and problems you see with the program.

Let's talk about some of the specifics of the program.

2. Do you believe that density limitations, such as one house per 40 acres have been an effective zoning tool to protect agricultural land?
3. Is the restrictive covenant agreement of retaining the land in agricultural use an effective component of the program?
4. Is the property tax credit of \$1.50 per acre per year an effective incentive to encourage landowners to enroll in this program?
5. In your opinion, does the program have political support from state and local elected officials?
6. In your opinion, has the program been well administered?
7. How important in your opinion is the agricultural economy in maintaining land in agricultural use?
8. How well do you think the funding system for the agricultural preserves has functioned?
9. What other aspects of the program would you like to comment on? (List some items but these are not intended to be all inclusive.)
 - Legal aspects
 - Unintended impacts of the program
 - Benefits to farmers

10. In your opinion, do you believe this program has been successful?
- Yes, explain.
 - No, explain.
11. Why in your opinion has the enrollment in the Minnesota Agricultural Preserves Program not been higher on a statewide basis?
12. Is agricultural land preservation viewed as an important priority to farmers outside of the Metro Region?
13. What other improvements do you believe could be made to make this program more effective?
14. Do you have any other thoughts or comments on the program?

C. Green Acres Program

Prior to the passage of the Metropolitan Agricultural Preserves Agricultural Act and Minnesota Agricultural Land Preserves Program Act, the state had initiated the Green Acres Program (1968) which provides that certain property owners, engaged in agricultural pursuits, can apply for deferment of higher valuations and consequent taxes payable, including special assessments, and continue to have the property value based on its valuation for farm purposes. In order to qualify, the property owner(s) must own at least 10 acres which are primarily used for agricultural purposes and which were used for agricultural purposes in the year preceding assessment. This program also defers payments of special local assessments. The land must either be the homestead of the applicant, or have been in the family for at least seven years. Additionally, the owner must be able to verify a minimum gross agricultural income of \$300 plus \$10 per tillable acre.

1. In your opinion, how well has the Green Acres Program functioned over the past 30 years.

If yes, in what way and to what end?

If no, explain your concerns and problems you see with the program.

2. Are the land acreage qualifications for participation in this program an effective tool for preserving agricultural land?
3. Are the land owner incentives for lower assessments in agricultural land an effective incentive for participation in the program?
4. Is the program administered effectively?
5. Is the process for participation in the program effective in encouraging land owners to enroll?
6. Does this program work well in conjunction with the Agricultural Preservation Program?
7. What other aspects of the program would you like to comment on?

- Benefits to farmers
- Conflicts with other programs
- Unintended impacts of the program
- Legal aspects
- Funding
- Other

8. What do you believe have been the successes and failures of this program?

- Please explain

9. What improvements do you believe could be made to make this program more effective?

- Please be specific.

D. Right to Farm Law

As you know, Minnesota has Right to Farm law. The key provision of the law provide nuisance lawsuit protection. In addition, the Metropolitan Agricultural Preserves Program and the Statewide Agricultural Preserves Program provide additional protection against the implementation of local ordinances that would interfere with normal farming operations. A few counties have adopted their right to farm ordinances..

1. In your opinion, has the Right to Farm law in Minnesota functioned well in providing protection to farmers from nuisance lawsuits?
2. Do you believe it works well in conjunction with other agricultural land preservation programs such as the Agricultural Land Preservation Program?
3. Are you aware of any legal challenges to Minnesota's Right to Farm Law?

If yes, could you provide any specific citations?

4. Have the local right to farm ordinances worked well in conjunction with the statewide law?
5. Does this law have good political support from state and local officials?
6. What improvements to you believe could be made to make this law more effective?
7. Any additional thoughts on this program?

E. Planning Enabling Legislation

The counties in the state having less than 300,000 population (1950 census) are authorized to carry on planning and zoning activities. Therefore, I would like to ask you some questions about how this authority works in conjunction with the agricultural preservation programs.

1. In your opinion, does the planning, development and zoning function well for those counties outside the Metro Region? If yes, in what way and to what end?
2. Is the planning, development and zoning authority compatible with the Agricultural Preserves Program?
3. Is this authority also compatible with the Community-Based Planning Act?
4. Does it give the counties sufficient zoning authority to preserve agricultural land?
5. Are there any other aspects of planning, development and zoning authority that you would like to comment on?

F. Community-Based Planning Act

Minnesota's Community-Based Planning Act which was passed in 1997 establishes state-wide goals for local government planning including goals on citizen participation, cooperation, public education, sustainable economic development, public investments, livable community design, housing, transportation, conservation, sustainable development and land use planning. Plans by local government are voluntary and financial assistance is available through competitive grants. Technical assistance is also provided. One of the goals refers to Public Investments and calls for local communities to account for the full environmental, social and economic costs of new development including infrastructure costs such as transportation, sewers and waste water treatment, water, schools, recreation, and open spaces and plan the funding mechanisms necessary to cover the costs of the infrastructure..

1. In your opinion, is the Community-Based Planning Act a helpful tool in the preservation of agricultural land? If yes, in what way? If no, please explain.
2. Do you see any conflicts with the overall goals of the Community-Based Planning Act and the state's Agricultural Preservation Program?

3. Do you see any conflict with any of the other growth management and local planning programs?
4. Do you see the need for any modifications or changes to the Community-Based Planning Act? If so, please explain.
5. Is the funding and technical assistance available under this program useful for agricultural preservation efforts at the local level?
6. Any other thoughts on this Act?

G. State Agricultural Land Preservation and Conservation Policy

The State Agricultural Land Preservation and Conservation Policy, enacted in 1982, sets forth state policy on agricultural land preservation and conservation. The law also requires that, unless a project is already subject to the state environmental review process, any state project or state-funded project or rule that adversely impacts ten acres or more of agricultural land must be reviewed by the Minnesota Department of Agriculture before the project can commence to determine if other alternatives exist which would avoid converting agricultural lands.

1. How effective has been implementation of the State Agricultural Land Preservation and Conservation Policy or consideration of agricultural land preservation impacts through the environmental review process?
2. Do you see any conflicts between this policy and other agricultural land preservation programs?
3. Do you have any suggestions for modification of this policy?

H. Other Agricultural Land Preservation Tools

As you may know, there are a number of other agricultural land preservation tools that are utilized by states and local jurisdictions in other parts of the country.

1. What other agricultural land preservation tools are you aware of that could improve the effectiveness of Minnesota's Agricultural Land Preservation programs?

If yes, please explain how you believe they could be incorporated into the current mix of programs?

2. Do you have any other thoughts on other state or local agricultural preservation programs outside of Minnesota?

I. Summary

I would now like to ask you a series of questions regarding how well the current agricultural preservation programs work together in preserving farm land.

In your opinion,

1. Is agricultural preservation an integral part of the growth management program in the Metro Region?
2. Is the agricultural zoning required under the Agricultural Preserves Program effective in preserving agricultural land or should it be strengthened?
3. Is the current property tax law effective in assessing the proper value of real estate taxes?
4. Are other economic incentives besides the real estate tax needed to make the Agricultural Preserves Program more effective? If yes, please be specific.
5. Do you believe it is necessary to have an economic incentive such as the real estate tax reduction for enrollment in the Agricultural Land Preservation Program in rural counties outside the Metro region?
6. Are economic factors such as commodity and livestock prices equally as important as agricultural land preservation programs in keeping land in agriculture?
7. Are soil and water conservation programs an important element in agricultural land preservation?
8. Do you believe the Agricultural Land Preservation Program can work effectively in those rural counties that have not exercised any local land use planning efforts under the state enabling planning and zoning authority?
9. Are there any other aspects of state and Metro agricultural preservation programs that you would like to comment on?

10. **And lastly, what has been the state's role in program such as low interest loans, technical assistance and marketing development to improve the economic well-being of farmers?**

Appendix C
Table of Green Acres Effect on Farm Land
Market Value
Taxes Payable 1997

TABLE
GREEN ACRES EFFECT ON FARM LAND MARKET VALUE
TAXES PAYABLE 1997

COUNTY	NUMBER OF GREEN ACRES	FARM LAND MARKET VALUE		
		BEFORE GREEN ACRES REDUCTION	AFTER GREEN ACRES REDUCTION	GREEN ACRES REDUCTION
AITON	0	65,708,100	65,708,100	0
ANOKA	59,542	189,528,000	93,389,700	78,139,300
BECKER	2,391	172,001,004	170,819,404	1,181,600
BELTRAMI	0	67,851,800	67,851,800	0
BENTON	0	119,779,810	119,779,810	0
BIG STONE	0	181,332,860	181,332,860	0
BLUE EARTH	127	616,643,000	615,730,300	782,700
BROWN	0	483,404,100	483,404,100	0
CARLTON	0	40,825,800	40,825,800	0
CARVER	22,181	280,781,500	250,681,200	30,120,300
CASS	0	55,089,200	55,089,200	0
CHIPPEWA	0	381,568,900	381,568,900	0
CHISAGO	136,343	188,203,300	133,773,500	54,429,800
CLAY	535	429,506,500	429,111,800	394,700
CLEARWATER	0	89,145,300	89,145,300	0
COOK	0	982,000	982,000	0
COTTONWOOD	0	415,712,800	415,712,800	0
CROW WING	0	60,022,400	60,022,400	0
DAKOTA	123,776	389,480,500	273,350,800	116,129,700
DODGE	0	284,837,800	284,837,800	0
DOUGLAS	79	138,271,850	138,065,350	206,300
FARIBAUT	0	601,727,800	601,727,800	0
FILLMORE	0	387,325,720	387,325,720	0
FREEBORN	0	457,259,354	457,259,354	0
GOODHUE	0	420,983,500	420,983,500	0
GRANT	0	236,509,000	236,509,000	0
HENNEPIN	50,296	374,388,700	204,712,800	169,675,900
HOUSTON	0	259,723,000	259,723,000	0
HUBBARD	5,389	48,235,317	47,234,217	1,001,100
ISANTI	161,938	162,672,500	119,731,000	42,941,500
ITASCA	0	28,879,600	28,879,600	0
JACKSON	0	571,016,300	571,016,300	0
KANABEC	0	75,173,850	75,173,850	0
KANDIYOHI	1,894	382,484,785	382,287,085	177,700
KITSON	0	257,613,150	257,613,150	0
KOOCHICHING	0	19,730,900	19,730,900	0
LAC QUI PARLE	0	312,698,500	312,698,500	0
LAKE	0	309,200	309,200	0
LAKE OF WOOD	973	25,191,200	24,072,300	1,118,900
LE SUEUR	0	288,833,100	288,833,100	0
LINCOLN	0	177,498,395	177,498,395	0
LYON	2,552	387,895,450	389,789,850	8,105,800
MCLEOD	0	287,144,400	287,144,400	0
MAHOMEN	0	81,448,709	81,448,709	0
MARSHALL	0	385,435,325	385,435,325	0
MARTIN	0	579,669,940	579,669,940	0

TABLE
GREEN ACRES EFFECT ON FARM LAND MARKET VALUE
TAXES PAYABLE 1997

COUNTY	NUMBER OF GREEN ACRES	FARM LAND MARKET VALUE		
		BEFORE GREEN ACRES REDUCTION	AFTER GREEN ACRES REDUCTION	GREEN ACRES REDUCTION
MEeker	0	244,882,800	244,882,800	0
MILLE LACS	0	79,180,150	79,180,150	0
MORRISON	6,165	190,081,100	185,353,000	3,728,100
MOWER	0	472,174,340	472,174,340	0
MURRAY	0	378,085,980	378,085,980	0
NICOLLET	947	376,351,700	375,077,700	1,274,000
NOBLES	0	489,834,480	489,834,480	0
NORMAN	0	317,972,900	317,972,900	0
OLMSTED	0	339,071,300	339,071,300	0
OTTER TAIL	0	416,846,000	416,846,000	0
PENNINGTON	0	92,768,021	92,768,021	0
PINE	5,673	112,428,020	111,350,520	1,075,500
PIPESTONE	0	208,775,575	208,775,575	0
POLK	0	689,893,675	689,893,675	0
POPE	0	177,873,150	177,873,150	0
RAMSEY	347	21,883,200	15,289,700	6,363,500
RED LAKE	0	64,858,800	64,858,800	0
REDWOOD	0	607,118,225	607,118,225	0
RENVILLE	0	840,578,500	840,578,500	0
RICE	22,005	365,858,443	349,820,143	8,038,300
ROCK	0	317,817,000	317,817,000	0
ROSEAU	0	178,181,475	178,181,475	0
ST LOUIS	0	28,629,289	28,629,289	0
SCOTT	82,808	282,973,000	236,780,200	25,282,800
SHERBURNE	158,931	204,697,700	121,909,500	82,788,200
SIBLEY	0	450,386,122	450,386,122	0
STEARNS	285	415,853,384	415,034,484	848,900
STEELE	278	310,026,542	310,084,142	842,400
STEVENS	0	229,422,400	229,422,400	0
SWIFT	0	300,824,302	300,824,302	0
TODD	0	153,194,950	153,194,950	0
TRAVERSE	0	258,886,200	258,886,200	0
WABASHA	501	210,818,275	209,059,175	1,789,100
WADENA	0	53,440,730	53,440,730	0
WASECA	0	381,475,200	381,475,200	0
WASHINGTON	78,725	615,338,900	231,757,400	163,581,500
WATONWAN	0	324,942,500	324,942,500	0
WILKIN	0	314,987,100	314,987,100	0
WINONA	80	217,023,885	216,795,365	228,300
WRIGHT	334,189	483,263,400	302,607,800	180,445,800
YELLOW MED	0	388,174,829	388,174,829	0
STATEWIDE TOTAL	1,263,151	23,729,909,051	22,733,228,351	998,671,780

Source: Minnesota Department of Revenue, Tax Bulletin No. 26

DRAFT FOR DISCUSSION WITH RURAL ISSUES WORK GROUP

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Three Farmland Preservation Proposals for the Metropolitan Council

By Tom Daniels, Ph.D.

Introduction

Six of the seven counties in the Metropolitan Council's region have rural lands; Ramsey County is considered totally urbanized. Stretching in an arc from the southeastern metro region to the southwest, Dakota, Scott, and Carver Counties have large amounts of farmland in traditional large commercial farms that produce corn, soybeans, livestock, and other crops. Dakota County has annual farm product sales of \$103 million, Carver has \$62 million, and Scott \$46 million. Carver, Dakota and Scott Counties have agricultural zoning at one dwelling per 40 acres. There has been relatively little nonfarm intrusion into the agricultural areas of these three counties, and population increases from 1990 to 1999 have been modest (under 500 people) in most of the rural townships in these counties.

Table 1. Acres in Farms and Value of Farm Production Among Six Counties in the Twin Cities Metropolitan Region, 1997.

<u>County</u>	<u>Acres in Farms</u>	<u>Value of Farm Production (in millions)</u>
Anoka	57,313	\$23.8
Carver	153,223	\$62.0
Dakota	221,316	\$102.9
Hennepin	69,128	\$43.7
Scott	117,830	\$46.1
Washington	89,935	\$57.3
TOTAL	708,745	\$335.8

Source: US Department of Agriculture, 1997 Census of Agriculture.

While the economics of traditional farming are complicated by federal farm programs and trade policy in addition to swings in product prices and production costs, the land use patterns and zoning in Dakota, Scott, and Carver counties give agriculture hope for the future.

Farming in Anoka, Hennepin, and Washington Counties features smaller, specialty crop and livestock operations that require less farmland than traditional crop and livestock farms. Anoka County has annual farm production of \$24 million, Hennepin has \$44 million, and Washington has \$57 million. Moreover, in these three counties there has been considerable non-farm development amid most of the farming areas. Zoning in these counties allows one dwelling per 10 acres and sometimes higher densities in the countryside. Much of the rural areas in these three counties are in transition to large lot rural residential development with some specialized agricultural operations. Population growth in the rural townships of these three counties was significant from 1990 to 1999, often greater than 500 additional residents in Hennepin County, more than 1,000 new residents in nearly all townships in Anoka County, and from a few hundred to a few thousand new residents in townships in Washington County.

This paper examines three scenarios for preserving rural land in six counties in the Metropolitan Council region. It is clear that relying on the MUSA line, the Metropolitan Ag Preserves program, and county zoning will not retain agricultural land in the long run. The MUSA can and has been extended outward at times. Enrollment in the Metropolitan Ag Preserves program does not require a long term or permanent commitment, and agricultural zoning can be changed by local elected officials.

Preservation generally means permanent or perpetual preservation. However, less than permanent protection may offer an acceptable compromise as long as the protection will occur over a minimum of 30 years.

There are three tools that offer permanent preservation or long term protection: fee simple acquisition, purchase of agricultural preservation easements (better known as purchase of development rights), and transfer of development rights.

Fee simple acquisition of land enables the buyer to take title to the land and determine the use of the land, subject to local zoning regulations. The purchase of privately owned land for public uses makes sense in the case of sensitive and unique natural areas in which special management is needed or public access is desired. Fee simple acquisition is rarely used for farmland preservation.

The purchase of agricultural preservation easements (PAPE) has been widely used by state and local governments and private land trusts to acquire an interest in privately owned land, but on a strictly voluntary basis. Landowners must be willing to sell or donate their development rights in return for cash or tax benefits that compensate them for the land use restrictions they agree to put on their properties.

The PAPE program features a legally binding contract, known as a "deed of easement," which spells out the land use restrictions that the landowner agrees to adhere to. The deed of easement runs with the land so that future landowners are also bound by the land use restrictions.

A deed of easement may apply in perpetuity or for a certain period of time, such as 30 years, specified in the deed. There are four ways that a deed of easement can be removed:

- a) through an eminent domain action by a government agency, but the land must then be put to a public purpose;
- b) by the ruling of a judge if the holder of the deed of easement does not monitor the property under easement to ensure that the landowner is abiding by the terms of the deed of easement;

c) in some states, notably Maryland and Pennsylvania, the two states with the most acreage under deeds of easement, a landowner may apply to buy back the development rights any time after 25 years. However, the landowner must demonstrate that the land is surrounded by development and has no markets for agricultural products. Maryland's PAPE program began in 1978 and Pennsylvania's in 1989 so neither state has yet had to deal with proposals to re-purchase development rights;

d) the limited time period of a less than perpetual deed of easement expires.

The transfer of development rights (TDR) involves the sending of development potential from a protection area, such as farmland, to a growth area where there are adequate public services to accommodate higher density development. A local government creates a market in TDRs by giving so many TDRs per acre to each landowner in a sending area and requiring developers who want to build at higher densities in the growth area to purchase TDRs from the landowners in the sending area. TDRs work best in places where the sending areas have not been dotted with rural residential development and where planning efforts have identified growth areas with appropriate services. Developer demand for TDRs drives the program. A local government may want to establish a TDR bank to buy TDRs from landowners and then re-sell them to developers in order to keep the TDR market liquid, especially during slow economic conditions.

Three Scenarios for Rural Lands Preservation in the Six Counties

The Metropolitan Council's planning staff has clearly spelled out goals and policies for the Permanent Agricultural Areas.

Goals:

- a. Support agricultural land uses
- b. Limit non-farm housing
- c. Keep incompatible uses out
- d. Maintain a clear urban/rural edge

Policies:

- a. Overall densities no greater than one house per 40 acres
- b. Road network supporting farm to market transportation

The Metropolitan Council's white paper of May 2001 reported that "a minimum of 400,000 acres of prime agricultural lands need(s) to be preserved within the region to meet the goals of protection of this valuable resource and to serve as a minimum critical mass necessary for preservation of agricultural communities."

There are currently about 500,000 acres of farmland in the metropolitan region, comprising about 27% of the region. Clearly, some agricultural land will continue to be converted to non-farm uses. The challenge is to identify the agricultural lands that have the best chance of remaining in production over the long term and to devise programs that both protect the farmland base and enable farmers to continue to farm.

Counties with Permanent Agricultural Areas Should Employ a Package of Farmland Protection Techniques

No single farmland protection technique can guarantee the future viability of a region's farm operations. Yet, counties can enhance the viability of farm operations and the stability of the rural land base through an integrated package of farmland protection techniques (see "Survey and Analysis of Existing Protection Programs").

The nation's leading farmland protection programs feature a combination of voluntary, regulatory,

and financial compensation methods:

Voluntary:

- 1) Use-value assessment of farmland for property tax purposes;
- 2) Agricultural economic development.

Regulatory:

- 1) Agricultural zoning at a density of no more than one house per 25 acres;
- 2) Growth boundaries or urban service areas.

Financial Incentives:

- 1) Purchase of Development Rights (PDR) (also called Purchase of Agricultural Preservation Easements (PAPE));
- 2) Transfer of Development Rights.

All six counties with farmland within the jurisdiction of the Metropolitan Council have one voluntary and at least one regulatory program to protect farmland. Owners of farmland are eligible to participate in the Metropolitan Ag Preserves Program and extensions of central sewer and water are limited by the Metropolitan Urban Service Area (MUSA) line.

Carver, Dakota, and Scott counties also have a second regulatory protection for farmland: agricultural zoning. The rural zoning in Anoka, Hennepin, and Washington is best defined as large lot rural residential.

The investment of public funds to purchase agricultural preservation easements is more likely to succeed in counties with agricultural zoning for two main reasons:

- 1) Agricultural zoning holds down the cost per acre PAPE programs because the permitted development potential is more restricted than under rural residential zoning. The lower cost per acre of the PAPE programs means that a county with agricultural zoning will be able to preserve more farmland for the same amount of money as a county with just rural residential zoning;
- 2) Agricultural zoning keeps preserved farms from becoming surrounded by non-farm development. In counties without agricultural zoning, a preserved farm can act as a magnet for non-farm residences because of the "preserved view" that the farm provides. A large number of neighboring non-farm residences can lead to nuisance complaints and other conflicts, and ultimately drive the preserved farm out of business. Farmers are often wary of participating in PAPE programs if they believe their farms could become preserve "islands" in a sea of non-farm residences.

A PAPE program also acts as an agricultural economic development program. Studies have shown that most farmers use the proceeds from PAPE programs to reinvest in their farms.

In sum, a county that combines agricultural zoning with a PAPE program is more likely to sustain Permanent Agricultural Areas than a county with rural residential zoning and a PAPE program.

The Permanent Agricultural Areas should receive first priority for funding for land preservation. Diversified Rural Areas should receive a secondary priority for land preservation.

Each of the following scenarios depends upon funding from the Metropolitan Council with matching funds from county governments. The counties, with consultation and approval from the Metropolitan Council, would acquire agricultural preservation easements.

Transferable development rights programs may be useful at the township level or across two townships. Funding from the Metropolitan Council would not be needed to establish local TDR programs. On the other hand, a metro region TDR program would require extensive planning and implementation costs, with no guarantee of success because of the variety of zoning in the rural parts of the six counties.

Funding for a PAPE program from the Metropolitan Council appears necessary because the individual counties will find it challenging to provide the significant amounts of money to preserve agricultural lands. The Metropolitan Council should require local county matching funds to be authorized and available before the Metropolitan Council actually releases funds for specific PAPE projects.

Scenario One: Dakota County PAPE Pilot Program

Scenario One is a pilot purchase of agricultural preservation easements (PAPE) program to preserve farmland in Dakota County, the region's leading agricultural county. Dakota County has a critical mass of farmland--more than 220,000 acres in 1997--and its farming area adjoins the major farming counties of Rice and Goodhue to the south. Rice County had over 250,000 acres of farmland in 1997 and annual farm production valued at more than \$127 million. Goodhue County had more than 384,000 acres of farmland in 1997 and agricultural production valued at \$160 million.

If the pilot PAPE program is successful in Dakota County, the Metropolitan Council should consider expanding the program to include at least Carver and Scott Counties, if not Anoka, Washington, and Hennepin as well. In addition, a successful pilot PAPE program in Dakota County could spur interest in creating county-level PAPE programs in the other five counties in the metropolitan region as well as in Rice and Goodhue Counties. Ultimately, a successful pilot program might lead to a state-funded PAPE program.

Structure and Funding of Dakota County PAPE Pilot Program

The Dakota County pilot PAPE program would be managed at the county level through the county planning department. The Dakota County Commissioners would appoint a Farmland Preservation Board consisting of nine members: four farmers, one township supervisor, one county commissioner, a representative from the building industry, and two at-large members, ideally from the conservation district, University of Minnesota Cooperative Extension, or an agricultural lending institution.

The Dakota County planning department would serve as staff to the Farmland Preservation Board. The Board would be empowered to adopt by-laws and program guidelines for operating the PAPE program, subject to approval by the County Commissioners.

The program guidelines would cover such issues as:

- Eligible farms for purchase of agricultural preservation easements

- Criteria for ranking applications from eligible farms
- Appraising development rights
- Policies on negotiating prices that will be paid for agricultural preservation easements
- Payment options for landowners
- The contents of the deed of easement, used to execute the purchase of agricultural preservation easements
- Monitoring of preserved farmland

The Farmland Preservation Board and staff would draft PAPE application forms, hold informational meetings around the county, and evaluate and rank the applications. The Board and staff would contract with appraisers for the appraisal of the value of development rights and would make offers to purchase the development rights from landowners. The Board would recommend approval of each purchase of agricultural preservation easements project, and the County Commissioners would make the binding decision to commit county funds for each purchase.

The Dakota County PAPE pilot program would be funded from two sources: \$5 million from the county and \$5 million from the Metropolitan Council. The total of \$10 million would create a serious program that would draw the interest of farmers. The funds for both the Dakota County share and the Metropolitan Council's share could come from the sale of general obligation bonds. The purchase of agricultural preservation easements is a long-term capital program for which bonds are typically used as the financing tool. Also, interest rates are currently at 30 to 40 year lows, making bonding an attractive funding mechanism.

The Metropolitan Council would disperse funds to Dakota County on a project by project basis. The Council would have the authority to review and approve the Dakota County's PAPE program guidelines as well as each PAPE project. Each project should be funded on a 50-50 basis between the County and the Council.

The Dakota County PAPE pilot program would be expected to run for 5 or 6 years. At the end of the pilot program, the County could continue to operate its own program, the Metropolitan Council could decide to continue helping to fund the County's PAPE efforts, or the PAPE program could be allowed to cease operation, except for the County's obligation to monitor the preserved farmland for compliance.

Scenario Two: Carver, Scott, and Dakota PAPE Programs

Permanent Agricultural Areas are not limited to Dakota County. Carver County had more than 150,000 acres of farmland in 1997. Moreover, because of the rural road network, Carver County is not easily accessible from the suburban or urban areas of the Twin Cities. Most of the townships in Carver County added fewer than 500 residents from 1990 to 1999, and there is strong local commitment to the preservation of agriculture.

Scott County had 117,000 acres of farmland in 1997, the third most among counties in the metro region. Population growth in the townships of western Scott County was less than 500 residents between 1990 and 1999. The preservation of farmland, especially in the western part of Scott County, would help to maintain a critical mass of farmland in Scott and Carver Counties. Preserving farmland in Scott County would also help to protect farmland to the south in neighboring LeSueur County which had 214,000 acres of farmland and annual farm production of \$84 million in 1997.

The preservation of farmland in Dakota, Scott, and Carver Counties would provide the metro region with a critical mass of farmland. The Metropolitan Council's white paper called for the long term

preservation of 400,000 acres of farmland. In 1997, there were nearly 500,000 acres of farmland in Dakota, Scott, and Carver Counties combined, accounting for almost 70 percent of the metro region's farmland. These three counties also produced \$211 million in farm products in 1997, almost 63 percent of the region's farm output.

It is conceivable that preserved farmland in Carver and Scott Counties could be contiguous in places, in effect creating a regional greenbelt. Also, preserving farmland in these Dakota, Scott, and Carver Counties could spur farmland preservation efforts in Goodhue, Rice, and LeSueur Counties which have fairly strong agricultural industries. Preserving farmland in these six counties would ensure a long term critical mass of farmland as a base for the agricultural industry in southeastern Minnesota.

Structure and Funding of the Carver, Scott, and Dakota PAPE Programs

The Carver, Scott, and Dakota County PAPE programs would be managed in the same manner as suggested for Dakota County under Scenario One with each county establishing a program.

The Carver, Scott, and Dakota County PAPE programs would be funded from two sources: up to \$15 million from the Metropolitan Council and matching funds from each county. A county could receive no more than \$6 million in PAPE funds from the Council and no less than \$3 million (see Table 2). A county would have to match the Metropolitan Council dollar for dollar. This way, a total of between \$18 million and \$30 million could be raised for farmland preservation.

Table 2. PAPE Funding by the Metropolitan Council and Carver, Scott, and Dakota Counties.

<u>County</u>	<u>County Funding (in millions)</u>			
	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>	<u>Level IV</u>
Carver	\$3	\$4	\$5	\$6
Scott	\$3	\$3	\$5	\$3
Dakota	\$3	\$4	\$5	\$6

Total County PAPE Funds	\$9	\$11	\$15	\$15
Metropolitan Council Matching Funds	\$9	\$11	\$15	\$15
TOTAL FUNDS	\$18	\$22	\$30	\$30

Note: A county would have to authorize at least \$3 million in PAPE funds in order to receive a match from the Metropolitan Council. But a county that authorized \$8 million in PAPE funds would only be matched \$6 million by the Council.

The total of \$18 million to \$30 million in the six county PAPE program would create a serious program that would draw the interest of farmers. The funds for both the county shares and the Metropolitan Council's share would come from the sale of general obligation bonds. The purchase of agricultural preservation easements is a long-term capital program for which bonds are typically used as the financing tool. Also, interest rates are currently at 30 to 40 year lows, making bonding an attractive funding mechanism.

The Metropolitan Council would disperse funds to each county on a project by project basis. The Council would have the authority to review and approve each county's PAPE program guidelines as well as each PAPE project. Each project should be funded on a 50-50 basis between the county and the Council.

The Carver, Scott, and Dakota County PAPE program would be expected to run for 5 or 6 years. At the end of this time, the counties could continue to operate their own PAPE programs; the Metropolitan Council could decide to continue helping to fund the counties' PAPE efforts; or the PAPE program could be allowed to cease operation, except for each county's obligation to monitor the preserved farmland for compliance.

Scenario Three: A Six Metro County PAPE Program

There is prime farmland in each of the six metro counties with rural land. Permanent Agricultural Areas could be created in each of the six counties. But in Anoka County in particular, and to a lesser degree in Hennepin and Washington Counties, it is more likely that Diversified Rural Areas can be created. These areas will feature a mix of farm operations interspersed with unsewered rural residential development. Because of the emphasis on farmland preservation, a six county PAPE program should emphasize farmland preservation in Dakota, Scott, and Carver Counties which collectively have most of the farmland and farm output of the six counties. The advantage of a six county PAPE program is that it can compel each county to preserve farmland.

Structure and Funding of the Six County PAPE Program

The six county PAPE program would be managed by each county through its county planning department in a manner similar to Scenario One and Two.

The six county PAPE programs would be funded from two sources: up to \$30 million from the Metropolitan Council and matching funds from each county. Up to \$20 million of the Metropolitan Council's funds would be earmarked for Dakota, Scott, and Carver Counties. No one county could receive more than \$8 million and no less than \$4 in Metropolitan Council funding (Table 3). A county would have to authorize at least \$4 million in PAPE funds to receive funding from the Metropolitan Council.

Table 3. PAPE Funding by the Metropolitan Council and Carver, Scott, and Dakota Counties in a Six County PAPE Program.

<u>County</u>	<u>County Funding (in millions)</u>			
	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>	<u>Level IV</u>
Carver	\$4	\$5	\$8	\$8
Scott	\$4	\$4	\$4	\$4

Dakota	\$4	\$5	\$6	\$8

Total County PAPE Funds	\$12	\$14	\$18	\$20
Metropolitan Council Matching Funds	\$12	\$14	\$18	\$20
TOTAL FUNDS	\$24	\$28	\$36	\$40

Note: A county would have to authorize at least \$4 million in PAPE funds in order to receive a match from the Metropolitan Council. A county that authorized \$10 million would only be matched \$8 million by the Council.

Up to \$10 million of the Metropolitan Council's funds would be earmarked for Anoka, Hennepin, and Washington Counties. No one county could receive more than \$4 million and no less than \$2 million in Metropolitan Council funding (Table 4). A county would have to authorize at least \$2 million in PAPE funds to receive funding from the Metropolitan Council. A county would have to match the Metropolitan Council dollar for dollar. This way, a total of between \$12 million and \$20 million could be raised for farmland preservation.

Table 4. PAPE Funding by the Metropolitan Council and Anoka, Hennepin, and Washington Counties in a Six County PAPE Program.

<u>County</u>	<u>County Funding (in millions)</u>			
	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>	<u>Level IV</u>
Anoka	\$2	\$2	\$3	\$2
Hennepin	\$2	\$3	\$3	\$4
Washington	\$2	\$3	\$4	\$4

Total County PAPE Funds	\$6	\$8	\$10	\$10
Metropolitan Council Matching Funds	\$6	\$8	\$10	\$10
TOTAL FUNDS	\$12	\$16	\$20	\$20

Note: A county would have to authorize at least \$2 million in PAPE funds in order to receive a match from the Metropolitan Council. A county that authorized \$6 million would only be matched \$4 million by the Council.

The six county PAPE program would raise between \$36 million and \$60 million to create a serious program that would draw the interest of farmers.

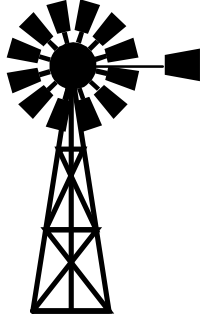
The six county PAPE program would be expected to run for 6 to 8 years. At the end of this time, the counties could continue to operate their own PAPE programs; the Metropolitan Council could decide to continue helping to fund the counties' PAPE efforts; or the PAPE program could be allowed to cease operation, except for each county's obligation to monitor the preserved farmland for compliance.

Conclusion

The six counties with rural land in the metropolitan region of the Twin Cities have emphasized local planning and zoning for farmland preservation, with varied success. The Metropolitan Council has relied upon the MUSA line to limit the extension of public sewer and water service into the countryside. The Metropolitan Ag Preserves program has provided property tax reductions on farmland.

The leading farmland preservation programs in the nation use three main techniques: growth boundaries (such as the MUSA line), agricultural zoning, and the purchase or transfer of development rights. Politicians have been surprised by the general support among taxpayers for farmland preservation. For example, county governments in Pennsylvania have spent more than \$100 million on farmland preservation since 1989, in addition to \$300 million in state funding. County governments in Maryland have spent more than \$70 million to operate their own programs as well as match state funds.

The Twin Cities metropolitan region has a respectable agricultural industry and roughly half a million acres of farmland. If the Metropolitan Council's goal of preserving 400,000 acres is to be achieved, a PAPE program should be initiated as soon as possible. In each of the three scenarios described above, PAPE funding from the Metropolitan Council would be matched dollar for dollar by county government. The Metropolitan Council would be providing counties with a strong incentive to develop PAPE programs, while requiring a county "buy-in."



DRAFT

Policy and Implementation Proposal for the Rural Area

Rural Issues Work Group

March 2002



Mission

The mission of the Metropolitan Council is to improve regional competitiveness in the global economy so that this is one of the best places to live, work, raise a family and grow a business.

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I. INTRODUCTION

The Metropolitan Council is a regional planning and coordinating agency for the seven-county metropolitan area. The Council advocates Smart Growth for vital communities and a competitive region. That advocacy includes long-standing policies supporting the conservation and protection of agricultural and rural lands within the metropolitan area.

A. Current *Blueprint* Policies

Lands in the Metropolitan Area outside areas served by or planned for urban infrastructure are divided in the current *Blueprint* into three policy categories: **rural growth centers** (the small towns located within the permanent rural and permanent agricultural areas); **permanent agricultural area**; and **permanent rural area**. Current policies and Council activities are summarized below.

1. Rural Growth Centers

While the Council recently identified nearly 80 settlements scattered throughout the rural area, current policy focuses on 17 rural communities designated as “rural growth centers.” Defined as small cities with centralized sewer services, the rural growth centers are described as appropriate locations for growth provided they can “locally finance and administer services, including schools, sewer, roads, water and stormwater drainage.” Local governments of rural growth centers are expected to plan for a balance of housing and jobs and for 2020 urban staging areas. Current policy language states “the Council does not support the extension of regional systems to rural [growth] centers because of the distance from the urban center and the small populations of rural [growth] centers.” As the region’s population continues to increase and the urban area continues to expand into the rural parts of the region, the policy guidance for rural growth centers has been called into question. If rural growth centers were able to accommodate additional growth, they might be able to attract households that would otherwise scatter throughout the rural area. If regional assistance is needed for these centers to grow it may be appropriate to consider changing current policy to offer support to rural growth centers as a way to accomplish regional objectives. The Council has also indicated an interest in developing policies for other types of rural settlements that current policies do not acknowledge.

2. Permanent Agricultural Area

Land currently designated as permanent agriculture comprises about 26% of the land area within the region - over 500,000 acres. These lands are locally designated for long-term agriculture; zoned at a minimum of 1 house per 40 acres and certified as eligible for participation in the Metropolitan Agricultural Preserves Program. The Metropolitan Agricultural Preserves Program is currently a primary tool to preserve agricultural land. It encourages the use of the metropolitan area’s agricultural lands for food production and recognizes farming as a long-term land use for lands enrolled in the program. The program’s objectives include providing farmers the assurance that they can make long-term agricultural investments, allowing continued farming without urban pressures and providing an orderly means to maintain viable productive farm operations in the metropolitan area. Other Council efforts have also focused on the preservation of agriculture. For example, the Council convened a task force to develop a simple-to-use Permanent Agricultural Land Identification Process that could be used by local governments during their comprehensive planning process.

Despite these efforts, the expanding urban area and recent strong regional economy are increasing pressure to develop the region’s prime agricultural and rural lands, particularly those at the urban edge. The 1997 Census of Agriculture indicated that metro area lands used for farming declined by about 52,000 acres between 1992 and 1997. The market for large-lot single-family houses in the rural area continues to be strong. There is a growing sense that the tools historically used by the state and region to protect agricultural and rural lands will not be sufficient to withstand development pressures. In response, the Council, local

governments, state agencies and others have worked to develop ways to maintain the rural areas that are such a significant part of the region.

Two of the seven metropolitan area counties, Dakota and Washington, have initiated land preservation efforts. In February 2000, Washington County adopted an ordinance to establish a Purchase of Development Rights Program aimed at preserving open space in the county including farmland. The county has purchased several easements. Dakota County initiated a two-year Farmland and Natural Areas Project in 1998 to: identify and prioritize important natural areas and farmlands; sample citizen support for ways to fund protection efforts; acquire donated conservation easements on 300 to 500 acres of priority lands; and recommend to local governments additional tools and programs they can adopt to protect identified resource lands within the county. Purchase of agricultural preservation easements is one of the tools the county is considering. Dakota County adopted the Project report and is moving into implementation. To support such local efforts, proposals to strengthen agricultural land preservation programs and fund pilot purchase of agricultural preservation easements have been initiated at the legislature in recent sessions but have not succeeded.

3. Permanent Rural Area

The permanent rural area has a wide variety of land uses including farms, low-density residential development and facilities that mainly serve urban residents, such as regional parks. Approximately 23% of the total metropolitan area - just over 439,000 acres - is designated as permanent rural. Current Council policies for this area call for overall gross densities of one dwelling unit per 10 acres and encourage clustered development as an alternative to scattered, large-lot subdivisions. Urban-level services, such as regional wastewater treatment or transportation infrastructure are not provided to or planned for the permanent rural area.

B. Rural Issues Work Group Established to Recommend Updated Policies

In addition to the legislative efforts and local agricultural land preservation efforts underway in the region, the Council established a Rural Issues Work Group comprised of eight Council members. This group undertook a review of Council policies regarding the region's rural and agricultural lands. The current *Blueprint* states a "common misconception is that agriculture and other rural land uses are only temporary, waiting for the land to be developed. Most of the rural area will not be needed for urban development in the foreseeable future. Agriculture and rural land uses are legitimate and permanent land uses in these areas." Work Group members observed that Council policies have not always been effective in protecting rural and agricultural lands from development. The Work Group is committed to strengthening policies to support rural and agricultural uses as permanent land uses, and ensuring that Smart Growth principles are applied throughout the region's rural areas.

The Rural Issues Work Group completed its review of current policies and actions to maintain rural areas within the seven counties and has considered options to increase their effectiveness. The Group's work included gathering input from local officials and citizens during a series of public meetings held throughout the region's rural areas in August and September 2001. The work group also heard several staff presentations and spoke with local and national experts on various aspects of rural policy. This careful study resulted in the following regional objectives, policies, and implementation programs that have been forwarded to the Metropolitan Council with the recommendation that they be incorporated into the new regional *Blueprint 2030*.

C. Smart Growth for the Region's Rural Area

Blueprint 2030 will recommend a pattern of growth for the metropolitan area. Smart Growth concepts promote a pattern of growth supporting redevelopment and cost-efficient new development that maximizes the use of existing and new infrastructure investments. For the region's rural area, this means guiding growth to rural settlements where infrastructure exists and away from productive agricultural areas. The policies recommended in this document reflect the following overall objectives:

- 1. Support additional growth in Rural Settlements** (concentrations of one or more residential neighborhoods surrounding a compact core area that provides some commercial services and/or civic facilities) where such growth is planned for and supported by appropriate services; particularly in rural growth centers along regional transportation corridors.
- 2. Limit non-farm housing development in areas designated as Permanent Agriculture.** Limiting non-farm housing will ensure that farming remains the predominant land use and reduce conflicts between agriculture and other land uses.
- 3. Preserve the choice for "rural" housing in the Diversified Rural Area** (which is the remaining rural area outside of Rural Settlements and the Permanent Agricultural area). The pattern of development in the Diversified Rural area should protect environmental resources and a sense of "rural character" (features such as scenic landscapes, open views, dispersed houses, woodlots, and wetlands - as defined by local units of government and their citizens).
- 4. Encourage development patterns that eliminate or minimize negative impacts on significant natural resources.** Significant natural resources are located throughout the metropolitan region. Development should occur in a manner that does not impinge on these natural resources.

Local Government Choice: The Council's Smart Growth initiatives set a course for the region, as defined by the statements above, and encourage local governments to be creative in how they follow the course. Local governments will have a choice in how to implement regional policies. The Council will provide assistance and incentives to local governments who choose to work with the Council to implement regional objectives.

Benefits of Smart Growth: Tangible public and private benefits arise from making Smart Growth choices in rural area development. The benefits for farmers include being able to continue farming without pressure to sell productive land for development, and minimizing nuisance conflicts from non-farm development. Benefits for those who choose to live in rural settlements include small-town lifestyle with access to a metropolitan area. Benefits for those who choose to live in the diversified rural area are proximity to nature, privacy, open views and, often, lower property taxes. Public benefits from Smart Growth, include:

- 1. Lower taxes and less strain on local budgets:** Studies support the link between housing density and local property taxes. Generally, agricultural densities and higher-density housing (small-town or urban) generate more revenue than they demand in public services while semi-rural or large-lot suburban housing create a shortfall.
- 2. Decreased demand on county and state highways:** Guiding growth to rural settlements offers access to nearby jobs and services that may reduce the number of miles traveled. The further people live from jobs and other destinations, the more miles they have to drive on arterial roads. The cost of congestion is paid for by the entire region.

3. **Protection of productive farmland:** Limiting non-farm related development on productive agricultural lands supports the continued presence of agriculture in the metropolitan area. Scattered non-farm rural development boosts land prices and increases the rate of conversion of farms out of agriculture and into housing. Non-farm development in agricultural areas also increases the clash between production agricultural practices that produce noise, smells, dust, and slow-moving vehicles and non-farm residents who wish for a “rural” lifestyle.
4. **Protection of natural resources:** Smart Growth development patterns consider the impact of development on natural resources; lakes, streams, rivers, wetlands, groundwater, air, habitat, etc. Protection of natural resources will help preserve scenic and rural landscapes and natural values that attract people to rural areas.

II. Regional Objectives and Policies for the Rural Area

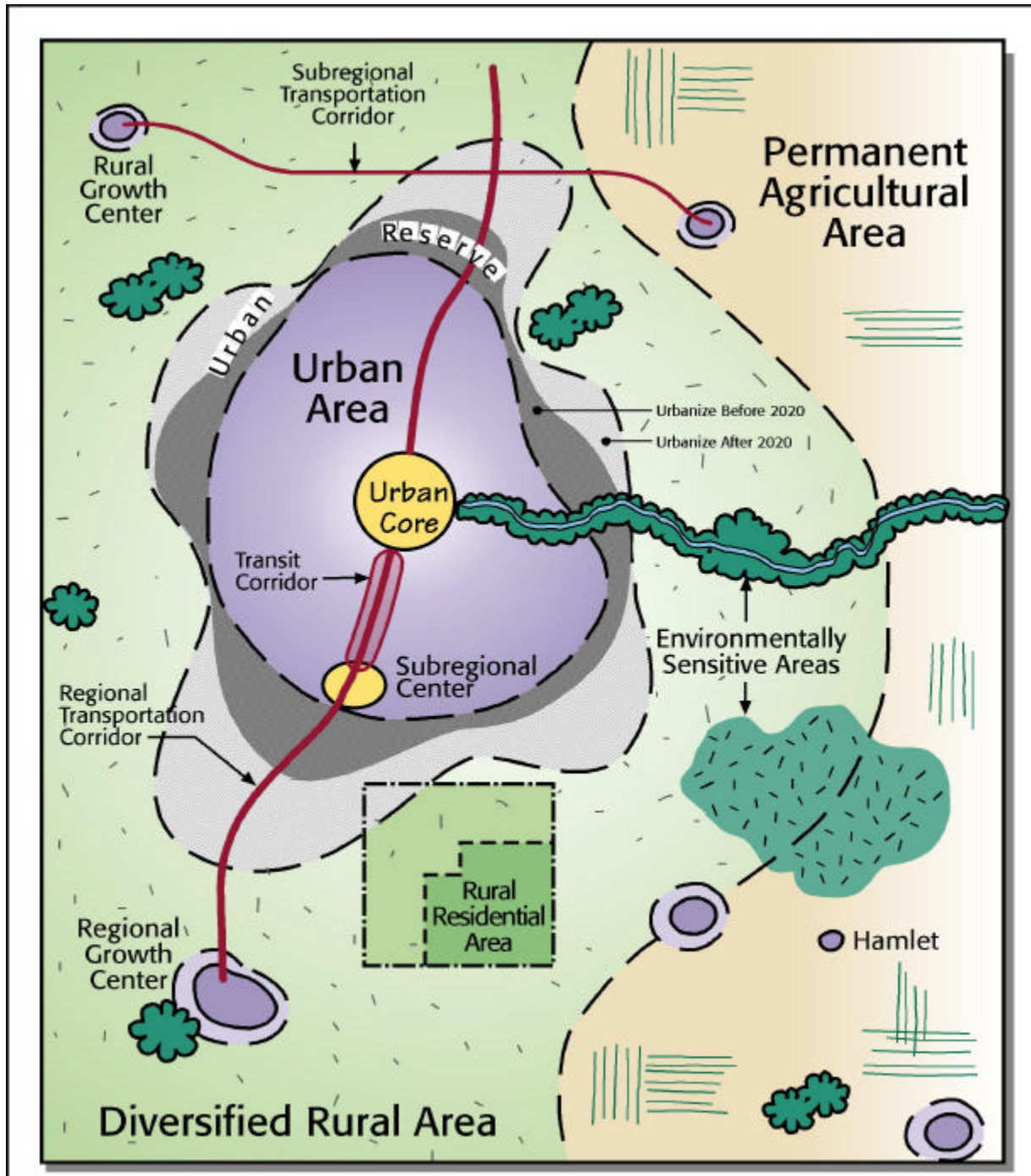
The following sections outline the regional objectives and policies for the rural area of the Twin Cities Metropolitan Region recommended by the Rural Issues Work Group. For policy development, the rural area was conceptually divided into four policy areas listed here and illustrated on the conceptual map on the following page:

- **Rural Settlements**
- **Permanent Agricultural Area**
- **Diversified Rural Area**
- **Rural Residential Area**

The Rural Issues Work Group also considered policies to preserve and protect **natural resources** in the rural area.

Regional objectives are set forth for each policy area defining the regional interest in the policy area. Policies are recommended to reach the objectives for each of the geographic policy areas. Implementation strategies are presented in section III.

Conceptual Map of the Proposed Rural Area Policy Areas



A. Regional Objectives for Rural Settlements

Rural settlements - population concentrations located throughout the region's rural area – are defined in this document as a hierarchy of places, based on their size, settlement patterns and infrastructure, rather than using the previous *Blueprint* criteria, which focused on the provision of central sewer service. The hierarchy consists of:

- **Hamlets**
- **Rural Centers**
- **Rural Growth Centers**
- **Regional Growth Centers**
- **Other places with concentrations of housing**

The following objectives are established for rural settlements as a general category, with the understanding that each rural settlement type will play a different role in proportion to its size and capacities for growth:

1. **Focus rural area growth.** Rural settlements should be the focus for the greatest share of the forecasted growth that will be anticipated in the rural area, in order to relieve growth pressure on permanent agricultural areas and sensitive natural resources, and to offer an alternative to scattered rural development.
2. **Emphasize growth in Rural Settlements along regional transportation corridors.** Growth in rural settlements along regional transportation corridors should be encouraged to maximize investment in current infrastructure and minimize the need for new infrastructure serving scattered low-density development.
3. **Provide diverse and affordable housing:** Rural settlements should provide some diversity of housing, in order to accommodate varying life-cycle needs. They should provide affordable housing in proportion to their size, with consideration given to retaining existing affordable housing stock.
4. **Provide commercial services and/or civic facilities.** Rural settlements should provide a level of goods, services and civic facilities in proportion to their size and as appropriate for their location, in order to serve their residents and/or the surrounding area.
5. **Maintain the ability to change and grow while meeting regional objectives.** Rural settlements may plan to grow and evolve or remain at their current size. The Metropolitan Council should offer planning assistance and/or incentives for rural settlements to grow in a manner that preserves their small town character and meets the other goals and principles of *Blueprint 2030*.

B. Hierarchy and Characteristics of Rural Settlements

The Rural Issues Work Group found that a variety of rural settlement types exist within the Metropolitan area. The Work Group created a hierarchy of rural settlement types in order to develop policies for each type. (See Rural Settlements summary table in Appendix A, page 42) Wastewater treatment, while remaining an important planning consideration, is no longer the only defining factor in classifying rural settlements as was done in the current *Blueprint*.

The following general definition of rural settlements is proposed:

Rural Settlements are settlement concentrations consisting of one or more residential neighborhoods surrounding a compact core area that provides some commercial services and/or civic facilities.

When applied in the rural area this general definition includes a wide variety of places which can be classified according to their most common characteristic: **hamlet, rural center, rural growth center and regional growth center**. Note that these characteristics are **descriptive, not prescriptive** - they are based on existing conditions, not desired ones. Desired characteristics are discussed below under Policies. Also, many rural settlements are evolving and growing, and may therefore not fit precisely into one category or another.

Hamlet: *A settlement, often at a crossroads, primarily residential in character, but with a small compact core offering limited convenience goods and/or community activities, such as a school, church, tavern or restaurant, general store or similar land uses. (For example: New Trier, Hamburg,...)*

The following characteristics are typical of a hamlet, although not always present:

1. Often part of a larger jurisdiction (city or township); may also be an incorporated city (e. g., Miesville, Bethel)
2. Generally have no public water or wastewater treatment
3. Average housing densities of 2 or more units per acre
4. Surrounded by agricultural, rural or natural resource lands
5. A population generally under 500, or around 200 housing units (number of houses are used as a surrogate for population numbers in unincorporated places)

Rural Center and Rural Growth Center: *A compact settlement that includes one or more residential neighborhoods surrounding a center that provides basic consumer services and community activities to residents or nearby residents. These two classifications share the same defining characteristics. The only distinction is the community's interest in growth, as expressed in its plans and policies. As discussed under Rural Settlement Policies below, rural growth centers could receive additional regional resources to support their interest in growth (For example: Carver, St. Francis and Belle Plaine are rural centers. They could consider becoming rural growth centers.)*

The following characteristics are typical of a rural center or rural growth center, although not always present:

1. Generally an incorporated city or the "center" of a township-sized city
2. Centralized wastewater treatment
3. Average housing densities of 2 – 7 units/acre
4. Civic facilities such as schools, parks and religious institutions are present
5. Basic neighborhood-level retail and service uses are present, although it is not a regional shopping or employment center
6. Access to a county or state arterial highway
7. A population generally ranging from 500 to 2,500 (although some are larger)
8. Many are surrounded by a defined growth or expansion area.

Regional Growth Center: *A larger rural settlement that has evolved into a full-service city yet is separated from the Urban Area. It has its own “core” and “suburbs,” and serves a larger surrounding land area. (For example: Stillwater, Hastings,...)*

Regional growth centers share many of the characteristics of rural growth centers, with a few differences:

1. Access to a state or interstate highway, and often a dedicated transit connection to the Urban Area, such as an express bus
2. Includes regional-level retail and other regional facilities such as hospitals
3. Includes a greater share of employment (this is especially true in county seats)
4. Offers some diversity of housing types
5. A population of 5,000 or more (over 2,000 housing units) although it could be less

Other places with concentrations of housing, such as lakeshore settlements and manufactured home communities are scattered through the Rural Area. Characteristics and policies for these places are discussed in the Diversified Rural Area section of this report.

C. Policies for Rural Settlements

The proposed policies assume that the Metropolitan Council will work cooperatively with local municipalities to define their roles as rural settlements. The Metropolitan Council may offer incentives for local governments to grow in the manner suggested. Local governments will choose whether or not to take advantage of the incentives offered.

1. Policy that applies to all Rural Settlements

- a. **Rural Settlements may evolve in type.** As outlined in the policies below, each type of rural settlement has a choice of remaining in its current size or configuration, or accepting greater or lesser amounts of regional growth. The smaller types may develop or evolve into the larger types, with hamlets becoming rural growth centers, and rural growth centers becoming regional growth centers. Expectations for each evolving type are listed below under the original type of rural settlement.

2. Policies for Hamlets

- a. **Support a limited amount of infill development,** but not larger-scale expansion. Limited infill housing or commercial development that is consistent with the prevailing character of the community. Infill development should not exceed the capacity of the community wastewater treatment system, where one is present. If additional growth is desired, the wastewater treatment system may need to be improved accordingly, as the hamlet grows into a rural center (see below). Basic contextual design guidelines may be desirable for infill development.
- b. **Provide safe and sustainable wastewater treatment.** This may be accomplished through such practices as properly installed and monitored on-site septic systems or small community wastewater treatment systems.

- c. **It is desirable, but not required, that hamlets provide basic “convenience level” retail/commercial services** for residents.
- d. **A hamlet may develop into a rural center/rural growth center**, under certain conditions. Hamlets with fairly direct access to regional transportation corridors are most appropriate for this level of expansion. Other criteria for this level of expansion would include meeting the goals for rural centers/rural growth centers listed below. The Metropolitan Council would work with the local unit of government, the county and adjacent jurisdictions to develop plans and investment programs for this expansion.

The Metropolitan Council would offer to assist local governments in achieving these goals to the extent feasible, primarily through planning and technical assistance.

3. Policies for Rural Centers and Rural Growth Centers

- a. **Local communities choose to become Rural Growth Centers.** Rural Growth Centers could potentially become the primary locations of anticipated growth in the rural area. Alternatively, some communities may choose to remain at their current size (as “Rural Centers”). If a rural center’s plans would maintain it at its current size and scale, the primary goal would be to maintain its existing characteristics. Limited infill or expansion within the capacity of the wastewater treatment system may be appropriate.

The decision as to what level of growth is appropriate should be made by the local government, in consultation with the county and Metropolitan Council. Criteria reflecting regional objectives will be developed to assess requests from rural centers for regional assistance.

For rural centers choosing to maintain their current size the Council could provide planning and technical assistance. Other types of assistance might be appropriate as well, depending on the location of the rural center (e.g., a link to regional transit if along a transportation corridor), its size, and its infrastructure needs.

The following policies apply to rural centers that choose to become rural growth centers.

- a. **Improve wastewater treatment systems** to serve the projected population at required discharge standards.
- b. **Provide basic retail/commercial services** for residents.
- c. **Provide some linkage to regional transit** – e.g., “park and pool” lots in most locations. Rural growth centers along major transportation corridors may be suitable for park and ride lots or other transit service.
- d. **Protect regionally significant natural resources** and common open space
- e. **Provide a diversity of housing types, including affordable housing, at densities of at least 3 to 7 units per acre** in the community’s residential areas.
- f. **Define a growth area** for future growth in cooperation with the surrounding township(s), where present, and the county.
- g. **A rural growth center may develop into a regional growth center** under certain conditions. Rural growth centers that are located along designated transportation corridors would be the most appropriate locations for this degree of growth. Criteria for

this level of expansion would include meeting the goals for regional growth centers listed below. The Metropolitan Council would work with the local unit of government, the county and adjacent jurisdictions to develop plans and investment programs for this expansion.

The Metropolitan Council would offer to assist the local unit of government in achieving these goals through the following actions:

- a. Planning and technical assistance. For example, if a rural growth center chose to develop design guidelines to ensure that new or infill development is consistent with the community's historical character and "small town" characteristics, Council staff could provide model design guidelines.
- b. Financial or technical assistance with wastewater treatment. Metropolitan Council Environmental Services (MCES) may assume wastewater treatment responsibilities through mutual agreement with county and municipal governments.
- c. Assistance with regional transportation investments, which may include roads and transit investments
- d. Assistance with other regional investments where appropriate, such as regional parks or trails
- e. Funding assistance through an expanded Livable Communities program or improved coordination with state funding programs.

2. Policies for Regional Growth Centers

Regional Growth Centers have an important role to play in accommodating anticipated growth in the rural area. Their growth in the past several decades is an indicator of their importance as satellite centers that can support a full range of retail and service uses and a balance of jobs and housing.

- a. **Develop a strong central business district** that can serve the surrounding rural area as well as the community itself
- b. **Provide a dedicated transit link to the urban core** such as express bus service, in addition to park and ride facilities
- c. **Provide a diversity of housing types, including affordable housing, at moderate to high densities of 3 to 7 units per acre** averaged across the community's residential areas. Some higher-density nodes (15-50 units per net acre) may be desirable close to transit stops or other activity centers.
- d. **Accommodate major public facilities** such as a hospital or high school.
- e. **Define a growth area** for future growth in cooperation with the surrounding township(s), where present, and the county. Where a regional growth center includes more than one city (as in the Stillwater area), cooperative planning between cities should be initiated to define a growth area.
- f. **Protect regionally significant natural resources** and common open space

The Metropolitan Council would offer to assist the local unit of government in achieving these goals through such actions as:

- a. Planning and technical assistance. For example, if a regional growth center chose to develop design guidelines to ensure that new or infill development is consistent with the community's historical character and "small town" characteristics, Council staff could provide model design guidelines.
- b. Possible ownership and operation of wastewater treatment systems if needed. (MCES already provides wastewater treatment services for Stillwater, Hastings and Forest Lake and is considering the acquisition of the Rogers plant)
- c. Assistance with regional transportation investments, which may include roads and transit investments
- d. Assistance with other regional investments such as regional parks or trails
- e. Funding assistance through an expanded Livable Communities program or improved coordination with state funding programs

D. Regional Objectives for the Permanent Agricultural Area

1. **Protect regionally significant agricultural areas.** Large, contiguous agricultural areas within the Metropolitan region should receive protection from non-farm development to ensure the continuation of a valuable economic sector that is integrally tied to its natural resource base.
2. **Consider all types of agriculture.** Agriculture should be defined broadly. It should cover all types of agriculture, including specialty farming (sod farms, berry farms, nurseries, vineyards, etc.) and farming on less-than-prime soils.
3. **Encourage continuation of locally significant agriculture.** Agricultural lands that are not within large, contiguous blocks should also be encouraged to continue in agricultural production. Policies for these agricultural lands will be addressed in the Diversified Rural Area.
4. **Reduce development pressures on agricultural lands.** Guiding growth to rural settlements and the urban area will relieve development pressure on agricultural areas.
5. **Identify agricultural lands as a natural resource.** Agricultural lands are an important natural resource. They provide water recharge areas, open space, habitat and connections between important natural resource areas. The role of agricultural lands as a resource should be considered as the regional growth strategy is developed.

Permanent Agricultural Area Boundaries: The boundaries of the Permanent Agricultural Area should be determined by analyzing a series of locational factors. A GIS overlay of these factors will indicate potential areas to be included within the Permanent Agricultural Area. At a minimum, these factors should include: the location of all farms; prime agricultural soils; specialty cropland on non-prime soils; lands eligible for the Metropolitan Agricultural Preserves program; lands identified in local plans as permanent agriculture. Examples of other factors are contained in the *Permanent Agricultural Land Identification Process Report* developed by a Council-established task force.

After potential areas are outlined, consideration should be given to the need for a critical mass of farmland. Critical mass means the number of acres of farmland that enable farm support businesses to continue in operation. Without support services, farmers struggle to survive. One view of critical mass is 400,000 acres as stated in the *Agenda for Regional Action* discussion paper. Another rule-of-thumb for critical mass is enough farmland in close proximity to produce \$50 million in farm products.

Local preferences for what land should be included are also important. Washington and Dakota Counties initiated efforts that include farmland preservation. Both counties developed maps of priority protection areas.

E. Policies for the Permanent Agricultural Area

Multiple programs or tools are required to achieve the goal of supporting the continuation of agriculture in the Metropolitan region, and to prevent conflicting land uses in permanent agricultural areas. A balance between regulation and incentives is important to achieve the highest levels of participation and protection. The combined result of the programs and tools should be the preservation of areas where farming is the predominant land use and there are few conflicts between agriculture and other land uses. (Examples: Castle Rock Township, Hollywood Township, Belle Plaine Township,...) The following policies are proposed for the Permanent Agricultural Area:

1. Proposed policies requiring significant financial investments

- a. Enhance the existing Metropolitan Agricultural Preserves program** to encourage increased participation. This could be achieved by increasing the property tax credit to farmers. Addressing the issue of immediate filing for withdrawal could also strengthen the program.
- b. Establish a Purchase of Agricultural Preservation Easements (PAPE) program** - also referred to as Purchase of Development Rights (PDR) program - to offer a permanent protection alternative. Combining a PAPE program with an enhanced Metropolitan Agricultural Preserves program would capture the largest number of participants. Also, farmers hesitant about permanently restricting their land could participate in the agricultural preserves program while observing how the PAPE program worked.

2. Proposed policies requiring planning review or planning and technical assistance

- a. Maintain the agricultural zoning density standard** at a maximum of one house per 40 acres. This density standard could be maintained through a variety of agricultural zoning techniques. Strong agricultural zoning is necessary for support of other programs such as Metropolitan Agricultural Preserves, PAPE and Transfer of Development Rights (TDR).
- b. Provide incentives for communities that establish Agricultural Security Districts** with a minimum density of 160 acres per dwelling unit. An Agricultural Security District would limit non-farm rural development further than the base agricultural zoning density standard, and include the zoning provisions listed in the next policy. Incentives could include priority targeting for PAPE funds and technical assistance.
- c. Support other zoning provisions that minimize conflict between agricultural production and other non-farm uses**, such as:
 - i. Exclusive agricultural zoning
 - ii. Limits on commercial and industrial enterprises that are not related to agriculture or natural resources, such as golf courses and manufacturing plants that attract traffic and might be incompatible with agricultural operations.
 - iii. Prohibitions on cluster developments that result in a concentration of people not engaged in agriculture that may cause conflicts with agricultural operations and

demand for urban-level services.

- iv. Access management road standards on county roads to reduce conflicts between agricultural use of roads and use by others.

- d. **Support continuation of use-value assessment** for lands enrolled in the Metropolitan Agricultural Preserves program and lands in a PAPE or TDR program.

3. Proposed policies requiring cooperation with other jurisdictions or agencies

- a. **Encourage the development of Transfer of Development Rights (TDR) programs** coupling Permanent Agricultural Areas with Rural Growth Centers.
- b. **Establish growth reserve areas and orderly annexation agreements** for rural growth centers and regional growth centers that lie within Permanent Agricultural Areas. A negotiated growth reserve area combined with an orderly annexation agreement establishes where growth will occur and allows other programs to be targeted to areas outside the growth reserve. These tools address annexation issues as well as the desire for planned, staged growth.
- c. **Strongly encourage coordination of local land use plans** among municipalities, townships and counties.
- d. **Work with other agencies (University of Minnesota, Soil and Water Conservation Districts, Minnesota Pollution Control Agency) to encourage the use of Best Management Practices** targeted at reducing soil erosion and improving water and air quality.
- e. **Work with other regional partners to promote on-going information and education programs** to increase participation in available agricultural preservation programs.
- f. **Coordinate implementation** of Metropolitan Area agricultural policies and practices with efforts in **adjacent counties**.

4. Proposed policies focusing on economic development

- a. **Provide metro-wide economic development support** such as:
 - i. Promotion of networks for farm sales to new farmers
 - ii. Support for access to capital for beginning farmers
 - iii. Support for and promotion of Department of Agriculture economic development programs
- b. **Continue existing Council policy to restrict major public facilities** that will conflict with agricultural uses, attract ancillary development and place demands on the highway system unless there is no other possible site in the region.
- c. **Enhance right-to-farm protections.** These enhancements could include the requirement that landowners applying for a permit for non-farm land uses must sign an agreement that is filed with the deed that states they understand they are in an agricultural district in which farming activities are protected, and that they will not expect urban services.

F. Regional Objectives for the Diversified Rural Area

Rural character is the most apt term used to describe the proposed Diversified Rural Area. It encompasses a wide variety of uses and densities. (Examples: May Township, Burns Township,...) Rural Settlements and Rural Residential areas punctuate, and are considered separate from, the Diversified Rural Area; each has a separate set of policies.

Diversified Rural Area policies should accomplish the following objectives:

1. **Acknowledge existing development patterns.** The Diversified Rural Area has a variety of existing densities and development patterns that are the starting point for policies.
2. **Protect regionally-significant natural resources** consistent with the NRI/A.
3. **Maintain rural character.** Preserve the sense of “rural character,” meaning scenic landscapes, farms, open views, few houses, woodlots, and wetlands - as defined by local units of government and their citizens.
4. **Provide a rural life style choice** in areas not needed for urbanization, including opportunities for continued farming activities.
5. **Provide locations for facilities and services** that are of value to the urban area but require a rural location (nurseries, campgrounds, festival grounds).
6. **Balance the provision of housing with other objectives.** Accommodate housing at low densities as long as other objectives for the Diversified Rural Area are not compromised.
7. **Provide for a transition** from the Urban Reserve to the Permanent Agricultural Area, and a frame for Rural Settlements and Rural Residential areas.

G. Policies for the Diversified Rural Area

The following policies are proposed to reach the objectives for the Diversified Rural Area:

1. **Support a variety of appropriate land uses, including the continued presence of agriculture and other land uses requiring a rural location.** The Diversified Rural Area supports the widest variety of land uses in the rural area. Land uses include farming, farm-support businesses, non-farm housing, and certain non-farm activities that require isolation or particular resources.

As the current *Blueprint* states, a “common misconception is that agriculture and other rural land uses are only temporary, waiting for the land to be developed. Most of the rural area will not be needed for urban development in the foreseeable future. Agriculture and rural land uses are legitimate and permanent land uses in these areas.” The Council should provide technical assistance to local governments seeking to maintain agriculture in their communities.

In the Diversified Rural Area local governments may allow certain uses that require isolated, rural locations but that primarily serve the urban public. As stated in the current *Blueprint*,

the Diversified Rural Area is an appropriate location for campgrounds and recreational vehicle parks, regional parks, trails, landfills, race tracks, gun clubs, festival grounds, gravel pits, commercial and industrial uses that require space, and other similar land uses. The Council's interest is that these facilities are adequately served, consistent with local and regional plans, and to the extent possible that they do not interfere with farming.

2. Achieve residential densities and development patterns that preserve rural character.

Overall gross density of non-farm housing should not be more than 1 house per 10 acres calculated on the basis of 64 houses per 640 acres section. This flexible density standard serves as a proxy for rural character by ensuring development patterns that maintain a rural landscape. It results in an overall density equal to the current density standard. The number of housing units allowed on a tract smaller than 640 acres should be proportionate to the size of the tract.

The Council would accept alternative density and development patterns that are equally effective in achieving the regional objectives of protecting rural character, protecting natural resources, and avoiding regional investment in infrastructure. Local governments could consider the following additional density related standards to achieve development patterns that protect rural character:

- a. Guide housing to avoid or minimize harm to sensitive natural resources, particularly those that are identified through the regional NRI/A or local natural resources inventory. For identified areas consider overall development at densities lower than 64/640.
- b. Require housing to be sited so as to minimize effects on rural "visual character" and the viability of farming, by locating houses on the edges of wooded areas rather than high quality farm fields or in the center of high quality woods, on the sides of hills rather than the hilltops, and/or in locations that are considered difficult to farm by reason of soil conditions, slope or size.
- c. Guide subdivision design to minimize the number of county or state road access points.

3. Identify and protect regionally significant natural resources. The Metropolitan Council has partnered with Metro DNR to identify natural resources across the seven-county area through an NRI/A. This information can assist local governments to develop density and development design policies in the Diversified Rural Area that protect regionally significant natural resources.

4. Offer incentives, such as density bonuses, for clustered developments or developments that incorporate anticipatory platting in areas abutting rural settlements and are governed by annexation agreements or joint planning boards. Density bonuses should be provided only if other regional objectives such as natural resource protection are not diminished. Clustering can be used to protect farmlands or other desirable resources such as woods, wetlands or rural views. Cluster housing standards are detailed in the implementation section.

5. Encourage the creation of new Rural Centers/Growth Centers and Regional Growth Centers. To reinforce the policies under Rural Settlements, the Council should encourage and provide incentives for local governments to guide growth to Rural Centers/Rural Growth Centers and Regional Growth Centers. The Council prefers growth in such communities to be served by centralized wastewater treatment systems rather than on individual septic systems or alternative community systems.

6. Allow opportunities for transfer of development rights programs. Transfer of development rights programs allow the transfer of density between non-contiguous parcels.

The Metropolitan Council should encourage the use of transfer of development rights programs to provide flexibility in density and development design in the Diversified Rural Area.

- 7. Plan for the expansion of Rural Settlements.** For local governments in the Diversified Rural Area that encompass or abut rural settlements, the Metropolitan Council should review comprehensive plans for policies that support orderly annexation of land to a rural settlement. The Council encourages orderly annexation (or joint powers service agreements) under the following conditions consistent with current *Blueprint* requirements:

 - a. Environmentally safe and sustainable wastewater treatment can be provided
 - b. Appropriate transportation infrastructure can be provided
 - c. Local regulations exist to require compact growth at densities suggested in the Rural Settlements policies
 - d. Significant natural resources will be protected
 - e. A planned growth edge is identified for growth through 2030

- 8. Monitor pockets of development at near-urban densities.** In the Diversified Rural Area, there are some concentrations of housing at near-urban densities (i.e. one house per two acres or less.) Examples include unincorporated clusters of housing or manufactured housing communities. Policies for growth of these “Rural Residential Areas” are listed in the following section. At a minimum, the Metropolitan Council should monitor these pockets of development by:

 - a. Reviewing local comprehensive plans for policies and programs designed to:
 - i. Limit or prohibit growth except as designed under Rural Residential policies below
 - ii. Protect the function of county or state roads
 - iii. Protect “rural character”
 - b. Work with local governments to ensure that facilities are built or maintained to protect water resources.

- 9. Provide no regional wastewater treatment service or transportation infrastructure with urban service levels in the Diversified Rural Area.** Communities in the Diversified Rural Area will be responsible for providing for all wastewater treatment services, roads and other required urban services at their own expense.

- 10. Support proper management of on-site individual sewage treatment systems (ISTS).** The Metropolitan Council should continue its review of local plans for provisions mandating ordinances that ensure that individual sewage treatment systems are sited, constructed and maintained in a way that protects groundwater.

H. Regional Objectives for Rural Residential Areas

Rural Residential Areas are those places, generally within the Diversified Rural Area, that are currently developed at near-urban densities (i.e. one house per two acres or denser), but do not have the characteristics of Rural Settlements. (Examples: Ham Lake, Credit River Township,...)The Rural Issues Work Group developed a separate set of objectives and polices for local governments that may desire growth for existing Rural Residential Areas.

Rural Residential Areas policies should accomplish these objectives:

- 1. Acknowledge existing development patterns** in communities that have developed at densities of 1 unit per 2 or fewer acres in areas served by rural infrastructure.
- 2. Protect regionally significant natural resources** and implement best management practices and other measures to prevent development from compromising natural systems such as groundwater.
- 3. Provide sufficient public services and infrastructure** to meet the needs of current and future residents. Local governments, the Metropolitan Council, Mn/DOT and other state agencies are involved in the provision of public services and infrastructure.
- 4. Provide guidance for growth of Rural Residential Areas that meets the objectives listed above.**

I. Policies for Rural Residential Areas

The following policies are proposed to reach the objectives for Rural Residential Areas:

- a. Identify existing Rural Residential Areas.** Areas predominately developed on lots of two acres or less and where no plans exist for centralized wastewater treatment should be identified as Rural Residential Areas.
- b. Allow for planned growth of Rural Residential Areas that meets regional objectives.** In a Rural Residential Area, additional development should be allowed only if the local government has a plan and investment program consistent with regional policies and objectives. If possible, local governments should consider how Rural Residential Areas can transform into Rural Centers/Rural Growth Centers. The Council will review plans and investment programs for the growth of Rural Residential areas for the following requirements:
 - a.** Provision of safe and sustainable wastewater treatment
 - b.** Protection of regionally significant natural resources
 - c.** Limited access points to state and county roads systems consistent with state and county access management policies
 - a.** Construction of an interconnected local public street system
 - b.** A planned growth edge is identified for growth through 2030
 - c.** Provision of the public facilities and services consistent with level of development. The local government should prepare a forecast of the cost of such facilities and services and the effect on the local tax rates before approving growth plans for these areas.

J. Regional Objective for Natural Resources in the Rural Area

One of the most effective means of protecting natural resources is to integrate natural resource planning into land use planning. Often natural resources are viewed as an afterthought in the land use planning process. Natural resources and open space are viewed as those places that are either unbuildable (wetlands, steep slopes, etc) or are **currently** undeveloped (farmland, vacant land, etc), but waiting to be purchased and developed. In this approach natural resources that are not protected under current law may be viewed as being in transition to some higher use. There are many documented cases of development occurring in areas that are “unbuildable” or environmentally sensitive. Wetlands are easily filled, slopes can be stabilized and there are numerous cases of floodplains being developed.

While acknowledging the on-going efforts of a partnership among the Metro DNR, the Metropolitan Council and others to map the region’s natural resources and develop policies for their protection, the Rural Issues Work Group considered recommendations for the protection of natural resources within the region’s rural area.

Policies for natural resources in the rural area should achieve the following objective:

Identify and protect regionally significant natural resources. Natural resources of regional significance should be identified, and both regional and local plans should include policies and actions to protect them.

K. Policies for Natural Resources in the Rural Area

To protect regionally significant natural resources in the region’s rural area five specific actions are proposed for incorporation into *Blueprint 2030*:

1. **Encourage the establishment of performance-based standards.** Local governments should be encouraged to develop performance-based standards to replace the current emphasis on density standards. Performance-based standards measure the impact of particular land uses and development patterns on natural resources. Local performance-based standards could be incorporated in cluster designs. The use of performance-based standards might be a criteria considered by the Council when offering regional incentives to local governments.
2. **Align regional system investments and policies:** Regional system investments and policies should align to ensure the protection of natural resources. Ensuring that investments made in rural areas support implementation of rural and natural resource policies will be critical. Policies developed as the NRI/A is completed will direct regional system investments consistent with implementation of rural and natural resource policies.
3. **Provide planning assistance and technical assistance to local governments.** To assist local governments in implementing regional natural resource policies while also meeting local needs, the Council should provide a comprehensive collection of land use tools for local communities. Local communities may then choose those tools that best meet their individual needs. The collection of tools may include **regulatory** solutions such as zoning, **incentive** solutions such as Transfer of Development Rights or tax credits, and **acquisition** programs. The Council, in cooperation with other organizations such as the DNR, the Department of Agriculture and conservation groups, should offer increased technical assistance to local governments.
4. **Incorporate regional objectives for natural resource protection into the local comprehensive planning process.** The comprehensive planning process is a way to communicate with local

governments about how their land use choices impact the region. This approach provides the Council with opportunities to foster coordinated sub-regional planning efforts engaging multiple local communities to coordinate efforts to implement the *Blueprint*.

III. Implementation Strategies for the Rural Area

The Rural Issues Work Group recommends the following implementation strategies to achieve the regional objectives and policies for the rural area presented in section II. of this report.

For policy development and implementation strategies, the rural area was conceptually divided into the following areas:

- **Rural Settlements**
- **Permanent Agricultural Area**
- **Diversified Rural Area**
- **Rural Residential Area**

The Rural Issues Work Group also considered policies and implementation strategies to preserve and protect **natural resources** in the rural area. The Environmental Policy Plan provides much greater guidance for the protection of natural resources throughout the metropolitan area.

The *Framework for the Blueprint 2030* provides the following key directions for development of policies and implementation strategies for the *Blueprint* update:

- *More closely align the environmental, transportation and community development goals, objectives and policies.*
- *Set Priorities and align regional investment to maximize the benefits of limited public resources.*

Implementation strategies focusing on regional alignment foster a more cooperative and comprehensive approach to regional growth and development. Implementation strategies presented in this report are organized to support a focus on regional alignment. A combination of regional systems, regional investments and land use planning strategies - including strategies for identifying and protecting the region's natural resources - are proposed for each of the four rural policy areas.

Emphasis is placed on giving choices to local communities on how to implement rural area policies. Many of the implementation strategies recommend that the Metropolitan Council **provide information** on the benefits of policies to local communities. Another basic strategy is the **distribution and/or development of model design guidelines, ordinances, and programs** that local communities can tailor to their circumstances. (Many examples already exist at the local level and should be shared.) Local communities that choose to implement environmentally sound practices should also be eligible for **technical assistance** from the Metropolitan Council. The implementation plan also relies on **consistent cooperative interaction** between Metropolitan Council staff and local government officials and staff. This higher level of interaction should lead to better alignment between regional policies and local plans, programs and ordinances.

A. Implementation Strategies for Rural Settlements

Rural settlements are areas of population concentration located throughout the rural area. They are defined as a hierarchy of places in section II. above. The following implementation strategies are presented for rural settlements.

1. **Work with selected Rural Growth Centers to evaluate and provide wastewater treatment services.** A central implementation strategy is for the Metropolitan Council to consider assuming some responsibility for wastewater treatment services for a number of rural growth centers that meet certain environmental, transportation, land use planning and cost criteria. These rural growth centers could potentially be the focus of much of the growth forecast for the Rural Area, guiding growth away from the Permanent Agricultural and Diversified Rural Areas. Rural growth centers may elect to work with the Metropolitan Council staff to evaluate potential costs and benefits of various scenarios for providing wastewater treatment services. Scenarios may include Metropolitan Council investment in systems that do not connect to the Council’s centralized systems. Impacts on existing treatment plants, service costs and service fees, groundwater and surface water quality, and other regional systems should be considered.
2. **Target highway investments to benefit expanding regional growth centers and certain rural growth centers.** Regional growth centers and rural growth centers that elect to accommodate future growth and meet selection criteria for increased regional investment should be targeted for future highway investments. Regional and sub-regional transportation corridors should link these growth centers to the urban area. Funding for such investments should be considered in the context of priorities for transportation and transit investments for all policy areas in the region.
3. **Expand transit options.** The Council should consider options for providing some level of improved transit service to certain regional and rural growth centers located beyond identified transit corridors—again in the context of regional transportation priorities. This could involve strategic placement of park and ride lots in selected centers in proximity to the metropolitan highway system, along with possible improvements to transit service along these highways. For rural growth centers beyond the reach of the regional transit system, “park and pool” lots should be provided where additional growth is planned or forecast.
4. **Provide grants or planning technical assistance** to existing or potential rural growth centers to plan for growth. Multiple jurisdictions need to be involved in defining growth areas around rural growth centers and appropriate levels of rural growth.
5. **Park and open space investments should be targeted** to complement the efforts of regional growth centers and rural growth centers that choose to work with the Metropolitan Council to accommodate anticipated growth in the rural area and meet criteria for additional regional investments. The goal of these investments is to allow for appropriate rural settlement growth while protecting the integrity of regionally significant natural resource areas.

B. Implementation Strategies for the Permanent Agricultural Area

The following implementation strategies will help achieve the stated policies for the Permanent Agricultural Area:

1. **Direct regional wastewater treatment system investments to areas outside the Permanent Agricultural Area.** To maintain the integrity of the Permanent Agricultural Area, investments in wastewater treatment in the Rural Area should be directed to rural growth centers and regional growth centers.
2. **Limit wastewater treatment system hookups for a sewer lines crossing a Permanent**

Agricultural Area. If a current, or future, sewer line crosses through a Permanent Agricultural Area the Metropolitan Council should prohibit connections to the line in this area. Allowing connections, particularly for non-farm uses, will undermine the effectiveness and integrity of the Permanent Agricultural Area.

3. **Define Permanent Agricultural Area boundaries.** The *Agenda for Regional Action* proposed a goal of protecting 400,000 acres of farmland within the metropolitan area. The Council and local government staff should use the regional GIS data base to overlay a series of factors defining boundaries of a Permanent Agricultural Area, such as:
 - a. Location of lands currently in farms
 - b. Prime and locally-important agricultural soils
 - c. Specialty cropland on non-prime soils
 - d. Metropolitan Agricultural Preserves eligibility
 - e. Lands identified in local comprehensive plans as permanent agriculture

4. **Develop and propose statutory changes to enhance the Metropolitan Agricultural Preserves Act by providing an alternative, longer-term enrollment option.** The existing short-term program would remain as an option. However, a longer-term/higher-benefit option would be created. The Metropolitan Council should pursue the following specific changes to Minn. Stat. 473H to increase participation and better achieve long-term protection goals (a more detailed implementation strategy is included in an appendix to this report):
 - a. Create an optional enrollment period of a minimum of 30 years.
 - b. Increase the property tax credit to a level that will induce landowners to sign-up for the longer term.
 - c. Clarify the economic hardship relief rules to better define what constitutes a case of hardship that would allow the landowner to withdraw early.
 - d. Require additional planning and best management practices for lands enrolled in the 30-year term program as well as restricting the construction of non-farm buildings and guiding the location of farm buildings to non-productive farmland.

5. **Develop a program and pursue funding for a Purchase of Agricultural Preservation Easements (PAPE) program.** The Metropolitan Council should work with counties that have Permanent Agricultural Areas to develop a PAPE program. The Minnesota Department of Agriculture should also be involved in the development of the program. (Program cost estimates, and suggested components and process are contained in an appendix to this report.)

6. **Develop and distribute informational materials and model ordinances, conduct informational workshops and offer to provide technical assistance** to local governments pursuing innovative planning and zoning techniques, such as:
 - a. Establishing agricultural security districts that use a combination of elements to provide maximum protection for agriculture. Among techniques are included:
 - i. Very large lot sizes - minimum 160 acres per dwelling
 - ii. Establishment of an agricultural district qualifying for Metropolitan Agricultural Preserves Program
 - iii. Exclusive agriculture zoning allowing only farm related uses
 - iv. Limitations to prevent locating structures on productive land
 - v. Requirement of agricultural use notice and nuisance waivers for land use permit applicants
 - vi. Exemption from assessments
 - vii. Exemption from local nuisance ordinances

- viii. Annexation limited
 - ix. Preference for PAPE purchases
 - b. Exclusive agricultural zoning
 - c. Purchase of Agricultural Preservation Easements
 - d. Other zoning provisions that minimize conflict between agriculture and non-farm uses
- 7. **Allow opportunities for potential transfer of development rights programs and offer to provide technical assistance** to officials and staff of local governments interested in establishing a TDR program. As an **incentive** to create TDR programs, the Metropolitan Council could increase the priority for wastewater treatment investments for rural growth centers that create a TDR program with neighboring jurisdictions.
- 8. **Promote the benefits of coordinated planning and provide facilitation services.** Metropolitan Council staff should develop materials and workshops promoting the benefits of coordinated planning and offering guidance on implementing coordinated planning processes. Metropolitan Council staff could also assist with facilitation of coordinated planning processes. Facilitation could be provided to local governments involved in:
 - a. Multi-jurisdictional coordinated planning efforts
 - b. Developing Transfer of Development Rights programs
 - c. Defining growth reserve areas around expanding rural and regional growth centers
 - d. Negotiating orderly annexation agreements
- 9. **Provide planning grants** to encourage local governments interested in implementing innovative tools. Programs such as PAPE and TDR require a significant commitment of staff time to develop local policies, priorities and ordinances. Planning grants could also be used as incentives for local governments to undertake coordinated planning efforts.
- 10. **Establish a forum for dialogue with officials and staff of counties adjacent to the seven-county Metropolitan Area.** Specific Metropolitan Council staff should be designated to conduct outreach efforts to surrounding counties. To be effective, staff should develop a consistent and continuing forum for discussing planning issues that affect both the seven-county metro area and surrounding counties.
- 11. **Promote appropriate road design and access management** along county and state highways throughout the rural area to mitigate development pressures on Permanent Agricultural Areas and guide growth away from Permanent Agricultural Areas and toward areas that are planned for some level of growth.

C. Implementation Strategies for the Diversified Rural Area

The following implementation strategies will help maintain the essential elements of the Diversified Rural Area in a manner that maintains local choice.

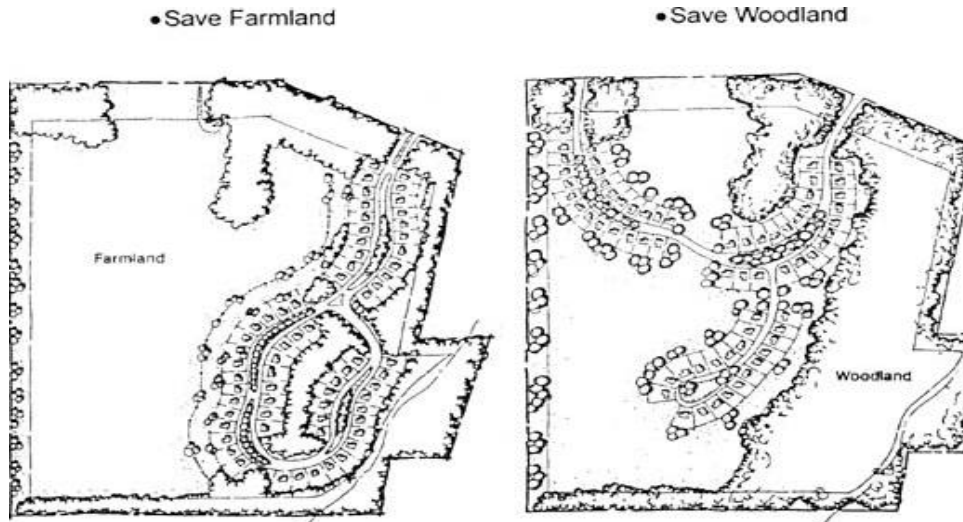
- 1. **Evaluate and minimize cumulative wastewater treatment impacts of cluster development.** Rural cluster developments are frequently recommended as a means of allowing housing in the Diversified Rural Area while preserving significant open space, farmlands or natural resources. However, they can result in a cumulative increase in the number of on-site wastewater treatment systems or construction of community treatment systems. As part of the Metropolitan Council's assessment of wastewater treatment alternatives for rural areas, the potential effects of these community systems on groundwater and surface water should be evaluated. After these effects are determined, the Metropolitan Council staff should develop advisory standards for cluster developments and provide

technical assistance to local communities that allow cluster development (see Natural Resources implementation strategy #4 below).

2. **Prepare informational materials and conduct workshops** for local planners and zoning administrators. The Council should:
 - a. **Illustrate how to guide development on the basis of density** and how to calculate density on the basis on 640 acres of land for ownership tracts smaller than 640 acres. The materials and workshops should also present methods for tracking previously permitted density and legal aspects of regulating land development in this manner.
 - b. **Facilitate appropriate clustered housing design by updating and distributing** copies of the Metropolitan Council’s report *Open Space Design Development: A Guide for Local Governments* (1997) and **conducting informational seminars** for local planners and zoning administrators.
 - c. Prepare and distribute materials and conduct informational seminars on **how to use joint planning and “anticipatory platting” techniques.**
 - d. Publicize the results of the Council’s recent **cost of development study** with emphasis on near-urban (i.e. rural residential) densities.
 - e. Conduct a study and prepare recommendations regarding how local governments can **estimate the full cost** of near-urban rural residential and semi-rural land development in their locality and recover those costs from new and existing land developments.
 - f. Provide technical assistance and informational materials to local officials and staff regarding **transfer of development rights programs.**

3. **Review clustered housing provisions.** The Council should review local comprehensive plans for the inclusion of clustered housing policies with the following provisions:
 - a. Small lots (limited in size only by the adequate function of the sewage system)
 - b. Permanent protection of significant natural resources
 - c. Protected open space
 - d. Design and management of on-site or communal wastewater systems
 - e. Properly designed individual wells or community wells
 - f. A layout that maintains the appearance of a rural setting
 - g. Traffic generation consistent with rural levels of road service
 - h. No interference with long-term agriculture or the growth of a rural settlement

Example of Rural Clustering Options



Rural housing clusters may be designed to preserve farmland, other natural features, and/or open views. Local governments should assess a site's resources before choosing locations for preservation and development. Clustering is a technique to allow a reasonable amount of land development while conserving the most valuable aspects of rural character.

4. **Provide a GIS database** from the NRI/A project to local governments for use in identifying land with development constraints. The Metropolitan Council could also develop and conduct workshops for local government staff, landowners and developers on how to use the data in determining development constraints on a site-specific basis.
5. **Provide technical assistance to local governments in developing policies and ordinances to protect locally significant agricultural areas.** Local governments in the Diversified Rural Area may be interested in protecting working farms outside the Permanent Agricultural Area. Metropolitan Council staff could offer to assist local governments in writing policies and ordinances to protect these farms using techniques such as:
 - a. Creating agricultural districts that promote the continuation of farming
 - b. Requiring buffers between farms and new residential development
 - c. Requiring applicants for land use permits on land adjacent to working farms to sign waivers acknowledging that farming may produce nuisances and waiving the right to sue

D. Implementation Strategies for Rural Residential Areas

Rural Residential Areas are those areas within the Diversified Rural Area that are already developed at densities of one unit per two acres or greater. Implementation strategies are designed to help local communities understand and address issues related to rural residential development, and to result in orderly and efficient development patterns.

1. **Evaluate wastewater impacts** of rural residential development related to increased environmental risks.
2. **Prepare informational materials and conduct workshops** for local planners and zoning administrators. The Council should:
 - a. Publicize the results of the Council’s recent **cost of development study** with emphasis on near-urban (i.e. rural residential) densities.
 - b. Conduct a study and prepare recommendations regarding how local governments can **estimate the full cost** of near-urban rural residential and semi-rural land development in their locality and recover those costs from new and existing land developments.
 - c. Provide technical assistance and informational materials to local officials and staff regarding the **transfer of development rights**.
 - d. Provide assistance to local communities seeking to transition from rural residential development patterns to rural settlement development patterns.
3. **Encourage cities and townships** to prepare plans for, and require developers to build, a fully interconnected local street system within Rural Residential Areas to provide alternatives to the use of county and state highways.

E. Implementation Strategies for Natural Resources in the Rural Area

Blueprint 2030 should provide local communities with resources and assistance to integrate natural resource planning into the planning and development process. To accomplish this the following implementation strategies are critical.

1. **Review future Comprehensive Plan updates for alignment with regional natural resource goals and objectives.** To ensure this alignment, the Council will provide local communities with general direction on the Council’s natural resource policy and expectations for protection of natural resources. The Council will identify the regionally significant natural resources that it is trying to protect and the policies, goals and objectives in place to help protect the resources. Comprehensive plan updates and amendments will be reviewed to ensure they are consistent with these policies, goals and objectives and are protecting the valued natural resources.
2. The Council should **prepare materials, conduct workshops and offer to provide direct assistance** to local communities on the following land use techniques:
 - a. Detail how to **develop and implement performance based ordinances** that address:
 - i. Minimizing fragmentation of significant natural resource areas
 - ii. Creating buffers to significant natural resource areas.
 - iii. Constructing and operating innovative stormwater management systems and other approaches to balancing natural resource protection and new development.
 - b. **Develop guidelines to promote innovative design approaches** that minimize fragmentation of significant natural resources, prevent impacts to wetland and other natural resources, limit transportation improvements in identified sensitive natural areas, and ensure a safe and efficient transportation system.
3. **Provide technical assistance** and coordinated planning to promote **efficient design and appropriate expansion** of the regional wastewater treatment system and the regional transportation system in the urbanizing area that minimizes impacts on sensitive natural

resource areas.

4. **Create a guidebook and offer technical assistance to inform local leaders about small-scale wastewater treatment systems for rural centers and cluster developments.** This effort is to ensure that alternative systems are installed only where appropriate and to help local communities acquire the background information necessary to make informed decisions regarding wastewater treatment. Decisions to permit the use of on-site treatment systems and alternative wastewater treatment systems are of particular concern to local governments because the Metropolitan Council does not intend to provide wastewater service to the Agricultural Area, the Diversified Rural Area or the Rural Residential Area. Should these systems fail local governments will be responsible for resolving the problem.
5. **Investigate and promote ways to combine funding opportunities** for investment in both transportation system improvements and natural resource protection (e.g., Transportation Efficiency Act for the 21st Century (TEA21), wetland mitigation, locational choices).
6. **Work in partnership with the Metro Department of Natural Resources and others to provide information and technical assistance** to local governments that will:
 - a. Explain the NRI/A process (the assumptions, the results, the data availability) and how further details can be developed at a local level to help planning efforts to protect identified natural resources.
 - b. Demonstrate the interconnectedness and importance of land use and natural resource issues.
 - c. Provide local communities with a NRI/A methodology that they can adapt to local needs and circumstances.
 - d. Use the regional NRI/A to assist local governments with the preparation of more detailed local NRI/As.
 - e. Provide assistance or planning grants to rural communities lacking staff or resources to complete a local NRI/A and natural resources plan.
7. **Review local comprehensive plans for appropriate policies, maps and official controls to ensure the protection of regionally significant natural resources** as identified through the NRI/A process. (If requested by the local government, the Council could also assist local governments with the development of policies and official controls to protect identified locally significant natural resources.)
8. **Foster cooperation among state and federal agencies, local governments and others that have an interest in natural resource protection.** The Council should develop a systematic method for sharing information among agencies and other partners to promote discussion, minimize redundancy and ensure natural resource protection is aligned and supported by all appropriate jurisdictions.

Appendix A Rural Settlements Summary Table RURAL SETTLEMENTS				
Rural Settlement Type	Hamlet	Rural Center	Rural Growth Center	Regional Growth Center
Definition	A settlement, often at a crossroads, primarily residential in character, but with a small compact core offering limited convenience goods and community activities.	A compact settlement that includes one or more residential neighborhoods surrounding a center that provides basic consumer services and community activities to residents or nearby residents.	Same definition as a Rural Center Distinction: the community's interest in growth as expressed in its plans and policies.	A city that is separated from the Urban Area. It has its own "core" and "suburbs," and serves a larger surrounding land area. It shares many of the characteristics of a Rural Growth Center.
Typical Existing Characteristics	Often part of a larger jurisdiction (city or township) No public water or sewerage Surrounded by agricultural, rural or natural resource lands Average housing densities of 2 or more units/acre Population generally under 500 (around 200 households)	<i>Incorporated city or the "center" of a township-sized city</i> Centralized wastewater treatment Civic facilities present (schools, churches, parks, etc.) Basic neighborhood-level retail and service uses are present; but not a regional shopping or employment center Access to a county or state arterial highway Average housing densities of 2 – 7 units/acre Population generally 500 – 2,500 Often surrounded by a defined growth/expansion area	<i>Characteristics the same as those of a Rural Center</i>	Incorporated city Central wastewater treatment Includes regional-level retail and civic facilities, health care facilities, etc. Includes a greater share of employment (esp. in county seats) Often has dedicated transit connection, i.e. express bus Some diversity of housing types Access to a state highway Average housing densities of 3-7 units/acre or more Population generally 5,000+ Often surrounded by defined growth/expansion area

Appendix A
Rural Settlements Summary Table
RURAL SETTLEMENTS

<p>Policies/ Desired Characteristics</p>	<p>Safe and sustainable wastewater treatment Provides basic “convenience level” shopping Very limited infill housing or commercial development consistent with community character Hamlets may choose to grow into Rural Centers/Rural Growth Centers in the future</p>	<p>If a rural center’s plans would maintain it at its current size and scale, the primary goal would be to maintain its existing characteristics. Limited infill or expansion within the capacity of the wastewater treatment system may be appropriate.</p>	<p>Improved wastewater system (regional or local) to serve projected population Provide basic retail services for residents; employment to the extent feasible Some linkage to regional transit – i.e., “park & pool” lots Protect regionally significant natural resources and common open space Provide a diversity of housing types, including affordable housing, at densities of 3 – 7 units/acre Cooperatively define an “urban reserve” area for future growth with the surrounding township and county (this may involve orderly annexation agreements)</p>	<p>Maintain a strong central business district Provide a diversity of housing types, including affordable housing; at densities of 3 – 7 units/acre; some higher-densities nodes close to transit or activity centers Cooperatively define an “urban reserve” area for future growth with the surrounding township and county (this may involve orderly annexation agreements) Accommodate major public facilities such as high schools Establish some basic contextual design standards, including standards for new or infill development consistent with historical character and compact mixed use development principles.</p>
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Appendix A
Rural Settlements Summary Table
RURAL SETTLEMENTS

<p>Proposed Metropolitan Council Actions</p> <p>If the local government chooses to work with the Metropolitan Council, the Council may provide the following:</p>	<p>Planning, zoning and design assistance</p>	<p>Planning and technical assistance</p> <p>Other assistance may be appropriate depending on the location of the rural center (i.e. a link to regional transit if along a transportation corridor), its size, and its infrastructure needs</p>	<p>Planning and technical assistance</p> <p>Financial or technical assistance with wastewater treatment</p> <p>Assistance with regional transportation investments and investments such as regional parks or trails</p> <p>Funding assistance through an expanded Livable Communities program, or coordination with state programs (housing, transportation, etc.)</p> <p>Some linkage to regional transit, ranging from park & pool lots to park & ride along transportation corridors</p>	<p>Planning and technical assistance</p> <p>Own and operate the wastewater treatment system</p> <p>Assistance with regional transportation investments (may include roads and transit investments)</p> <p>Funding assistance through an expanded Livable Communities program or coordination with state programs (housing, transportation, etc.)</p> <p>Improved, dedicated transit service along transportation corridors</p>
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Appendix B

Approach for Amending the Metropolitan Agricultural Preserves Program Minnesota Statutes Chapter 473H

A. Background on the Metropolitan Agricultural Preserves Program

The Metropolitan Agricultural Preserves Program is a voluntary agricultural preservation program where enrolled land is assessed according to its agricultural value rather than market value. There is an additional property tax credit (“conservation credit”) of at least \$1.50/acre/year. Other benefits include exemption from special assessments and protection from annexation. Enrollees are required to complete the “Metropolitan Agricultural Preserves Restrictive Covenant” enrollment form specifying that the land will be kept in agricultural use as defined by statute. The restrictive covenant remains in effect indefinitely, or until the date an expiration notice is signed. The restrictive covenant and its benefits terminate eight years from the date the expiration notice is filed.

A \$5 fee levied by each county on mortgage registrations and deed transfers (MRDT fee) funds the program. Each county collects the fee and keeps \$2.50. The other half is transferred to the state conservation fund account (MN Stat. 40A). Since landowners enrolled in Agricultural Preserves receive a property tax savings (conservation credit), the counties use this revenue to compensate for the property tax difference. Counties first pay conservation tax credits from their \$2.50 share of the proceeds, then draw from the state fund if county proceeds are insufficient to meet tax credit demands. If a county’s share of the MRDT fee is more than the amount required to cover the total conservation credits in that county, it may use the excess funds for agricultural land conservation and soil conservation activities. Most counties have chosen to fund Soil and Water Conservation Districts (SWCD) with the excess funds.

In 2000, Carver and Dakota Counties drew from the state conservation fund account because conservation credits exceeded the total amount of the MRDT they retained. After all withdrawals from counties, the state conservation fund has carried an average balance of \$1.28 million for the past four years. This balance is not an amount that is added yearly; rather it reflects the accumulation of overages produced over a number of years. For example, the amount added to the state conservation fund balance in 2000 was \$277,862. This fund has been diverted, in whole or in part, for other state purposes in the past and is proposed to be diverted in whole under current budget proposals.

B. Proposed Policy

The Metropolitan Council’s Rural Issues Work Group has proposed adopting the following policy:

Enhance the existing Metropolitan Agricultural Preserves program to encourage more participation.

C. Proposed Implementation Strategies for Enhance the Metropolitan Agricultural Preserves Program

The Metropolitan Council’s Rural Issues Work Group has considered adopting the following statements as an implementation program for the policy stated above:

1. Develop and propose statutory changes to enhance the Metropolitan Agricultural Preserves Act by **providing an alternative, longer-term enrollment option**. The existing short-term program would remain as an option. However, a longer-term/higher-benefit option would be created. The Metropolitan Council should pursue the following specific changes to Minn.

Stat. 473H to increase participation and better achieve long-term protection goals:

2. Create an **optional enrollment period of a minimum of 30 years**. This would help the program qualify for matching funds from the anticipated federal farmland protection program.
3. **Increase the per acre property tax credit** to a level that will induce landowners to sign-up for the longer term. It has been suggested that \$5.00 per year would be sufficient. The counties forward 50% of the MDRT fee (currently \$5 per transaction) to the State Conservation Fund account. This account is used to reimburse counties whose Metropolitan Agricultural Preserves Program costs are not completely covered by the 50% of the MRDT fee that remains in that county. Excess balances in this account have been carried in past years.
 - a. There were 200,295 acres enrolled in the Metropolitan Agricultural Preserves Program in 2000. If an additional **100,000 acres were enrolled** instead in the alternative, longer-term enrollment option, it would cost an **additional \$500,000 per year**.
 - b. The increased cost could be funded by:
 - i. Using current State Conservation Fund balances (the balance in this account has ranged from \$675,000 to \$1.9 million over the past four years)
 - ii. Securing federal farmland protection program matching funds
 - iii. Increasing the MRDT fee
4. **Clarify the economic hardship relief rules** (MN Stat. 473H.09) to better define what constitutes a case of hardship that would allow the landowner to withdraw early.
5. **Require additional planning and best management practices** for lands enrolled in the 30-year term program as well as restricting the construction of non-farm buildings and guiding the location of farm buildings to non-productive farmland.

D. Additional Implementation Information

1. Statutory changes

There are three primary changes necessary to implement the enhanced Metropolitan Agricultural Preserves Program as suggested above.

- a. **Create a 30 year term option under section 473H.08 Duration.** This option would require 30 year agreements with no provision for withdrawal other than hardship.
- b. **Raise the minimum conservation credit to \$5.00/acre/year under section 473H.10(c)** for the 30-year term option.
- c. Add requirements for a **current soil conservation plan** certified by local SWCD and **other best management practices under section 473H.16Conservation.**

2. Cost and funding of increase in conservation credit to \$5.00/acre/year

Current program enrollment (expiration 8 years after expiration notice is filed) is approximately 200,000 acres. This discussion assumes enrollment in this option will remain the same, although there could be some conversion from the 8-year expiration to the 30-year term. The total eligible acres were 512,000 in 1999.

In the proposed Purchase of Agricultural Preservation Easements (PAPE) scenarios, protection of 100,000 acres was used for comparison. If an enhanced Metropolitan Agricultural Preserves program protected an **additional** 100,000 acres of newly enrolled land under the 30-year term program the costs would be:

Cost of \$5/ac/yr conservation credit for an additional 100,000 acres –

\$500,000 per year; \$15,000,000 over a 30 year term
\$500,000 is greater than the amount of overage in 2000 (\$277,862)

If an additional 200,000 acres is protected (doubling the size of existing enrollment):

Cost of increase to \$5/ac/yr conservation credit for an additional 200,000 acres -
\$1,000,000 per year; \$30,000,000 over a 30 year term

Increasing the conservation credit payment from \$1.50 to \$5.00/acre would use money that is currently being used in the following ways:

- a. The portion of the \$2.50 county share of the MRDT fee that is not used to reimburse the county and cities for lost revenue is primarily used to fund county soil and water conservation district activities.
- b. The state conservation fund account (the \$2.50 of the MRDT fee that is retained by the state) is first used to reimburse counties that cannot cover their lost revenue with their share of the MRDT fee. Last year, Carver and Dakota counties spent all of their share and received portions of the state conservation fund account. Counties in greater Minnesota participating in the state's agricultural preservation program also received portions of the state conservation fund account.

Payments for a 30-year term program could reduce the amount of revenues directed to SWCDs. The state conservation fund account could support additional costs for the 30-year term program, but if the program is very successful, it may be oversubscribed. This, of course, assumes MRDT fees remain at \$5.00, and the rate of mortgage registrations and deed transfers does not drop below the current level. Provision should be made for a source of revenues to supplement the state conservation fund if needed. Possible sources include: general state property tax revenues, an increase in the MRDT fee, or use of state conservation fund balances to create an endowment to generate future revenues.

3. Matching funds from the federal Farmland Protection Program to further increase conservation credit benefit

It has been suggested that conservation credit tax incentives could be further enhanced by the use of matching funds from the Federal Farmland Protection Program (FPP) and other county funds. The \$5.00 paid by a county under the Metropolitan Agricultural Preserves Program could be matched by an additional \$5.00 from the FPP, thus bringing the total benefit to \$10.00/acre/year

The FPP funding is part of the current Farm Bill under consideration in Congress. The Senate and House have each passed versions of the Farm Bill with the FPP funded at \$200 million and \$350 million respectively. An eligible program could receive a 50/50 match for payments to landowners for programs that acquire easements or other interests in land that provide permanent protection (a minimum of 30 years) from conversion to nonagricultural uses. An informed guess was made that Minnesota could receive up to \$15 million in FPP funds for an eligible program, however this is not a guarantee. The Minnesota 30-year term program would be competing for FPP funding against programs in other states that acquire permanent conservation easements. To date, the FPP has only funded the purchase of permanent easements. It is also unclear as to how the FPP would treat a 30-year stream of payments.

An **additional statutory change** to the Metropolitan Agricultural Preserves Program would be necessary to qualify for federal funds. The 30-year term program would have to acquire an interest in land that is enrolled for the 30-year period. The restrictive covenant placed on land enrolled in the current program is not an interest in land that is acquired by the county or state. A term conservation easement held by the county or state would satisfy the federal requirement.

4. Additional County funds used to further increase the per acre payment

Another way that has been suggested to increase the incentive for landowners to enroll in a 30-year term option would be for counties to use other funds (local bonding, general revenues, etc.) to increase the payment. No change in state legislation would be necessary. A county would have to establish a fund and rules for making payments.

5. Cost of program with FPP match and additional County match

If FPP funds were obtained as a 50/50 match for the \$5.00 base conservation credit, and a county chose to make an additional contribution of \$3.00/acre/year, the **total benefit to a landowner** would be:

\$13/acre/year
\$390/acre over the 30-year term
\$15,600 for 40 acres over the 30-year term

The **total program cost** would be:

For an additional 100,000 acres of newly enrolled land under the 30 year term program:

Cost of \$5/ac/yr conservation credit for an additional 100,000 acres -
\$500,000 per year; \$15,000,000 over a 30 year term

**Cost of above plus county match plus FPP match -
\$1,300,000 per year; \$39 million over a 30 year term**

If an additional 200,000 acres is protected (doubling the size of existing enrollment):

Cost of increase to \$5/ac/yr conservation credit for an additional 200,000 acres -
\$1,000,000 per year; \$30,000,000 over a 30 year term

**Cost of above plus county match plus FPP match -
\$2,600,000 per year; \$78 million over a 30 year term**

Appendix C

An Approach for Implementing a Purchase of Agricultural Preservation Easement (PAPE) Program

A. Introduction and Minimum Criteria

The Metropolitan Council Rural Issues Work Group includes establishing a Purchase of Agricultural Preservation Easements (PAPE) program (also referred to as a Purchase of Development Rights [PDR] program) as a policy recommendation for the Permanent Agricultural Area. The Council will establish a minimum set of criteria for design and participation in a PAPE program. The Council will then work with counties to design county-administered programs that meet both the minimum criteria and the needs of that county. Examples of possible criteria include:

1. Farmland eligible for PAPE must be within the defined Permanent Agricultural Area and eligible for the Metropolitan Agricultural Preserves Program
2. The county must provide at least a 50% match to purchase funds provided by the Council
3. Purchased easements must be permanent

B. Preferred Scenario

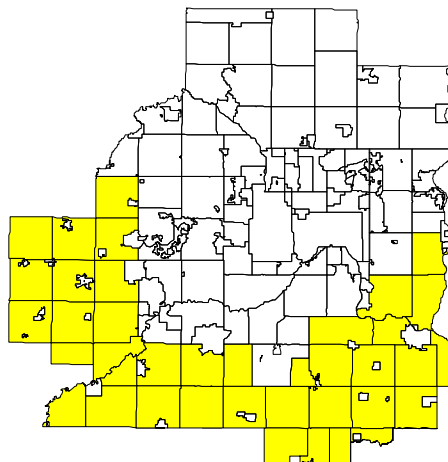
The Rural Issues Work Group considered two possible alternative implementation scenarios for a PAPE program. The alternatives included target locations, estimated program costs, and possible program administrative design. The remainder of this Appendix describes the implementation scenario preferred by the work group to meet the objectives for the Permanent Agricultural Area. The information provides a starting point for the development of a regional program. Final program design will be based on the minimum criteria and county preferences.

An essential element of a successful PAPE program is a targeted acquisition strategy. The goals of such a strategy include:

1. Creating a barrier of preserved farmland to limit the spread of development into the countryside; and
2. Creating large contiguous blocks of preserved farmland to protect a critical mass of farms and farmland that will help keep farm support businesses profitable and thus support agriculture as an industry.

The following PAPE program scenario was discussed by the Rural Issues Work Group for a PAPE program to achieve the goals listed above.

The figure to the right presents a conceptual map of townships with large areas of land eligible for enrollment in the Metropolitan Agricultural Preserves Program (referred to as “MAP certified”). These areas are targeted by local governments for long-term agriculture. Eligibility for the Agricultural Preserves Program is a minimum criteria for PAPE programs. The townships highlighted on the map formed the basis for our cost estimates. The figure contains about 490,000 acres of MAP program certified land.



3. Acreage and Cost Estimates

Farmland preservation programs across the country have proven that when a county preserves at least 20,000 acres, the county is able to influence the location of development away from agricultural areas. Five counties in the metropolitan area (Carver, Scott, Dakota Hennepin and Washington counties) have townships with significant areas of MAP certified lands. A target of 100,000 acres across the five counties was used for initial program cost estimates for comparing scenarios. After reviewing the two scenarios, the Rural Issues Work Group recommended targeting a higher number of acres, possibly 200,000, for the preferred scenario. A higher number of acres will provide a wider area of protection further reducing development.

Cost estimates in this document assume the following acreages in the five counties:

35,000 acres in Carver County
 35,000 acres in Dakota County
 10,000 acres in Hennepin County
 15,000 acres in Scott County
 5,000 acres in Washington County
TOTAL 100,000 acres

The cost of an easement would average about \$1,000 an acre, for a total of \$100.4 million (see Table 1). The “Metro-wide” alternative in Table 1 includes 100,000 acres of agricultural lands more distant from the urban edge and, thus less expensive to purchase and preserve.

Table 1: Assumed County Target Acres and Costs*

County	Target Acres (Thousands)	Expenditure (Millions)
Carver	35	28.4
Dakota	35	22.8
Hennepin	10	24.2
Scott	15	7.4
Washington	5	17.6
Total	100	100.4
Metro-wide alternative	100	52.5

*For discussion purposes. Actual acres target by each county would be determined as counties develop their programs. Source: Steve Taff

In this example funding was split on a 50/50 basis between the Metropolitan Council and each of the five counties. Using the cost estimates from Table 1, county funding would be as follows:

County	County Funding (in millions)
Carver	\$14.2
Dakota	\$11.4
Hennepin	\$12.1
Scott	\$3.7
Washington	\$8.8
Tot:	
Met	
TOTAL PAPE FUNDS	\$100.4

4. Program Design Suggestions

There are many elements to consider in designing a PAPE program. Following are suggested ways for designing a PAPE program in the Permanent Agricultural Area. Final program design will be developed at the county level and program elements may vary from county to county.

Length of program: The PAPE program would be expected to run for 10 to 15 years. Based on experience with other programs, the time involved in acquiring the estimated number of acres will take at least a decade. However with more funding and additional staff time it could take less time.

Staffing: Counties should have the primary responsibility for administering the program. Counties may have to hire staff to administer their respective PAPE programs. The Metropolitan Council should hire a staff person to coordinate the PAPE program. Initially, there will be a need for extensive public outreach and education as well as working with the county governments. Next, the staff person should be responsible for sending checks for easement purchases to the respective counties on a project-by-project basis. Later, monitoring and enforcement of easements will become a major emphasis. County legal staff should be available to respond to legal questions about the PAPE program.

Selection criteria and process: Farmland within the Permanent Agricultural Area should be eligible for preservation, and each county should require a minimum parcel size of 50 acres. Counties should develop an application form, application deadline, and ranking system for applications. Features counties may use to rank applications might include soil quality, gross annual farm income, road frontage, among others.

Easement valuation, payments and negotiation: Counties could choose any of the following easement valuation techniques:

- a. A traditional “before/after” appraisal for determining the value of easements
- b. A points-based appraisal system
- c. A set price per acre for easements

Counties could choose to offer a lump sum payment for an easement, installment payments, annuity payments or other payment options.

Counties should have the responsibility for coordinating appraisals, negotiations with landowners, surveys, closing documentation, and recording the easement document

Monitoring and enforcement of easements: The Metropolitan Council should be a joint holder with the respective county of any easement in which Metropolitan Council funds were used to acquire the easement. Each county and the Metropolitan Council should enter into a Memorandum of Agreement giving the county primary responsibility for the monitoring and enforcement of the easements. The Metropolitan Council should require annual monitoring reports on each farm preserved and should be prepared to assist a county with enforcement in a legal dispute.

Program reporting and evaluation: Counties should provide the Metropolitan Council with an annual report of PAPE program progress, including the number of easements settled, acres preserved, cost of acres preserved, and location. The Metropolitan Council should hold an annual meeting with the PAPE administrators to discuss issues and concerns relating to the program.



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

**“Green Acres” and
Agricultural Land
Preservation Programs**

FEBRUARY 2008

PROGRAM EVALUATION DIVISION
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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

February 2008

Members of the Legislative Audit Commission:

We evaluated three of Minnesota's programs that provide tax advantages to agricultural land—the "Green Acres" Program and two agricultural land preservation programs. This report presents the results of our evaluation of these programs.

We found that the Green Acres Program substantially reduces the variation in taxable value between farmland with value added by nonagricultural factors and that without. Nevertheless, it is not effective at preserving farmland, and the Legislature should reconsider who and what types of land should benefit from the program.

We found that the state's agricultural land preservation programs can help to slow the rate of development, but they do not adequately assure long-term preservation of farmland. If the state wants to preserve farmland for the long term, it will need to adopt other approaches.

This report was researched and written by Jody Hauer (project manager) and Dan Jacobson.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nobles".

James Nobles
Legislative Auditor

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Summary

Together, Minnesota's agricultural land protection programs, which cost about \$40 million in 2007, are generally effective at equalizing taxes, but they do not effectively preserve farmland for the long term.

Major Findings:

- The Green Acres Program effectively equalizes taxes for many agricultural landowners but does not help all who could be eligible. The program's effect on preserving farmland is short term and tenuous (p. 30).
- It is unclear whether the Green Acres Program's goals include benefiting some owners and types of land, such as untillable land used mostly for hunting (p. 35).
- Certain Green Acres Program eligibility criteria, including the income threshold and definition of land that is "primarily" agricultural, are outdated, difficult to implement fairly, or create inequities (p. 39).
- Not all counties that could have implemented the Green Acres Program have done so, and administration of the program is inconsistent. Recent Department of Revenue actions will help but can be improved (p. 43).
- The Metropolitan Agricultural Preserves Program and the Agricultural Land Preservation Program in Greater Minnesota can help control the shape and pace of development but are not adequate to preserve farmland for the long term (p. 54).
- In a few cases, counties have spent money raised through the farmland preservation programs on natural resource conservation projects that may not meet a strict

interpretation of state statutes, but additional oversight is necessary only if the Legislature wants to further restrict the spending (p. 63).

Recommendations:

- The Legislature should clarify who and what types of properties should benefit from the Green Acres Program (p. 38).
- The Legislature should replace the minimum income criterion in the Green Acres Program with more specific language to help define land that is "primarily" agricultural (p. 42).
- The Department of Revenue should continue efforts to make the Green Acres Program more consistent statewide but also make some changes, such as to its method for valuing nontillable land in the program (p. 50).
- If Minnesota wishes to preserve lands for agricultural uses over the long term, the Legislature should consider supplementing existing programs with other strategies. It should also improve current programs by specifying who has authority to enforce them (p. 62).
- The Legislature should determine whether spending program revenues on natural resource projects other than agricultural land preservation and soil conservation is unacceptable, and if so, it should specify in law the unallowable activities (p. 65).

Report Summary

More than three decades ago, Minnesota adopted programs to protect agricultural land. The Agricultural Property Tax Law, known as "Green Acres," reduces taxes on certain agricultural land. The Metropolitan Agricultural Preserves Act for the seven-county metropolitan area and the Agricultural Land Preservation Program for Greater Minnesota were intended to protect farmland for long-term agricultural uses.

Overall, we estimate these three programs reduced property taxes for enrolled landowners in 2007 by \$40 million. Nearby property owners not in the programs make up most of this by paying somewhat more in taxes than they otherwise would.

Minnesota has 29.5 million acres of land classified as agricultural, which is 58 percent of the state's total land area. But it has gradually lost farmland, with a 2 percent loss between 1982 and 1997.

Land qualifies for the Green Acres Program only if nonagricultural factors (such as development pressures) are adding to its value. The program reduces property taxes by lowering the taxable value of eligible land, and it defers the payment of special assessments. About 13 percent of the state's farmland is enrolled. If land becomes ineligible, landowners must pay back the tax break from the most recent three years and all of the deferred special assessments. Tax deferrals from earlier years, however, are a permanent tax break.

Land enrolled in the Metropolitan Agricultural Preserves Program also

enjoys a lower taxable value. In addition, owners receive a tax credit of about \$1.50 per acre, do not pay special assessments, and receive protections from annexation and local ordinances that might interfere with normal farming practices. However, only land in areas designated for long-term agricultural use is eligible. Owners must agree to a covenant on their land's title, restricting use to agriculture, and the restrictions remain in place for eight years after notice is filed to terminate the agricultural preserve. About 25 percent of farmland in the metropolitan area is enrolled.

In Greater Minnesota, the farmland preservation program operates in Waseca, Winona, and Wright counties, where enrollment is 33, 13, and 3 percent of farmland, respectively. Enrolled landowners receive many of the same benefits described for the program in the metropolitan area, except the land's taxable value is not lowered and property taxes are not deferred.

The Green Acres Program equalizes taxes for many agricultural landowners but does not help all who may be eligible, and it does not preserve farmland for the long term.

The Green Acres Program substantially reduces the variation in taxable value between farmland with value added by nonagricultural factors and that without. As an example, for enrolled farmland in the Twin Cities area, the program substituted an average agricultural-use value of \$3,600 per acre for the average estimated market value of \$13,800 in 2007. But not everyone who is potentially eligible receives benefits. Assessors have not

The Green Acres Program reduces the taxable value of qualifying farmland.

It is important to review the types of lands that benefit from the Green Acres Program because benefits have grown, and the program shifts more taxes onto land not in the program.

implemented the Green Acres Program in all areas where it could be used, and some landowners fail to apply or are not made aware of the program.

The Green Acres Program's effects on preserving farmland are of short duration. Landowners need not make any long-term commitments to the land. Especially in areas with development pressures, the amount of the tax benefit from the program, and the penalty of paying back three years worth of deferred taxes, are typically small relative to the financial gain of selling the land. Plus, the program is not targeted to farmland free of nearby land-use conflicts or land at threat of imminent development.

It is unclear whether the Green Acres Program's goals include benefiting certain landowners and land types that receive benefits.

Among beneficiaries of the Green Acres Program are people who are not farmers, land with only a small proportion of productive acres, farmland with increased values due to recreational demands, and minimal acreages used largely for hobby farm purposes. The law does not prohibit this, but in light of the sizable tax advantages provided by the program, it is appropriate to ask whether these beneficiaries should receive the benefits that come at the expense of other taxpayers not in the program. The Legislature should clarify the types of land to benefit.

Certain eligibility criteria for the Green Acres Program are outdated, difficult to implement fairly, or create inequities.

The program's income criterion has remained the same since 1969, and it does not filter out all minimal agricultural-production incomes. At the same time, the low threshold allows certain farmers, such as those on retirement incomes, to be eligible. Verifying applicants' incomes is difficult because landowners are reluctant to divulge personal financial data, not all file the income tax schedules used for verification, and assessors lack authority to verify private data.

Property-tax classification statutes list types of agricultural products for defining agricultural land but do not specify how much of a commodity is sufficient to qualify. Therefore, decisions regarding how many chickens on ten acres of land qualify as agricultural, for instance, are subjective. Furthermore, especially for small parcels, assessors have to determine whether the land is "primarily devoted to agricultural use," which is not defined in statute.

The Legislature should replace the minimum income criterion with more specifics for classifying farmland and defining "primarily" agricultural. Additional specificity would clarify for taxpayers and assessors what is and is not allowed.

Implementation and administration of the Green Acres Program has been inconsistent. Department of Revenue efforts to improve consistency will help but can be improved.

As of 2007, 35 counties had not implemented the Green Acres Program. Because some of those counties have nonagricultural factors influencing the value of farmland, certain landowners there are not

Land enrolled in the state's two farmland preservation programs peaked in 1998, and enrollments have been declining ever since.

receiving the tax benefits to which the law entitles them. In counties with land enrolled, assessors use different methods for deciding the primary use of the land, informing landowners about the program, and determining eligibility in special cases, such as when a parcel has multiple owners. Because these methods determine who receives the tax advantages and who is ineligible, consistency is important.

The Department of Revenue released a bulletin in October 2007 with a new statewide method for determining the low value of Green Acres parcels. To improve consistency among counties, the bulletin provides guidance to assessors on several matters, such as determining whether small properties qualify. The department should continue these efforts but should also make some changes, such as to its method for valuing nontillable Green Acres land.

Minnesota's two agricultural land preservation programs can shape development and slow its pace but are not adequate to preserve farmland for the long term.

Many counties and municipalities with land enrolled in one of the two preservation programs view them as an integral support for their local land policies. In their view, the programs help stage development, give farmers an incentive to continue farming, and prevent annexation that converts farmland to other uses.

At the same time, local government representatives generally believed that even without the tax incentives, their counties would not have developed much differently. The programs' effect on preserving

farmland is limited in part because only 25 percent of farm acres in the Twin Cities area and under 1 percent in Greater Minnesota are enrolled.

Since 1998 when enrollment in the two farmland preservation programs peaked, enrolled acres dropped 10 percent in the Twin Cities area and between 1 and 20 percent in Waseca, Winona, and Wright counties. Even in Carver County, which arguably has the strongest preservation program, 16 percent of acres once in agricultural preserves have expired since peak enrollment in 1998.

The financial benefits of the preservation programs are typically small relative to financial gains from selling the land. In the last ten years, the market value of farmland in the Twin Cities increased by an average of \$8,100 per acre, which reduces the incentive to retain the land for agricultural uses.

No state or local agency has enforcement authority over land in agricultural preserves. In a small number of cases, land was converted to other uses without waiting for the eight-year period required in law.

If the Legislature wishes to preserve agricultural land for the long term, it should consider supplementing existing programs with new approaches, but the options carry high costs. The Legislature should improve the existing laws by specifying who is to enforce them.

Money raised in the preservation programs has been largely spent on natural resource conservation, but some projects may not meet a strict interpretation of the law. Additional oversight is necessary only if the Legislature wants to further restrict the spending.

If Minnesota wants long-term preservation of agricultural lands, it must take new approaches, but they would be costly.

Introduction

Minnesota has three primary state programs intended to protect agricultural lands. One is known as the “Green Acres” Program, and it lowers the taxable value of qualifying farmland. It has drawn recent legislative attention because it is available in only some, not all, counties, and there were indications that it was administered inconsistently. The other two programs are designed specifically to preserve farmland and prevent it from being used for other purposes. One is the Metropolitan Agricultural Preserves Act, which applies to the seven-county metropolitan area. The second is the Agricultural Land Preservation Program, which is for Greater Minnesota.¹

In April 2007, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate the Green Acres Program and the two agricultural land preservation programs. Our evaluation addresses the following questions:

- **What are the Green Acres Program and the programs for preserving agricultural land, and what are their differences?**
- **How much in property tax benefits do program participants receive, and how do the programs affect property taxes paid by nonparticipants?**
- **How effective are the programs?**
- **Who benefits from the Green Acres Program, and how appropriate are the program’s eligibility criteria?**
- **How have the dollars raised as part of the agricultural land preservation programs been spent, and who oversees that spending?**

To answer the questions, we reviewed reports and state laws on the programs. We analyzed data from the Department of Revenue’s property tax records and the U.S. Department of Agriculture. We interviewed staff from state agencies and surveyed or interviewed most county assessors around the state. We reviewed program applications in six counties and spoke with a small number of landowners who either were already enrolled or wanted to apply. With data and staff from the Minnesota House of Representatives Research Department, we analyzed how the Green Acres and Metropolitan Agricultural Preserves programs affect property taxes. We interviewed a sample of local planning directors and

¹ Throughout this report, we refer to the Agricultural Land Preservation Program in “Greater Minnesota,” which comprises the 80 counties beyond the seven-county Twin Cities metropolitan area, even though the statutes do not use this terminology.

heads of organizations that oversee the spending of revenues raised in connection with the land preservation programs. In addition, we researched national literature and other states' programs on preserving agricultural land.

Although the Minnesota departments of Agriculture and Revenue are involved with the programs, we did not directly evaluate their performance. Nor did we survey the landowners who participate in the land protection programs, although we interviewed a small, nonrepresentative sample of them. We gathered information from county assessors, but we did not examine the consequences of their different practices for assessing the value of agricultural properties.

This report's first chapter provides background information on the Green Acres Program and the two agricultural land preservation programs. It also offers a brief description of other types of farmland protection programs. Chapter 2 evaluates the effectiveness of the Green Acres Program. Chapter 3 evaluates the effectiveness of Minnesota's farmland preservation programs and reviews how revenues associated with those programs are spent. Chapter 4 provides a brief overview discussion of the programs as a whole.

Background

SUMMARY

Minnesota has 29.5 million acres of agricultural land as of 2007, but it lost 2 percent of its farmland between 1982 and 1997, and data suggest additional losses since then, although the precise amount is not known. The state's "Green Acres" Program defers special assessments and reduces property taxes for agricultural landowners who meet the law's requirements on income, ownership, and land use and size. The Green Acres Program applies only where nonagricultural factors add higher value to farmland prices. It lowers property taxes by basing properties' taxable value on their agricultural use instead of "highest and best" use. Since 2000, acreage enrolled in the Green Acres Program has tripled to 3.7 million acres, due to growth in Greater Minnesota. Minnesota also has two separate but similar state programs specifically to preserve agricultural land. One program is in the Twin Cities metropolitan area, where six of seven counties have land enrolled, and the second is in Greater Minnesota, where three counties have land in the program. As of 2007, about 315,000 acres, or 1 percent of the state's farmland, were enrolled. Due to the three programs, agricultural landowners' property taxes for 2007 were reduced by about \$40 million, and surrounding property owners make up most of that by paying somewhat more property tax than they otherwise would.

Minnesota's property tax system targets certain programs to agricultural lands. One is Minnesota's so-called "Green Acres" Program, structured to equalize tax burdens for qualifying agricultural landowners. Two others are land preservation programs designed to retain agricultural land that might otherwise be converted to other uses. This chapter provides an overview of the Green Acres Program and the state's two programs for preserving farmland. Specifically, this chapter answers the following questions:

- How much farmland is in Minnesota, and how has this changed over time?
- What is the Green Acres Program, and how do landowners qualify for it?
- What are Minnesota's programs for preserving agricultural land? What are the differences between them?
- How much in property tax benefits do program participants receive, and how do the programs affect property taxes paid by nonparticipants?
- What other mechanisms to preserve farmland are available in Minnesota?
- What farmland preservation programs are in other states?

To answer these questions, we examined data on farmland from various sources including the Department of Revenue’s property tax records and the U.S. Department of Agriculture’s National Resources Inventory. We analyzed trend data on acreage enrolled in Green Acres and values of agricultural land. Also, with help from the Minnesota House of Representatives Research Department, we estimated how the Green Acres and Metropolitan Agricultural Preserves programs affect property taxes. We reviewed state statutes and studied relevant documents from the Department of Revenue, and we interviewed department staff. In addition, we researched national literature and other states’ programs on preserving agricultural lands.

FARMLAND ACREAGE

In 2007, Minnesota’s county assessors classified about 29.5 million acres of land as agricultural, or about 58 percent of Minnesota’s total land area.¹ This farmland includes land used to plant crops, pasture land for grazing animals, and other land that is not used for agricultural production (such as woodland and wasteland), if it is part of a farm with at least ten acres in agricultural production.

About 58 percent of Minnesota’s total land area is classified as agricultural property.

Although the percentage of land classified as agricultural varies widely among counties, most Minnesota counties have most of their land in farms. In 2007, 68 counties classified at least 50 percent of their land as agricultural, especially counties in southern, western, and northwestern Minnesota, as shown in Figure 1.1. Thirty-five counties classified 90 percent or more of their land as agricultural.

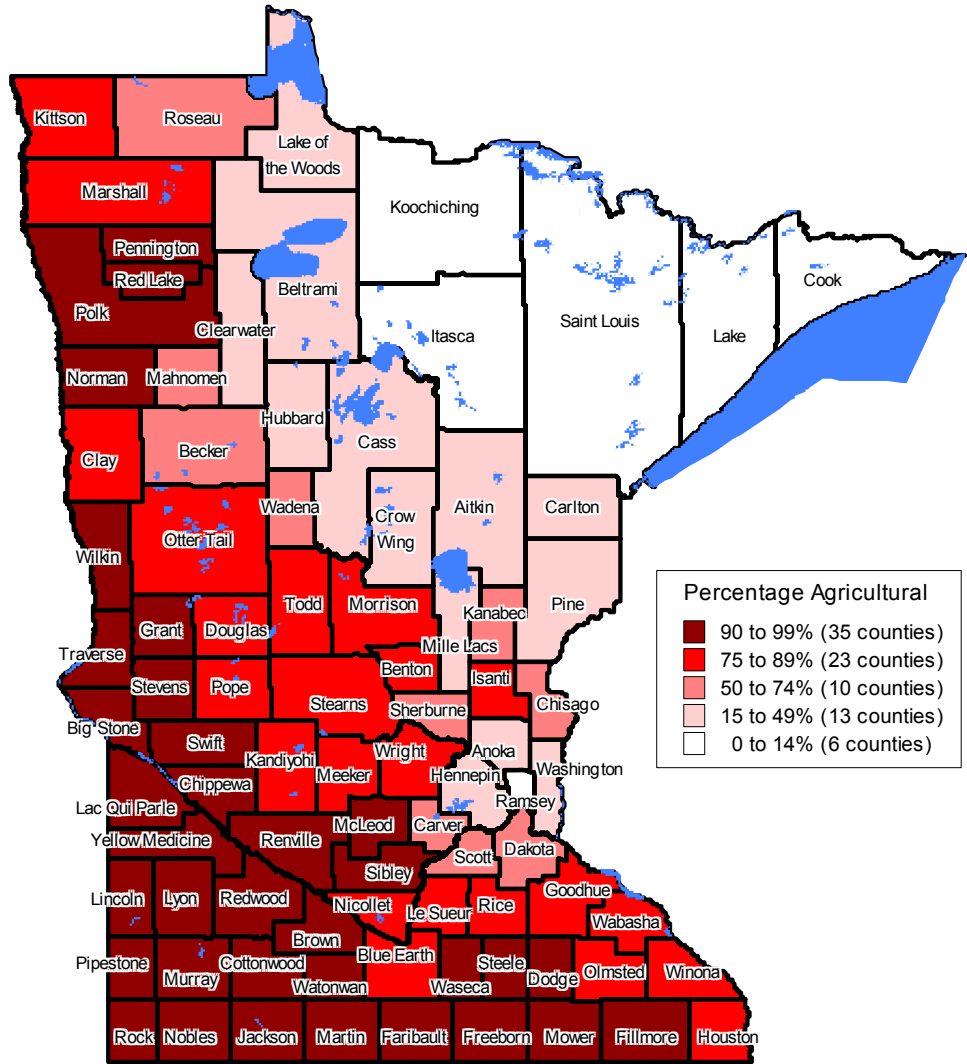
Minnesota has been gradually losing farmland over the past 25 years. Between 1982 and 1997, Minnesota lost about 500,000 acres of farmland, a decline of about 2 percent, according to the U.S. Department of Agriculture’s National Resources Inventory data. The Department of Revenue’s property tax records and the U.S. Census of Agriculture both indicate that farmland loss continued after 1997, but their loss estimates differ and neither measures the state’s farmland loss as reliably as the National Resources Inventory data.

Between 1982 and 1997, counties in the Twin Cities metropolitan area have lost farmland more rapidly than the rest of the state, as shown in Figure 1.2. The seven-county Twin Cities metropolitan area lost about 18 percent of its farmland; Greater Minnesota lost about 1 percent.² In the next sections, we describe Minnesota’s farmland protection programs.

¹ Based on a more restrictive definition of farmland, the U.S. Department of Agriculture’s Census of Agriculture estimated that Minnesota had 27.5 million acres of farmland in 2002. We used property tax data on farmland here because they are the most recent data available.

² Other data sources, including the Department of Revenue’s property tax assessment data and the U.S. Census of Agriculture, show similar patterns between 1982 and 1997, although their rate of decline was larger.

Figure 1.1: Percentage of Land Classified as Agricultural, 2007



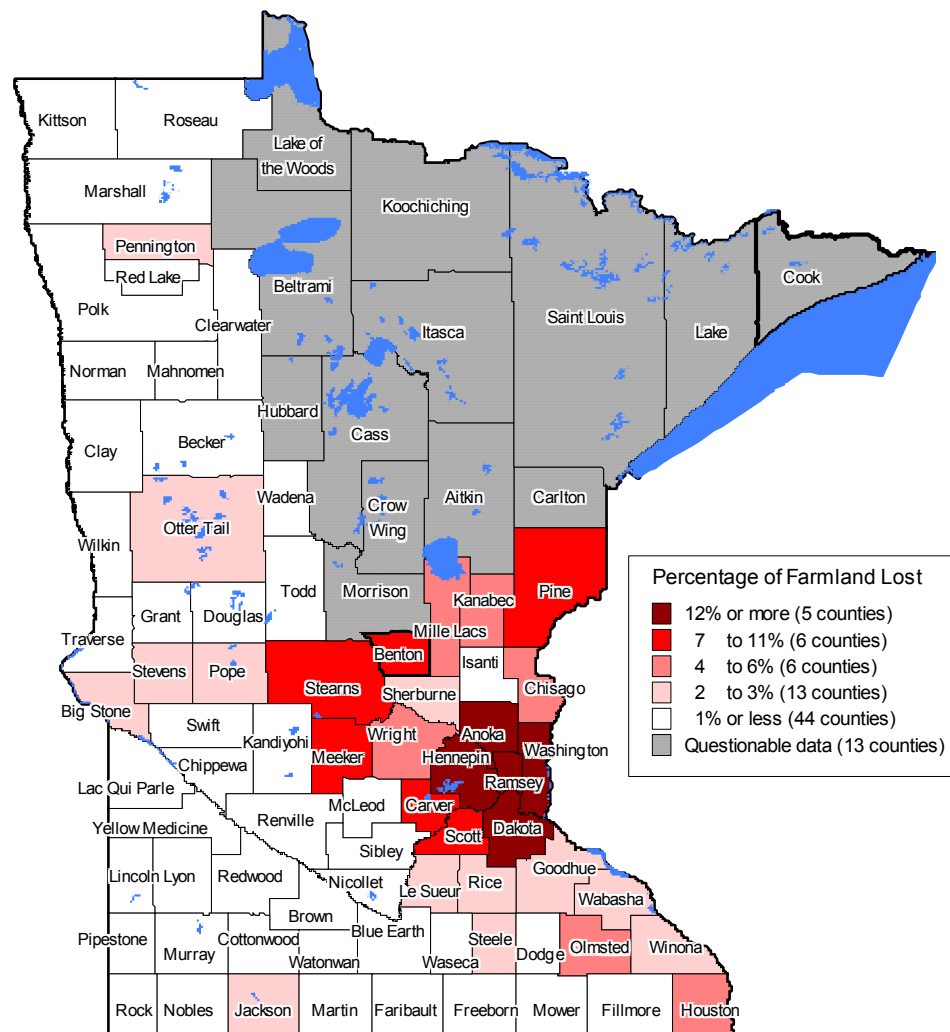
SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Revenue's 2007 Spring Mini Abstract.

“GREEN ACRES” PROGRAM

The Legislature passed the Minnesota Agricultural Property Tax Law, most commonly known as the “Green Acres” Program, in 1967.³ The law lowers taxable values on certain farmland and allows landowners to defer paying special assessments and portions of property taxes. Its benefits apply, however, only where nonagricultural influences (such as development pressures) drive prices

³ *Laws of Minnesota* 1967 Extra Session, chapter 60.

Figure 1.2: Percentage of Farmland Lost, 1982-1997



NOTE: Actual farmland losses for individual counties may differ from data shown because the National Resources Inventory data lack precision at the county level, particularly for the counties shaded in gray. Nevertheless, the data are useful for “big picture” descriptions.

SOURCE: Office of the Legislative Auditor, analysis of data from the National Resources Inventory compiled by the U.S. Department of Agriculture’s Natural Resources Conservation Service.

for agricultural land higher than if the land were sold exclusively for agricultural uses.

Tax Advantages

For lands enrolled in the Green Acres Program, assessors determine two values but use the lower value to calculate the taxes due any given tax year. One value is based solely on the land’s use for agricultural purposes, and it is the lower of

the two values. To determine this lower value, the law instructs assessors to consider sales of agricultural lands outside the seven-county metropolitan area and compare land of similar soil types and other agricultural characteristics.⁴ Furthermore, assessors are to avoid considering additions to the land's value from nonagricultural factors, such as increases due to a buyer's interest in developing the land for a retail complex.

The second of the two values is a market value, based on the usual selling price of farmland in an open market during arm's length transactions between willing buyers and sellers. This second value is a higher value because it reflects buyers' willingness to pay more for the property than it is worth as agricultural land. Farm properties free of influences from nonagricultural factors are already assessed at the low value based purely on those lands' agricultural uses and, consequently, are not enrolled in the Green Acres Program.

Landowner Benefits

Green Acres landowners pay less in property taxes, and other properties in the jurisdiction typically pay more to make up the difference.

In general, Green Acres property owners will owe less in property taxes, and the remaining properties in the taxing jurisdiction will bear slightly higher tax burdens to make up the difference. For an individual landowner enrolled in Green Acres, the tax benefit can be significant. The greater the difference between the low and high values of the property, the larger the tax reduction for the owner. As an example, one owner of 76 agricultural acres in a central Dakota County township owed property taxes of \$422 in 2007, 46 percent less than the \$778 he would have owed if not enrolled in Green Acres. Land located near more developed areas realize even greater equalization benefits. For instance, a landowner of 33 agricultural acres across from a housing development in the city of Rosemount owed \$624 in 2007 property taxes, 94 percent less than the \$10,128 he would have owed if the land were not in the program.

The size of the tax increase for other property taxpayers will also vary depending on an area's mix of land types. If farmland makes up a small proportion of the overall tax base, the shift in tax burden will be small when apportioned over remaining landowners. On the other hand, if farmland enrolled in Green Acres makes up a large segment of the area's tax base, and there is a large difference between the farmland's market value and its Green Acres low value, the remaining landowners will bear a large tax burden to cover the amount that is deferred for Green Acres landowners. Later in this chapter, we examine how the Green Acres Program affects property taxes of participating and nonparticipating landowners.

When land no longer qualifies for the Green Acres Program, three years worth of tax reductions come due.

More specifically, as long as land remains enrolled, the Green Acres Program defers a portion of the property taxes and all special assessments that may have been charged (such as for road improvements). Once the land no longer qualifies, the taxes deferred for the current year and prior two years come due, as do all of the deferred special assessments plus interest. Taxes deferred earlier than the most recent three years, however, become a permanent tax break.

⁴ *Minnesota Statutes* 2007, 273.111, subd. 4.

Should Green Acres land be sold to new owners who apply within 30 days of the sale and who are eligible for the program, the taxes and special assessments continue to be deferred.⁵

Eligibility

Not all agricultural land qualifies for Green Acres Program benefits. Landowners must apply for the program, and assessors determine who is eligible. Eligibility depends on meeting statutory criteria regarding ownership of the land, income from the property, and land size and use. Table 1.1 lists the criteria. When landowners have less desirable agricultural lands, such as slough, wasteland, and woodland, that are near to or surrounded by land that qualifies for the Green Acres Program, that less desirable land is also entitled to Green Acres benefits.⁶

County Participation and Farmland Enrollment

Originally, the Green Acres Program predominated in the Twin Cities area, but now 51 counties have land enrolled.

Since the Green Acres Program was established in the late 1960s, it has changed from a program concentrated in the Twin Cities area to a program covering 51 counties across the state. In 1970, five counties in the seven-county Twin Cities metropolitan area used the Green Acres program.⁷ By 1977, 16 counties participated, including all the counties in the seven-county metropolitan area, 4 fast-growing counties just to the north of the metropolitan area (Chisago, Isanti, Sherburne, and Wright Counties), and Rice County, which is on the southern edge of the metropolitan area. Participation expanded to 23 counties for properties assessed in 1990, 36 counties in 2000, and 51 counties in 2007.

While some counties from Greater Minnesota have participated in Green Acres for decades, little farmland from Greater Minnesota was enrolled in Green Acres until after 2000. Prior to 2000, enrollment was concentrated in the Twin Cities metropolitan area and the four counties on its northern border. For properties assessed in 1999, these 11 counties enrolled nearly 1.2 million acres in Green Acres, compared with 81,000 for the remaining 76 counties in Greater Minnesota, as shown in Table 1.2. But after 2000, enrollment in these 76 counties increased more than 30-fold, reaching 2.7 million acres for properties assessed in 2007. Because of this rapid growth in Greater Minnesota, statewide enrollment tripled between 1999 and 2007, reaching 3.7 million acres. Unlike Greater Minnesota, enrollment in the Twin Cities area declined slightly both during the 1990s and after 2000.

⁵ New owners who do not want a continued deferral of special assessments would have to arrange repayment by the seller at the time of purchase.

⁶ *Minnesota Statutes* 2007, 273.111, subd. 6(2).

⁷ A March 10, 1977, Department of Revenue memorandum to the Commissioner of Revenue indicates that Blue Earth County may have used the program since 1970, although the Blue Earth County Assessor could verify enrollment back to only 1974.

Table 1.1: Eligibility Criteria for Green Acres Program, 2007

Ownership	Income	Land Size and Usage
One of the following four conditions must apply:	One of the following must be met:	Land must be all of the following:
<ul style="list-style-type: none"> • Owner (or owner’s spouse, child, or sibling) homesteads the land; or 	<ul style="list-style-type: none"> • At least 1/3 of owner’s total family income comes from the land, or 	<ul style="list-style-type: none"> • Classified as agricultural property
<ul style="list-style-type: none"> • Owner (or owner’s spouse, parent, or sibling) must have owned the land for at least seven years, or the land is farmed along with qualifying land that is within four townships or cities away; or 	<ul style="list-style-type: none"> • Total production income from the land (including rental charges) is at least \$300 plus \$10 per tillable acre 	<ul style="list-style-type: none"> • At least 10 acres in size or a nursery or greenhouse
<ul style="list-style-type: none"> • Land is the homestead of a shareholder in a family farm corporation; or 	Plus, the property must be devoted to the production for sale of agricultural products ^a	<ul style="list-style-type: none"> • Primarily devoted to agricultural use
<ul style="list-style-type: none"> • Land is owned by a nursery or greenhouse 		
Plus, owner must be either a:		
<ul style="list-style-type: none"> • Noncorporate entity, 		
<ul style="list-style-type: none"> • Family farm operation, or 		
<ul style="list-style-type: none"> • Corporation deriving at least 80 percent of gross receipts from sale of horticultural or nursery stock. 		

NOTES: Landowners must meet criteria on ownership, income, and land size and usage, but within the ownership and income criteria, any one of multiple standards may be met. Slough, wasteland, and woodland contiguous to qualifying land and under the same ownership are also eligible.

^a Agricultural products are defined in *Minnesota Statutes* 2007, 273.13, subd. 23(e), and include: livestock, dairy products, poultry, horticultural and nursery stock, fruit, vegetables, forage, grains, bees, fish bred for sale, maple syrup collected by licensed processors, and trees grown as a crop but not sold for timber or wood products.

SOURCES: *Minnesota Statutes* 2007, 273.111, subd. 3 and 6.

Eligibility for the Green Acres Program depends on land ownership, income from the land, and land size and use.

Table 1.2: Trends in Green Acres Program Enrollment, for Property Assessed in 1999-2007

	Enrollment (in acres)		Percentage of Farmland Enrolled	
	1999	2007	1999	2007
Twin Cities seven-county metro area	396,259	342,034	48%	47%
Four fast-growing counties north of the metro area (Chisago, Isanti, Sherburne, and Wright)	759,145	671,270	80	77
Other 76 counties	81,067	2,714,284	0.3	10
State Total	1,236,471	3,727,588	4%	13%

NOTE: Land is enrolled in the program at least one year prior to when taxes are paid; for instance, enrollment occurred in 2007 or earlier years for taxes to be paid in 2008.

SOURCE: Office of the Legislative Auditor, analysis of data from the [Land Economics database](#) maintained by the University of Minnesota, Department of Applied Economics.

Green Acres enrollment tripled since 1999, due to growth in Greater Minnesota.

Today, the Green Acres Program is concentrated in 25 counties, which account for 96 percent of the state's 3.7 million acres enrolled. Statewide, 13 percent of Minnesota's farmland is enrolled in Green Acres, compared with 47 percent for the 25 counties with the heaviest use.⁸ Figure 1.3 illustrates how the percentage of farmland enrolled in Green Acres varies across the state. Enrollment as a percentage of farmland is highest in the Twin Cities metropolitan area, seven of the nine counties surrounding the metro area, the St. Cloud area, and the state's southeast corner.

Program Administration

Counties administer the Green Acres Program. County assessors are responsible for accepting applications, determining who qualifies, and assigning values to eligible properties.⁹

Minnesota's Department of Revenue plays a more limited role. For the Green Acres Program specifically, state law allows the commissioner of revenue to prescribe the application form that interested landowners complete. More generally, the commissioner has authority for general supervision over assessors and the administration of property tax laws so that assessments are just and equal.¹⁰ The commissioner may determine whether assessors are faithfully discharging their duties; deals with complaints of unequal or improper

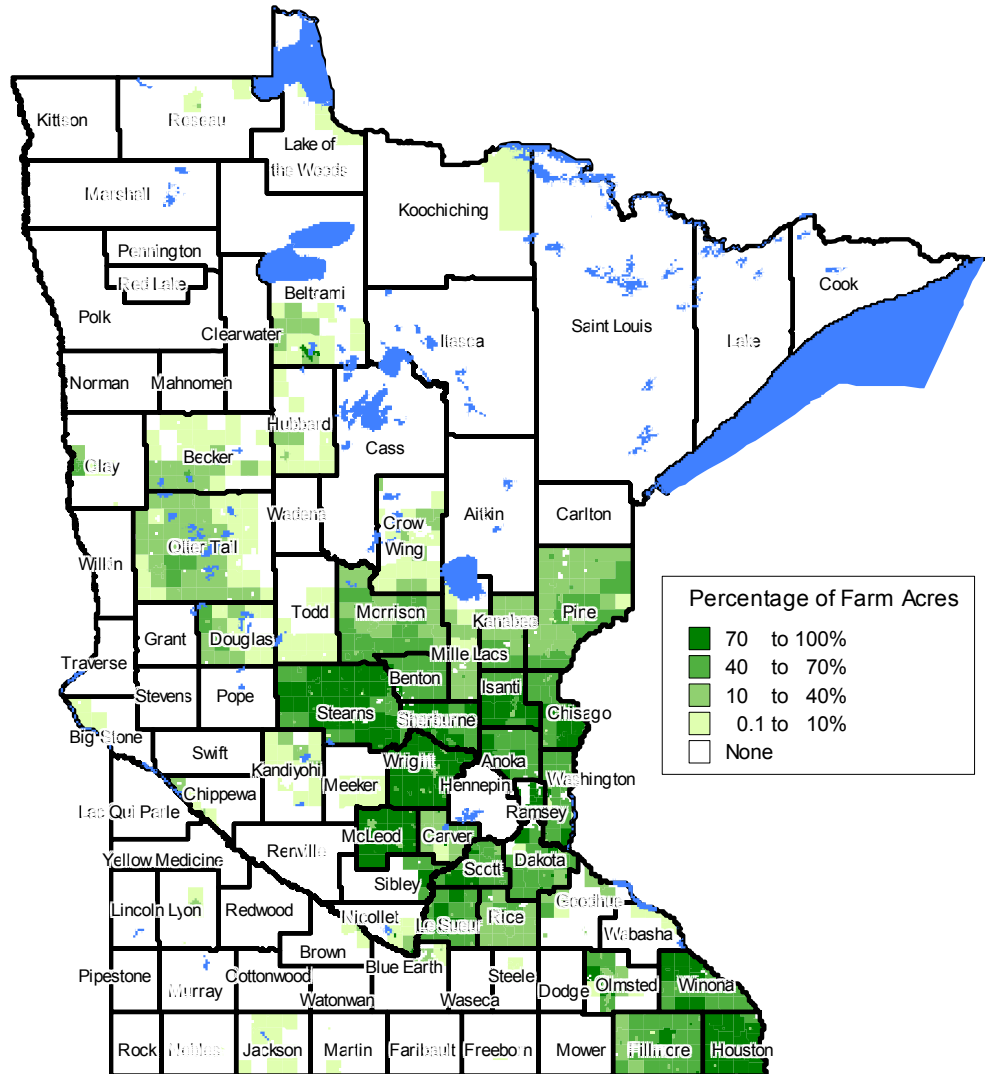
⁸ Among participating counties, 14 counties enrolled less than 1 percent of their farmland in the Green Acres Program.

⁹ *Minnesota Statutes* 2007, 273.111, subd. 4, 5, and 8.

¹⁰ *Minnesota Statutes* 2007, 270C.85, subd. 1.

assessments; and, with authority as the State Board of Equalization, may change assessment decisions made locally to enforce statewide equalization among property values.¹¹

Figure 1.3: Percentage of Farmland Enrolled in Green Acres Program, for Properties Assessed in 2007



NOTE: Data on farmland by city/township are unavailable for Hennepin County. Data are based on assessment year 2007, for property taxes to be paid in 2008.

SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Revenue's 2007 Spring Mini Abstract.

¹¹ *Minnesota Statutes* 2007, 270C.85, subd. 2(f); 270C.92, subd. 1; and 270.12, subd. 2 and 5. Further, if assessments are found to be grossly unfair or inequitable, the commissioner may appoint a special assessor to conduct a local reassessment. See: *Minnesota Statutes* 2007, 270C.94, subd. 1.

The Department of Revenue includes information on the Green Acres Program in its instruction manuals for assessors and auditors. Over the years, the department has intervened when county assessors or residents had Green Acres issues that could not be resolved locally. The department has issued memos and bulletins on the program and sent letters to clarify questions that the law itself did not fully answer. As an example, a taxpayer, who for several years had paid special assessments on his land, recently enrolled in the Green Acres Program, and questions arose over whether the special assessments, passed years earlier, were to be deferred. The department advised the assessor that newly enrolled land could indeed have the existing special assessments deferred but suggested contacting the landowner about the desirability of doing so because the deferment plus interest may have to be paid back when the land is sold or no longer qualifies for Green Acres. Such department communications are made available as resources to other county assessors who may face similar situations.

Recent Changes

A 2006 Department of Revenue report on the Green Acres Program highlighted a need to reexamine what types of land should qualify.

In response to a 2005 legislative requirement, the Department of Revenue released a 2006 report on the Green Acres Program.¹² The report, based on work by a committee including department officials and county assessors, raised several issues about the Green Acres Program, such as under what circumstances the program should be implemented and how assessors should set the low value for Green Acres land.

Among the issues were several that the report recommended the Legislature resolve. A number dealt with the legislative intent behind the law, which the report said has become less clear since it passed in 1967. The Legislature was asked to clarify whether the program was intended to equalize the value of agricultural land on a statewide basis, which would pose difficulties because comparable data on the quality of agricultural land are not available for each county. Tied to this is a question of whether the program is intended to preserve agricultural land exposed to urban development or, instead, to solely equalize tax burdens, as is explicitly expressed in statutes.¹³ Second, the report requests legislative review of statutory minimums on acreage and income, which have allowed small hobby farms to qualify for the Green Acres Program. Finally, it suggests the Legislature consider the appropriateness of some assessors' practice of splitting a property's tax classification when the land is used for multiple purposes, such as for a residence and a farm. Although the 2007 Legislature passed a tax bill containing changes to the Green Acres Program, the Governor vetoed the bill.¹⁴

¹² Minnesota Department of Revenue, *Assessment and Classification Practices Report: Agricultural Land Including Land Enrolled in the Green Acres Program* (St. Paul, April 2006).

¹³ *Minnesota Statutes* 2007, 473.211, subd. 2, says the “public interest would best be served by equalizing tax burdens upon agricultural property....”

¹⁴ Minnesota Legislature 2007, *Senate File 1024, 2nd Engrossment*, art. 5, sec. 13, would have increased the income criterion to qualify for the Green Acres Program. The Governor's veto message did not make reference to these provisions.

Following the 2006 report, the department convened a Green Acres working group, comprised of department officials and county assessors, to discuss changing the program. Based on the working group's discussions, the department released an October 2007 Green Acres bulletin that addresses some of the questions posed in the 2006 report.¹⁵ To encourage uniformity, it lays out a new method, to be used statewide, for determining the low value of Green Acres properties, and it requires each county assessor to submit a Green Acres implementation plan by June 2008. We address certain aspects of the 2007 bulletin in Chapter 2.

PROGRAMS FOR PRESERVING AGRICULTURAL LAND

One farmland preservation program is for the Twin Cities area, and a second is for Greater Minnesota.

Minnesota has two separate but similar programs specifically intended to preserve agricultural land. One is the Metropolitan Agricultural Preserves Act, enacted for the seven-county metropolitan area. The second is the Agricultural Land Preservation Program, which is structured for Greater Minnesota counties and municipalities that are willing to designate land for long-term agricultural use. We will first describe the Metropolitan Agricultural Preserves Program, followed by the program for Greater Minnesota.

Metropolitan Agricultural Preserves Act

In 1980, the Legislature passed the Metropolitan Agricultural Preserves Act for the purpose of maintaining “viable productive farm operations in the metropolitan area.”¹⁶ Six of the seven counties from the Twin Cities metropolitan area have had land enrolled in the Metropolitan Agricultural Preserves Program since 1983; Ramsey County does not have land enrolled largely because it has few farms and just 275 agricultural acres. The act requires action by both local governments and landowners. First, in their land-use planning, metropolitan-area local governments must designate areas within their boundaries as “agricultural preserves,” which will be set aside for long-term agricultural uses with no more than one dwelling allowed for every 40 acres.¹⁷ Second, landowners within an agricultural preserve must agree to have added to their land's certificate of title a covenant restricting use of the land to agriculture, in exchange for certain tax advantages and other nonmonetary benefits. The state has little involvement in, or oversight of, the process.

Landowner Benefits

Part of the tax benefit for landowners agreeing to the restrictive covenant is similar to that provided by the Green Acres Program—assessors use a low, agricultural-use value to set the land's taxable value. No additional value from

¹⁵ Minnesota Department of Revenue, *Green Acres Bulletin #1* (St. Paul, October 2007).

¹⁶ *Laws of Minnesota* 1980, chapter 566, sec. 1.

¹⁷ Land-use planning is done by cities and some townships and, in some cases, counties are in charge of the planning on behalf of townships.

The Metropolitan Agricultural Preserves Program lowers the enrolled lands’ taxable value and provides other benefits.

nonagricultural factors may be considered in setting the value, and the lower taxable value translates into lower property taxes owed. As a bonus, landowners receive a tax credit of approximately \$1.50 for every acre in the agricultural preserve, further reducing their tax bills.¹⁸ In contrast to the Green Acres Program, though, the landowner in Metropolitan Agricultural Preserves is not required to pay back any amount of the reduced property tax, even when the preserve expires.

Beyond the tax advantages, landowners with property enrolled in Metropolitan Agricultural Preserves receive protections against interference with their farming operations. Statutes prohibit local units of government from enacting ordinances that would unreasonably regulate farm structures or practices, barring an immediate and substantial threat to public health and safety.¹⁹ Public water and sewer systems are prohibited in agricultural preserves, and public roads or other public improvements in the vicinity of the preserve are deemed to be of no benefit to the land in the preserve.²⁰ This prevents land there from bearing the cost of the improvements.

Cities may not annex agricultural preserve land located in townships, except under special conditions.²¹ Furthermore, any unit of government considering eminent domain actions for taking lands within an agricultural preserve must follow additional procedures to evaluate alternatives to acquiring that land. As part of the procedures, the Environmental Quality Board is authorized to delay the eminent domain action for a year if alternatives would have less of a negative impact on the preserve.²²

To be eligible for the Metropolitan Agricultural Preserves Program, land must be in an area designated for long-term agricultural use.

Eligibility and Expirations

To be eligible for Metropolitan Agricultural Preserves, land must be at least 40 acres in size and in an area designated for long-term agricultural use. Certain exceptions exist to the minimum size requirement, such as a parcel that is at least

¹⁸ Technically, counties compute taxes on enrolled properties in two different ways and use whichever results in lower taxes for the owner. In one computation, the auditor multiplies the tax rate and the “net tax capacity” (taxable value) of the land, then subtracts \$1.50 per acre from the product. In the second, the auditor multiplies 105 percent of the previous year’s statewide average local tax rate for township properties by the enrolled land’s net tax capacity.

¹⁹ *Minnesota Statutes* 2007, 473H.12.

²⁰ *Minnesota Statutes* 2007, 473H.11. If land in the Green Acres Program is transferred to the Metropolitan Agricultural Preserves Program, the special assessments may continue to be deferred until the agricultural preserve expires.

²¹ *Minnesota Statutes* 2007, 473H.14. Exceptions require a finding by the state Office of Strategic and Long-Range Planning that (1) the preserve’s expiration has begun, (2) the township is unable to provide normal governmental functions, or (3) the city would completely surround the preserve.

²² *Minnesota Statutes* 2007, 473H.15, subd. 9. According to the Environmental Quality Board, no such delays have been approved.

Landowners participating in the Metropolitan Agricultural Preserves Program agree to “restrictive covenants” that require keeping the land in agricultural use.

35 acres but less than 40 acres due to the existence of a public roadway.²³ The restrictive covenant requires the owner to keep the land in agricultural use and follow sound soil and water conservation practices.²⁴

Once restrictive covenants are in place, they are binding on the owners and the owners’ successors, and the covenant runs with the land even when sold. Either the landowner or the local government may initiate action to allow agricultural preserves to expire, but expirations may not occur for at least eight years from the date of the action.²⁵ To initiate expiration, the local government must amend its comprehensive plan to remove zoning for the long-term agricultural area, and it must notify affected landowners by registered letter. A landowner may initiate expiration by notifying the local government that designated the preserve. After the eight-year period and on the date of expiration, all benefits and obligations related to the preserve cease. Landowners may file notices of expiration at the same time they apply for the agricultural preservation program; doing so permits them to allow the preserve to expire after eight years or reenroll the property at that time.

Conservation Accounts

As stated, among the tax benefits of the Metropolitan Agricultural Preserves Program, participants’ tax bills are reduced by about \$1.50 per acre of land in the preserve. Local governments that lose tax revenues due to the \$1.50 per acre credit are reimbursed with money collected from a \$5 fee imposed whenever a mortgage or deed is recorded or registered in the county.²⁶ Revenues from the \$5 fee are divided between the state and the county, as Figure 1.4 depicts.

Each county receives half of the revenues and deposits them into a county conservation account, which is to be used for statutorily specified purposes. If the county’s conservation account has insufficient money to cover the reimbursement for the \$1.50 per acre tax credit, the state must make up the

²³ *Minnesota Statutes* 2007, 473H.03, subd. 1-3. Certain 20-acre parcels are eligible if they have demonstrably high-quality soil, are considered to be an essential part of the agricultural region, were a parcel of record prior to 1980, and if surrounding land on at least two sides is eligible for an agricultural preserve.

²⁴ *Minnesota Statutes* 2007, 473H.16, subd. 1, and 473H.17, subd. 1. Landowners who are found to follow practices resulting in excessive soil loss, and who fail to enact corrective measures to prevent further loss, are subject to a civil penalty of up to \$1,000 and payment of court costs.

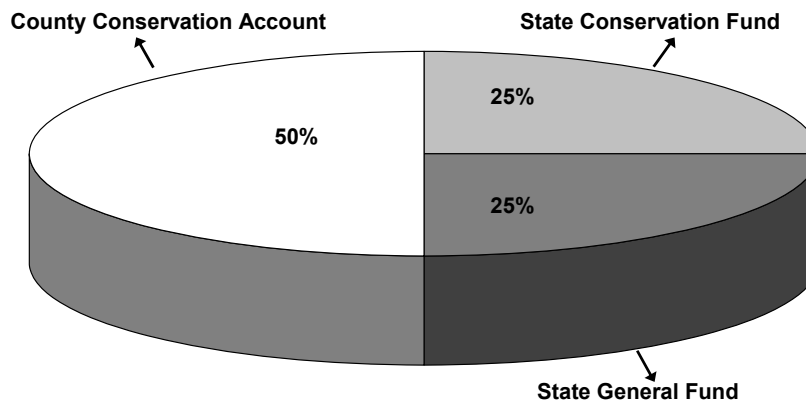
²⁵ *Minnesota Statutes* 2007, 473H.08, subd. 2-3. Terminations prior to the eight years are allowed when the governor has declared a public emergency and issues an executive order. We found no such executive orders. Prior to the eight years, Agricultural Preserves land may be taken by the state or local governments or other entities using eminent domain, but only after involving the Environmental Quality Board, which has authority to invoke a one-year delay in the taking.

²⁶ *Minnesota Statutes* 2007, 40A.152, subd. 1. Counties in the seven-county metropolitan area are required to impose the \$5 fee, regardless of how much or little of their land has been designated as agricultural preserves.

Tax credits to landowners participating in the agricultural land preservation programs are paid for with revenues from a \$5 fee charged when counties register mortgages and deeds.

Only three counties in Greater Minnesota have ever had land enrolled in the agricultural land preservation program.

Figure 1.4: Distribution of Revenues from \$5 Fee on Mortgage and Deed Transactions



NOTES: Counties in the seven-county metropolitan area are required to impose the \$5 fee. In Greater Minnesota, only the three counties participating in the Agricultural Land Preservation Program charge the fee.

SOURCES: [Minnesota Statutes](#) 2007, 40A.151, subd. 1, and 40A.152, subd. 1.

difference.²⁷ On the other hand, if county conservation accounts have more than what is needed to reimburse taxing jurisdictions for the tax credit, counties may spend the amounts for one of four purposes, as listed in Table 1.3.

Greater Minnesota’s Agricultural Land Preservation Program

The 1984 Legislature passed the Agricultural Land Preservation Program, with goals of preserving agricultural land, preserving soil and water resources, and encouraging the orderly development of rural and urban land uses.²⁸ Although open to all localities in Greater Minnesota, only three counties—Waseca, Winona, and Wright—have ever enrolled acres in the program.

Counties choosing to participate are required to develop an agricultural land preservation plan, which is to be reviewed and approved by the commissioner of the Department of Agriculture. The plan must designate land suitable for long-term agricultural use and be integrated with the county’s comprehensive plan. When the legislation passed in 1984, an appropriation of \$300,000 was included

²⁷ [Minnesota Statutes](#) 2007, 473H.10, subd. 3(e). To reimburse local taxing jurisdictions, the state uses its share of the \$5 fee deposited in the Minnesota Conservation Fund. If that fund is insufficient, the state is obligated to make reimbursements from its General Fund.

²⁸ [Laws of Minnesota](#) 1984, chapter 654, art. 3, sec. 31-47.

Table 1.3: Activities on Which Counties May Spend Conservation Account Dollars

- Planning for agricultural land preservation and conservation and implementation of official controls^a
- Soil conservation activities and enforcement of soil loss ordinances
- Incentives for landowners who create exclusive agricultural-use zones
- Payments to municipalities for the purposes listed above

NOTES: Counties may use Conservation Account dollars for these activities only after reimbursing taxing jurisdictions for annual revenues lost due to the \$1.50 per acre credited to landowners enrolled in either of the state's agricultural land preservation programs. Further, counties must have had equivalent expenditures from other county funds for the same purposes in the previous budget year. Money not encumbered within a year transfers to the state treasury.

^a Official controls are policies for controlling the physical development of a county or municipality, such as zoning ordinances, subdivision controls, building codes, and official maps.

SOURCE: [Minnesota Statutes](#) 2007, 40A.152, subd. 2-3.

for grants to help counties implement the program, although some of the money went unused and was returned to the state treasury.

Landowner Benefits

Although the land preservation programs in the Twin Cities area and Greater Minnesota are similar in some respects, the latter program's tax advantages are not as extensive. Property owners in the Greater Minnesota program receive a \$1.50 per acre credit to reduce their property taxes each year they have land enrolled.²⁹ The assessment of their properties' taxable values, however, is not reduced in areas where nonagricultural factors have increased agricultural land values (as is done in the Metropolitan Agricultural Preserves Program). Furthermore, once landowners give official notice to terminate an agricultural preserve, they are immediately ineligible for the \$1.50 per acre credit, although landowners in the Twin Cities program continue receiving the credit throughout the eight-year period until the preserve expires. Table 1.4 compares the programs' features.

Landowners enrolled in the Agricultural Land Preservation Program receive nonmonetary benefits, in addition to the \$1.50 per acre credit. The law prohibits local governments from enacting ordinances that regulate normal agricultural practices in a preserve, protecting farmers from restrictions on activities such as planting or harvesting that may create noise, dust, or other potential conflicts

The agricultural land preservation program in Greater Minnesota offers a \$1.50 per acre tax credit but does not reduce lands' taxable values.

²⁹ [Minnesota Statutes](#) 2007, 273.119, subd. 1.

Table 1.4: Comparisons Among the Agricultural Land Preservation Programs and Green Acres Program, 2007

	Metropolitan Agricultural Preserves	Agricultural Land Preservation	Green Acres
Assessor must use the low agricultural-use value to set the property value	✓		✓
Landowner who becomes ineligible must pay back three years of deferred taxes ^a		N/A	✓
Landowner may terminate from program in any given year			✓
A minimum acreage is needed to qualify	✓		✓
Land must be in area where a local government designated land for long-term agricultural use ^b	✓	✓	
After filing an expiration notice, landowner continues to receive tax benefits and other advantages for eight years	✓		N/A
Program requires county to charge \$5 fee on mortgage and deed registrations	✓	✓	
Program provides landowner a tax credit of \$1.50 per acre	✓	✓	
Program offers access to state's General Fund for reimbursing \$1.50 per acre tax credit	✓		N/A
Public water and sewer systems are prohibited on enrolled land	✓	✓	
City annexation of enrolled land is largely prohibited ^c	✓	✓	
Eminent domain action may be delayed for enrolled land	✓	✓	
Local governments may not pass ordinances restricting normal agricultural practices	✓	✓	
Department of Agriculture administers parts of the program		✓	

NOTE: The Metropolitan Agricultural Preserves Program applies to the seven-county metropolitan area, while the Agricultural Land Preservation Program applies to the rest of the state. The Green Acres Program is not designated for particular counties.

^a If the land enrolled in Green Acres is transferred to the Metropolitan Agricultural Preserves Program, the payback is not required. In contrast, the Agricultural Land Preservation Program in Greater Minnesota does not defer property taxes, so a payback does not apply.

^b In the metropolitan area, the zoning density must be not more than 1 dwelling unit per 40 acres.

^c Exceptions require a finding by the state that: (1) the preserve's expiration has begun, (2) the township is unable to provide normal governmental functions, or (3) the city would completely surround the preserve.

SOURCES: *Minnesota Statutes* 2007, 40A; 273.111; 273.119; and 473H.

Either local governments or landowners may initiate termination of an agricultural preserve by giving appropriate notice, but the preserve lasts for eight years after notice is filed.

Enrollment in the agricultural land preservation programs peaked in the late 1990s.

with nonagricultural land uses.³⁰ Annexation of lands in a preserve is prohibited, with the same exceptions as described earlier for the Metropolitan Agricultural Preserves Program. Public water, sewer, and drainage systems are also prohibited, and the land in agricultural preserves may not be assessed for building these types of projects nearby.³¹ Finally, government agencies may not use eminent domain actions to acquire land in a preserve, without first following specific procedures involving reviews and hearings by the Environmental Quality Board.³²

Eligibility and Termination

The only statutory eligibility requirement for the Agricultural Land Preservation Program is that the owner has land in an area designated in a local government's plan for long-term agricultural use. There is no income or land size requirement.³³

Terminating the agricultural preserve may be initiated when landowners notify counties of their intent or vice versa, but the expiration does not actually occur until at least eight years after official notice is given. If the county initiates the action to terminate the preserve, it must first amend its plans and zoning ordinances removing the designation for long-term agricultural uses, and the state's commissioner of agriculture must approve the amendments.³⁴

Farmland Enrollment

Landowner participation in the agricultural land preservation programs has slowly declined after reaching peak enrollment in the late 1990s. Enrollment quickly grew after land was first enrolled in the Metropolitan Agricultural Preserves Program in 1983, reaching a peak of 202,000 acres in 1997; since then it slowly declined to 182,000 acres in 2007, a decline of about 10 percent from the peak. Participation in Greater Minnesota's Agricultural Land Preservation Program also reached a peak in the late 1990s (138,000 acres), before declining to 133,000 acres in 2007, a decline of 3 percent.

Farmland enrollment in the Metropolitan Agricultural Preserves Program is generally low, as shown in Table 1.5, with about 25 percent of the region's agricultural land enrolled. Only Carver County enrolled more than 30 percent of

³⁰ *Minnesota Statutes* 2007, 40A.12.

³¹ *Minnesota Statutes* 2007, 40A.123. The law provides an exception allowing such public projects if the landowner elects to use them.

³² *Minnesota Statutes* 2007, 40A.122, subd. 1-4.

³³ Individual counties may impose their own land size requirement. For instance, Wright County requires lots of at least 35 acres, with any exceptions to be approved by the county board.

³⁴ *Minnesota Statutes* 2007, 40A.11. According to subdivision 5 of this section, preserves may be terminated earlier than eight years but only in the event of a public emergency declared by the governor. As previously stated, local or state governments may use eminent domain to take land prior to the eight-year expiration of an agricultural preserve, but only after involving the Environmental Quality Board, which has authority to invoke a one-year delay.

Table 1.5: Farmland Enrollment in the Agricultural Land Preservation Programs, 2007

	Farmland Acres	Farmland Enrolled	
		Acres	Percentage of Farmland
<u>Metropolitan Agricultural Preserves</u>			
Anoka	57,068	1,816	3%
Carver	167,910	93,727	56
Dakota	207,985	59,803	29
Hennepin	65,426	10,496	16
Scott	129,206	7,185	6
Washington	<u>94,625</u>	<u>9,053</u>	10
Twin Cities metropolitan area total	722,495 ^a	182,080	25%
<u>Agricultural Land Preservation</u>			
Waseca	252,090	82,989	33%
Winona	314,799	41,062	13
Wright	<u>323,391</u>	<u>9,158</u>	3
3-county total	890,280	133,209	15%
Greater Minnesota total	28,765,718	133,209	0.5%
<u>Both Programs</u>			
Statewide total	29,488,213	315,289	1%

NOTE: Data are on properties assessed in 2007 for taxes to be paid in 2008.

^a Includes Ramsey County.

SOURCES: Office of the Legislative Auditor, analysis of data from the Minnesota Department of Revenue's 2007 Spring Mini Abstract and U.S. Department of Agriculture, 2002 Census of Agriculture.

In the Twin Cities area, 25 percent of farmland was enrolled in the Metropolitan Agricultural Preserves Program as of 2007.

its farmland in the program. Enrollment ranged from 3 percent of farmland in Anoka County to 56 percent in Carver County. Enrollment in the Metropolitan Agricultural Preserves Program is lower than for the Green Acres Program for all participating counties except Carver County. Overall, 25 percent of metropolitan-area farmland was enrolled in the Agricultural Preserves Program in 2007, compared with 47 percent for the Green Acres Program.

Enrollment in Greater Minnesota's Agricultural Land Preservation Program was also low, ranging from 3 percent to a high of 33 percent of farmland in Waseca County, as shown in Table 1.5. Enrollment is especially low as a percentage of total farmland in Greater Minnesota, just 0.5 percent in 2007.

Statutes require Minnesota's Department of Agriculture to promote awareness of the need to preserve agricultural land.

Program Administration

Besides adopting plans and land-use ordinances required for the Agricultural Land Preservation Program in Greater Minnesota, counties review landowner applications for completeness and officially record the restrictive covenants.³⁵ The law also specifies duties for the Minnesota Department of Agriculture, although it does not assign the department broad oversight responsibilities. When the law was first passed in 1984, the department was directed to select up to seven counties for a pilot program, and it ultimately selected five pilot counties, two of which (Kandiyohi and Douglas) later dropped participation.

Since those early years, the department's role has focused on two other duties assigned by the law. One is promoting awareness of: the need for preserving agricultural land, physical and social factors that affect agricultural land uses, and approaches and technologies for preserving and conserving agricultural land.³⁶ Over the years, the department has broadened the scope of its awareness campaign to cover the mitigation of land-use conflicts between farming and residential land. It reasons that meeting the stated purposes of the law requires resolving conflicts, such as those over noise and odor, with nonfarm land uses.

The department's second statutory duty is to provide financial and technical assistance for agricultural land preservation.³⁷ According to the department, the only financial assistance available to this end was the original \$300,000 appropriated for the pilot counties and a \$65,000 appropriation enabling the department to hire one staff person for implementing the law. Regarding technical assistance for local governments, the department has developed written materials, such as a model ordinance for regulating feedlots, which was designed to help reduce the land-use conflicts between farms with animal agriculture and nearby residences.³⁸ Another example is a study comparing the public costs of preserving farmland versus the costs associated with subdividing and developing rural land.³⁹ The department remains active with workshops and other means of providing information on the land preservation program and preventing conflicts between adjacent rural and urban land uses.

Conservation Accounts

Counties participating in the Agricultural Land Preservation Program must charge a \$5 fee on mortgage or deed registrations, as is done under the Metropolitan Agricultural Preserves Program. Statutory restrictions on the use of the revenues are the same for both programs. One difference is that if the

³⁵ *Minnesota Statutes* 2007, 40A.10, subd. 2-3.

³⁶ *Minnesota Statutes* 2007, 40A.14, subd. 1.

³⁷ *Minnesota Statutes* 2007, 40A.15, subd. 1 and 5.

³⁸ Minnesota Department of Agriculture, *Planning for Agricultural Land Preservation in Minnesota: A Handbook for Planning Under Minnesota Statutes, Chapter 40A* and *Planning and Zoning for Animal Agriculture in Minnesota: A Handbook for Local Government* (St. Paul, June 1996). These publications were updated in 2006.

³⁹ Minnesota Department of Agriculture, *Cost of Public Services Study* (St. Paul, September 1999).

county-conservation account revenues are insufficient to reimburse the \$1.50 per acre tax credit, reimbursements will be made from the Minnesota Conservation Fund but not from the state’s General Fund.

Green Acres and the two agricultural land preservation programs reduced property taxes on enrolled lands by about \$40 million in 2007.

AMOUNT OF PROPERTY TAX BENEFITS

As we discussed earlier in this chapter, both the Green Acres and the Metropolitan Agricultural Preserves programs provide significant property tax benefits to participating landowners, and the Minnesota Agriculture Land Preservation Program’s tax benefits are small in comparison. In this section, we examine the overall amount of property tax benefits provided by these programs and estimate the tax impact on other property owners who do not participate.

The Green Acres and the Metropolitan Agricultural Preserves programs increase property taxes for nonparticipants by reducing the community’s tax base, assuming spending stays constant. To the extent that local governments reduce their spending because the tax base is smaller, our estimates overstate the impact on property taxes of nonparticipants.

Overall, we estimate that these three programs reduced property taxes on enrolled land by about \$40 million in 2007, as Table 1.6 shows. However, we estimate

Table 1.6: Amount of Property Tax Benefits Provided by the Green Acres and Agricultural Land Preservation Programs, 2007

	Green Acres Program		Agricultural Land Preservation Programs ^a		Total	
	With Limited Market Value (millions)	Without Limited Market Value (millions)	With Limited Market Value (millions)	Without Limited Market Value (millions)	With Limited Market Value (millions)	Without Limited Market Value (millions)
Twin Cities seven-county metropolitan area	\$12.5	\$20.1	\$4.2 ^b	\$5.6 ^b	\$16.7	\$25.7
Four counties north of metropolitan area (Chisago, Isanti, Sherburne, and Wright)	11.4	17.4	0.01	0.01	11.4	\$17.5
Other 76 counties	<u>11.3</u>	<u>17.5</u>	<u>0.2</u>	<u>0.2</u>	<u>11.5</u>	<u>\$17.7</u>
Total	\$35.2	\$55.1	\$4.4	\$5.8	\$39.6	\$60.8

NOTES: Data are for taxes paid in 2007. The size of the benefits provided by the Green Acres and land preservation programs is reduced by the “limited market value” law, which limits annual increases in properties’ taxable values for agricultural, residential, seasonal recreational residential (cabins), and timberland property. We also show the impact without limited market value because the law is scheduled to expire for assessment year 2009.

^a These columns combine data for the Metropolitan Agricultural Preserves and Greater Minnesota’s Agricultural Land Preservation programs. Only the former program lowers the taxable value of enrolled land, but each program provides property tax credits of about \$1.50 per acre. The property tax credits totaled \$0.5 million for the two preservation programs.

^b Includes \$0.3 million in property tax credits.

SOURCES: Office of the Legislative Auditor, with assistance from the Minnesota House of Representatives Research Department, analysis of property tax data from the Department of Revenue and select counties.

The Green Acres Program accounts for most of the tax benefits because it enrolls much more farmland than the agricultural land preservation programs.

that the programs' impact would have been \$61 million in 2007 were it not for the "limited market value" law, which limits annual increases in properties' taxable values for agricultural, residential, seasonal recreational residential (cabins), and timberland property. Examining the impact without the limited market value law is useful because, under current law, limited market values are scheduled to expire in assessment year 2009.⁴⁰

The Green Acres Program provided most of these benefits largely because it enrolls much more farmland than the other programs, both in the Twin Cities area and in Greater Minnesota. Greater Minnesota's Agricultural Land Preservation Program provided only \$0.2 million in benefits because only three counties participate, and its \$1.50 per acre credit is small compared with the other two programs.

The tax benefits provided by these programs are more concentrated in the Twin Cities area than is farmland enrollment. The seven-county Twin Cities metropolitan area and the four counties on its northern border account for 30 percent of land enrolled in these programs but 71 percent of the overall benefits.

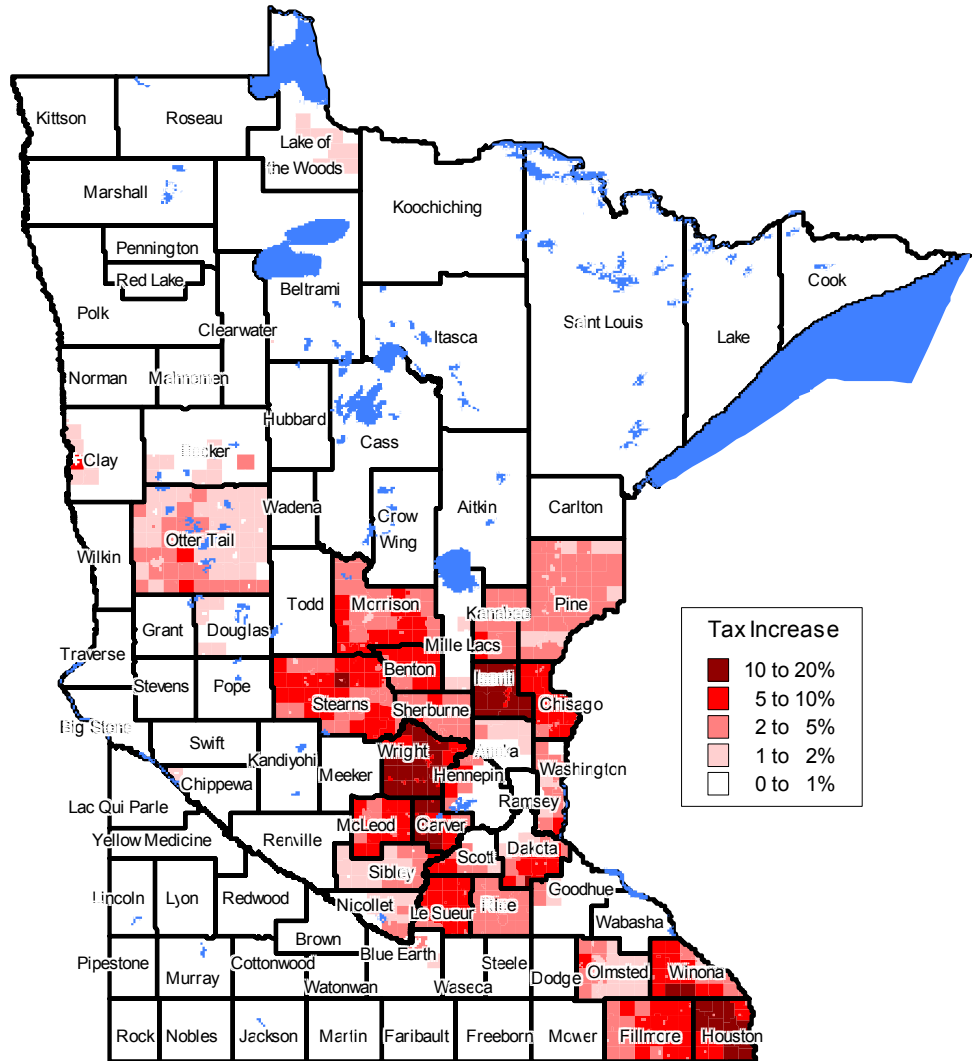
The tax impact of the Green Acres and the Metropolitan Agricultural Preserves programs on nonparticipating property varies widely among cities and townships across the state. To examine these tax impacts, we used our estimates without limited market values. For the townships with the largest tax impacts, we estimate that the programs would have increased property taxes in 2007 by 32 percent for agricultural homesteaded land owned by nonparticipants, 19 percent for residential homesteads, and 10 percent for commercial-industrial property. However, the two programs affect property taxes of most landowners by much smaller amounts. To illustrate how the tax impact on other property types varies across the state, we looked at what the tax impact would have been on residential homesteads, the property class with the highest total valuation in Minnesota. In about half of the 1,500 cities and towns in participating counties, the tax impact on residential homestead property would have increased by less than 1 percent. Among the remaining cities and towns, we estimate that the two programs would have increased residential homestead property taxes by at least 5 percent in 236 cities and towns, including 50 where the increase would have exceeded 10 percent. Areas with large tax impacts are in the farm areas near the Twin Cities, around St. Cloud, and in the southeast corner of the state, as shown in Figure 1.5.

In 2007, the Green Acres Program sheltered about \$10 billion in farmland market values, a 14-fold increase since 1993.

To examine how the benefits provided by the Green Acres Program have changed over time, we looked at trends in the amount of market value sheltered from property taxes by this program. Generally, the more farmland value that is sheltered from property taxes, the greater is the property tax benefit to landowners enrolled in the program. The amount of farm market value sheltered from property taxes by the Green Acres Program increased from \$0.7 billion in

⁴⁰ There are two other reasons to examine the tax impact without limited market values. First, even if the limited market value law is extended by the Legislature, its impact may decline if increases in agricultural land prices taper off from the rapid increases they have experienced for several years. Second, due to data limitations, the estimates without limited market values are more accurate and reliable than those with limited market value.

Figure 1.5: Estimated Impact of the Green Acres and Metropolitan Agricultural Preserves Programs on Residential Homestead Property Taxes



NOTES: This figure shows our estimates of how much the two programs would have increased property taxes, on average, in 2007 for residential homestead properties, if the “limited market value” law were not in effect. The limited market value law, which limits annual increases in property values used to determine property taxes for agricultural, residential, seasonal recreational residential (cabins), and timber property, is scheduled to expire for assessment year 2009.

SOURCE: Office of the Legislative Auditor, with assistance from the Minnesota House of Representatives Research Department, analysis of Department of Revenue’s property tax data.

1993 to \$10.1 billion in 2007, an increase that was much faster than the rate of inflation. One reason for this 14-fold increase was the rapidly rising farmland market values, particularly in the Twin Cities metropolitan area and nearby counties. From 1993 to 2007, farmland property values increased by over 500

percent in the seven-county metropolitan area and by over 700 percent in the four fast-growing counties bordering the metropolitan area to the north.⁴¹

Rising farmland values were also a factor in certain Greater Minnesota counties. For example, farmland prices for the three counties in Minnesota's southeast corner (Houston, Winona, and Fillmore Counties), increased by 371 to 484 percent during this period largely because of especially large price increases for nontillable farmland.

OTHER MECHANISMS TO PRESERVE AGRICULTURAL LAND

Although the Metropolitan Agricultural Preserves Program and the Agricultural Land Preservation Program in Greater Minnesota are the two official programs in the state for preserving farmland, other practices share somewhat similar aims. Most counties and many municipalities develop comprehensive plans and adopt zoning ordinances. Those that zone agricultural districts and maintain buffers between farms and nonfarm residences may help preserve and sustain farmland.

Local governments' land-use planning can help protect agricultural lands.

Land-use regulations may not be long lasting. Zoning regulations apply to all landowners in a jurisdiction, however, they are subject to changes, and if a jurisdiction's board of adjustment or local officials grant numerous variances to their land-use ordinances, land preservation may be of short duration.

While local planning and zoning cannot guarantee long-term land preservation, land easements are generally longer term and many are perpetual. Easements are restrictions voluntarily placed on land to protect its natural, scenic, historical, cultural, or architectural values. They are recorded on a property's deed and prevent developing the land but may also restrict using it for crop production or pasture. In contrast to zoning regulations, easements are typically targeted to only certain lands, such as forest or lands adjacent to waterways.

In Minnesota, statutes provide for conservation easements.⁴² The state has also appropriated dollars to conservation easement programs, most notably the Reinvest in Minnesota (RIM) Program and Conservation Reserve Enhancement Program (CREP). Other easement programs also exist, each with its own requirements on eligibility, payments, and duration, but most are not designed to preserve land for farming uses.

In addition, Dakota and Washington counties have begun programs that use public dollars to purchase development rights for key lands. One part of Dakota

⁴¹ These increases in value were much larger than the increases in "agricultural-use value" used to determine taxes for land in the Green Acres Program. County assessors typically look for farmland sales that are not influenced by nonagricultural factors to determine the land's agricultural value. Market value changes in five southwestern Minnesota counties, an area generally free of nonagricultural influences, suggest that the agricultural value of farmland increased by about 175 percent between 1993 and 2007.

⁴² *Minnesota Statutes* 2007, 84C.

County’s Farmland and Natural Area Program, which has been funded with a voter-approved sale of \$20 million in bonds, purchases agricultural easements to allow farming activities to continue permanently. As of June 2007, the county had acquired 13 permanent agricultural conservation easements representing 1,348 acres.⁴³ Washington County’s new program for purchasing development rights complements its efforts, which started in 2000, to keep lands in their natural condition. A referendum approved in 2006 gives the county a long-term funding source, but its emphasis is on protecting bodies of water and purchasing parkland and open space, not preserving agricultural land per se.

PROGRAMS IN OTHER STATES

Each of the 50 U.S. states has some type of farmland protection program.

Each of the 50 states has some type of farmland protection program, according to the U.S. Department of Agriculture.⁴⁴ Some of the programs lower the amount of property taxes paid by the agricultural landowner. Others regulate how the land is controlled or how it may be used.

Eligibility criteria, application procedures, and tenure of the protection vary by program and by state. In some cases, the benefits extend to all agricultural property, and the individual landowner is not required to apply. In others, landowners not only must apply and meet explicit eligibility standards, but also must renew their applications annually. Some programs protect farmland for a year, while others are designed as permanent protection.

Programs to reduce the tax burden for agricultural land include differential assessment programs, of which Minnesota’s Green Acres Program is one example in that it sets taxable values at a low, agricultural value instead of a higher value based on the “highest and best” use (the potential development use) of the land.⁴⁵ All states but one have some form of differential assessment for farmland. A second program is referred to as “circuit breaker” tax relief, which provides property tax reductions to farmers based on their income levels. Third are programs called agricultural districting, in which participants agree to maintain the land agriculturally in exchange for limits on taxes or special assessments for sewer, water, and other public services. This type involves both tax reductions and land-use controls and includes Minnesota’s agricultural land preservation programs. We looked more in depth at a sample of states, and Table 1.7 shows some of the features of the programs we examined.

⁴³ Dakota County, *Farmland and Natural Areas Program: Program Summary and Overview*, www.co.dakota.mn.us/CountyGovernment/Projects/FarmlandNaturalArea/Program+Summary+and+Overview.htm, accessed November 26, 2007.

⁴⁴ Cynthia Nickerson and Charles Barnard, “Farmland Protection Programs,” in *Agricultural Resources and Environmental Indicators, 2006 Edition* (Washington, D.C.: U.S. Department of Agriculture) July 21, 2006, www.ers.usda.gov/publications/arei/eib16/, accessed April 26, 2007.

⁴⁵ In addition, for all land classified as agricultural, Minnesota’s classification system assigns a low class rate, and a “limited market value” law limits the year-to-year increases in agricultural values.

Table 1.7: Features of Agricultural Land Protection Programs in Select States, 2007

Program	Type of Benefit	Owner Must Apply	Minimum Eligibility	Penalty for Removing Land from Program
Iowa Land Assessment	All agricultural land receives preferential assessment	No	None	None
Iowa Agricultural Land Tax Credit	Property tax credit	No	At least 10 acres	None
Iowa Family Farm Tax Credit	Property tax credit	Yes	At least 10 acres with at least 50% in crops or livestock, and owner is actively engaged in farming	None
Michigan	Income tax credit for property taxes exceeding 3.5 percent of household income; exemption from special assessments	Yes	At least 40 acres with at least 51 percent used agriculturally; or at least 5 acres with at least \$200 per acre annual income ^a	Repay seven years of tax credits plus 6 percent interest
Minnesota Green Acres Program	Eligible land receives preferential assessment and tax deferral	Yes	At least 10 acres, classified as agricultural, meeting ownership and minimum income thresholds	Repay three years of deferred taxes and all deferred special assessments
Minnesota Metropolitan Agricultural Preserves Program	Eligible land receives preferential assessment and tax deferral; \$1.50 per acre tax credit; and protections from ordinances restricting farm operations	Yes	At least 40 acres, located in an area designated for long-term agricultural use with no more than 1 dwelling allowed per 40 acres	None, but must wait eight years before land-use restrictions expire
Minnesota Agricultural Land Preservation Program	Eligible land receives \$1.50 per acre tax credit and protections from ordinances restricting farm operations	Yes	Located in an area designated for long-term agricultural use	None, but must wait eight years before land-use restrictions expire
North Dakota	All agricultural land receives preferential assessment	No ^b	None	None
South Dakota	Qualifying agricultural land receives preferential assessment	Yes	Must meet 2 of 3 criteria: At least 20 acres; produce at least 1/3 of yearly family gross income; or principal use is devoted to crops or livestock as specified in law ^c	None
Wisconsin Farm Preservation Tax Credit	Property tax credit up to \$4,200 based on income of owner; requires a restrictive covenant on the land	Yes	At least 35 acres, earning at least \$6,000 in profits the preceding year, and used agriculturally at least 12 months in the last 3 years ^d	Repay ten years of tax credits plus up to 9.3 percent interest
Wisconsin Land Assessment	All agricultural land receives preferential assessment and tax deferral	No	None	Repay a certain percentage based on the number of acres and difference between the high and low values

NOTE: Every state has some type of farmland protection program, and we selected a small sample for this table.

^a Also eligible are specialty farms where owners have gross annual incomes of at least \$2,000.

^b Owners apply to have land classified as "inundated" when it is unsuitable for crops or grazing animals for at least two growing seasons.

^c If less than 20 acres, a portion of 80 contiguous acres under the same ownership may also be eligible.

^d Land must be zoned for exclusive agricultural use or the county must have a certified agricultural preservation plan.

SOURCE: Office of the Legislative Auditor, analysis of other states' laws on farmland programs.

Programs designed to regulate how agricultural land is controlled include agricultural-land zoning, which sets minimum parcel sizes and may prevent the development of conflicting land uses. Another program is a right-to-farm law that offers protections to farmers. For example, such a law might prohibit governmental units from passing ordinances that impinge on agricultural activities, or it might restrict lawsuits filed by nonfarming neighbors who object to noises or smells from normal farm activities. A Minnesota example is a law requiring the Minnesota Department of Agriculture to review state agency actions, such as a road building project, that could adversely affect agricultural lands and recommend alternatives to reduce adverse effects.⁴⁶ Third are the “purchase of development rights” programs, similar to those described above in Dakota and Washington counties. They often rely on the purchase of conservation easements to protect the land from development. Finally, there are “transfer of development right” programs, which allow landowners to forego developing land and instead sell their development rights to a landowner elsewhere who can use those rights to develop at higher densities than otherwise allowed.

⁴⁶ *Minnesota Statutes* 2007, chapters 17.81, 17.82, and 17.84.

“Green Acres” Program

SUMMARY

The Green Acres Program effectively equalizes taxes for many agricultural landowners, but not everyone who may qualify for the program receives the benefits because the program is not yet available as widely as it could be, and some landowners fail to apply or may not be aware the program exists. While statutes do not make it clear that land preservation is a goal of the Green Acres Program, the program’s effect on preserving land for agricultural uses is short term and tenuous because it requires no long-term commitment to the land; furthermore, the tax benefit, and the penalty for removing land from the program, can be small relative to the value of the land on the open market. Some who receive Green Acres benefits are not farmers or are marginally eligible for the program, and we recommend that the Legislature clarify who and what types of land should receive the benefits. Certain program eligibility criteria are outdated and difficult to implement, and the Legislature should eliminate the income criterion and replace it with a more explicit definition of “primarily” agricultural land. The Department of Revenue’s steps to make the program more consistent statewide will help but can be improved.

The Green Acres Program reduces part of the tax burden for certain agricultural property. It is open to all qualifying landowners, but the program has not been available in every county, as Chapter 1 described. In this chapter we explore equity questions connected to the Green Acres Program and detail how well the program has worked. More specifically, we analyze the following research questions:

- **How effective is the Green Acres Program?**
- **Who benefits from the Green Acres Program?**
- **How appropriate are the eligibility criteria for Green Acres?**
- **How consistently have counties implemented and administered the Green Acres Program?**

To answer these questions, we studied property tax data from the Department of Revenue, and we analyzed trend data on acreage enrolled in Green Acres and values of agricultural land. Using the Department of Revenue’s data, we identified counties that had no land enrolled in the Green Acres Program as of 2007 and surveyed the county assessors there. From among the remaining counties, we selected a large sample and conducted telephone interviews with county assessors. We visited six counties to review landowners’ applications for the program, and we spoke with a small number of landowners who had been denied enrollment. We also interviewed Department of Revenue staff, an

Statutes for the Green Acres Program do not explicitly say that the program’s objective is to preserve agricultural land.

agricultural land economist knowledgeable about the program, and representatives of Farm Service Agencies in eight counties around Minnesota.

EFFECTIVENESS OF GREEN ACRES

Minnesota statutes state that the Green Acres Program is intended to “equalize tax burdens upon agricultural property.”¹ Although the law does not specifically address the objective of preserving agricultural land, some believe this to be one of the program’s purposes. The Department of Revenue’s 2006 report on the Green Acres Program acknowledged that the program’s intent is unclear and should be clarified.² Although the program’s goals are not fully explicit, we looked at both program goals and found that:

- **The Green Acres Program effectively equalizes taxes for many agricultural landowners but does not help all who may be eligible. The program’s effect on preserving farmland is short term and tenuous.**

The following sections describe how well the program equalizes tax burdens and preserves agricultural land.

Tax Equalization

When the Green Acres law was enacted in the late 1960s, urban development had driven the market value of agricultural land in the Twin Cities area beyond the value of rural farmland. Because property taxes were based on properties’ market values, farmers in the Twin Cities area paid much higher property taxes per acre than in the rest of the state. Over time, urban development, recreation, and other nonagricultural factors increased the value of farmland in other regions of the state.

To assess how well the Green Acres Program equalizes property tax burdens, we examined to what extent the program moves values used to determine property taxes closer to target values based on agricultural use. These target values, which we calculated from the Department of Revenue’s county-by-county estimates of the average value of tillable land for agricultural uses, are highest in the state’s prime agricultural areas in southern Minnesota. Because the agricultural value of nontillable farmland often differs from that of tillable land, these target values are rough guides for assessing how well the program equalizes valuation of agricultural property. For example, target values may be high for counties with a lot of nontillable land that is not useful for agriculture, such as counties in Minnesota’s southeast corner. These target values are generally accepted by county assessors as being reasonable for tillable land, although there are

¹ *Minnesota Statutes* 2007, 273.111, subd. 2.

² Minnesota Department of Revenue, *Assessment and Classification Practices Report: Agricultural Land Including Land Enrolled in the Green Acres Program* (St. Paul, 2006), 9. The report pointed to a Supreme Court case that said the program’s tax relief is to promote continued use of the land as agricultural property.

significant differences over what should be the target values for nontillable land. Nevertheless, we consider them appropriate to give a big-picture analysis of the program’s effectiveness.

In analyzing how well the program equalizes tax burdens we found that:

- **The Green Acres Program substantially reduces the variation in taxable value between farmland with value added by nonagricultural factors and that without.**

For land in the Twin Cities metropolitan area, the Green Acres Program substantially reduced taxable valuations of enrolled agricultural land in 2007—from an average \$13,800 per acre down to \$3,600 per acre.

The assessor’s average estimated market value for farmland is the highest in the Twin Cities seven-county metropolitan area, followed by the four fast-growing counties bordering the metropolitan area to the north (Chisago, Isanti, Sherburne, and Wright). As Table 2.1 shows, the Green Acres Program reduces the value of farmland enrolled in Green Acres in these counties to levels much closer to the target values. For enrolled farmland in the Twin Cities metropolitan area in 2007, the Green Acres Program substituted an average agricultural-use value of \$3,600 per acre for the average estimated market value of \$13,800. While this agricultural-use value is somewhat higher than the target value of \$2,500, Green Acres eliminated most of the difference in valuation due to urban development. In the four fast-growing counties on the metropolitan area’s northern border, the Green Acres Program substituted average values of \$1,900 (very close to the target value) for \$6,500 per acre.³ As Table 2.1 shows, the Green Acres Program also substituted lower tax valuations in other regions where estimated market values significantly exceeded the target values.

The other factor that indicates how well the program equalizes property tax burdens on farmland is the percentage of farmland that is enrolled in the program, particularly in counties with widespread nonagricultural influences on farmland market values.⁴ In 2007, 73 percent of the farmland in the seven-county metropolitan area was enrolled in either the Green Acres or Metropolitan Agricultural Preserves program, which we combine here because they offer essentially the same reduction in value, and metropolitan enrollees participate in only one of the two programs. For the four counties north of the metropolitan area, 77 percent of farmland is enrolled in the Green Acres Program.⁵ Considering that some landowners are not eligible for these programs, the two programs appear to effectively enroll most eligible farmers in the two areas with the highest estimated market values. However, in some areas which appear to have considerable nonagricultural influences on farmland value, enrollment in the Green Acres Program is low or moderate, including three of the five counties

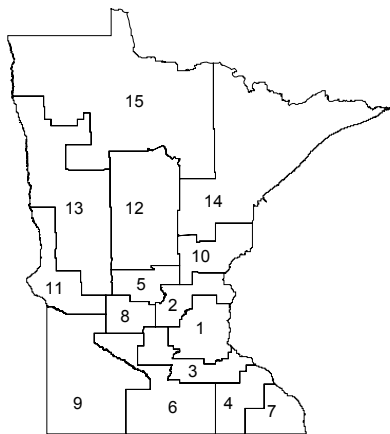
³ Note that the target value for these four counties is lower than the target for all of the regions in southern Minnesota because the four have poorer soil than farmland in southern Minnesota.

⁴ It is not possible to precisely determine how much farmland should be enrolled in the program because, as we described in Chapter 1, eligibility depends on the ownership situation as well as the land. Also, in some counties, nonagricultural influences have driven up the price of farmland in only certain parts of the county.

⁵ In Greater Minnesota, we do not combine enrollment in agricultural preservation programs with the Green Acres Program because only the Green Acres Program provides significant property tax reductions there. However, some land in Wright and Winona counties is enrolled in both programs.

Table 2.1: Impact of the Green Acres Program on Farmland Valuations, 2007

Region	All Farmland		Land in Green Acres		
	Estimated Market Value (per acre)	Target Value ^a (per acre)	Estimated Market Value (per acre)	Agricultural-Use Value (per acre)	Percentage of Farmland
1. Twin Cities metro area	\$10,453	\$2,546	\$13,799	\$3,585	47% ^b
2. North of metro	6,500	2,014	6,474	1,915	77
3. South of metro	3,935	2,862	4,213	2,854	36
4. Southeast	3,238	2,628	7,146	2,914	5
5. St. Cloud area	3,053	1,617	3,005	1,423	71
6. South central	2,983	2,934	11,534	3,287	0.3
7. Southeast corner	2,625	2,456	2,627	1,787	63
8. Near west	2,485	2,389	3,288	2,121	1
9. Southwest	2,324	2,397	3,859	2,349	0.2
10. Near northeast	1,991	1,434	1,959	1,070	31
11. West central	1,816	1,794	2,448	1,235	0.1
12. North central	1,761	1,095	2,143	1,083	14
13. Northwest	1,434	1,260	3,274	1,664	5
14. Northeast	1,228	881	N/A	N/A	0
15. Far north	658	533	1,876	809	0.3



NOTES: We grouped counties into the regions shown based on geographic proximity and the Department of Revenue's estimated agricultural-use value of their tillable land. The number of the region corresponds to the areas numbered on the adjoining map. This table does not include the effects of the limited market value law, which limits the annual increases in property values used to determine property taxes for agricultural, residential, residential seasonal recreational (cabins), and timber property. Valuations estimated in 2007 are used to calculate taxes paid in 2008.

^a The target values are rough approximations of the average agricultural-use value for farmland in 2007. To estimate them, we used the Department of Revenue's ratio of each county's agricultural-use value for tillable land to that from five southwestern counties considered to have had few nonagricultural factors influencing farmland prices. The target values do not include both tillable and nontillable land because good data on nontillable land are not available. Because agricultural-use values often differ between nontillable and tillable land, however, a region's actual target value may differ from the values shown, especially in regions, such as in the southeast corner, where nontillable land is a considerably larger percentage of farmland than in southwestern Minnesota.

^b Enrollment for the Twin Cities area would be 73 percent if enrollment in the Metropolitan Agricultural Preserves Program, which offers essentially the same tax benefit as Green Acres, were added.

SOURCE: Office of Legislative Auditor, analysis of data from the Department of Revenue's 2007 Spring Mini Abstract and Department of Revenue, *Green Acres Bulletin #1* (St. Paul, October 2007).

on the southern border of the metropolitan area and some counties in southeast Minnesota. This reduces the degree to which the program equalizes property tax burdens, which is addressed below.

Limited Tax Equalization

Although the Green Acres Program equalizes tax burdens, we found that:

- **Not everyone who may qualify for the Green Acres Program receives benefits because (1) the program has not been implemented everywhere it could be, (2) some otherwise eligible landowners either fail to apply or choose not to participate, and (3) some landowners may not be aware of the program.**

First, the Green Acres Program is available in only those counties where the county assessor has implemented the program. By definition, the program may operate only where nonagricultural factors influence the value of agricultural land. As of mid-2007, 35 counties had not implemented the Green Acres Program.⁶ In 16 of these counties, assessors reported that nonagricultural factors had increased the values of certain agricultural lands there. Half of those county assessors, though, also reported that they had not implemented the program because differences between the low (Green Acres agricultural-use) values and high (estimated market) values were slight, or the number of land sales with nonagricultural influences was small. For the remaining eight counties where assessors reported that nonagricultural factors had increased agricultural land values, had the Green Acres Program been implemented, qualifying landowners would pay lower taxes than they will in 2008.

As of 2007, about 35 counties had not implemented the Green Acres Program, even though some of them reported having land that likely would have qualified.

A second reason that some potentially eligible landowners do not receive Green Acres benefits is that they fail to apply or choose not to participate. About half of the assessors in the 48 Green Acres counties that we interviewed reported that some landowners who are likely eligible have not enrolled, although in many counties assessors believed this did not happen often. Most frequently, assessors believed that landowners who do not enroll simply decide against applying, have a general mistrust of government programs, or are thinking of soon selling their land.

Third, not all landowners may be aware of the Green Acres Program, in part because some counties have not actively informed landowners about it. Among the 48 Green Acres counties we interviewed, county assessors in five counties with relatively low enrolled acreages (less than 13 percent of deeded farm acres) reported providing Green Acres information only when landowners request it. Furthermore, none of the eight Farm Services Agency directors we interviewed believed the Green Acres Program was widely known within their counties.⁷ Five of the eight directors believed that farmers were “somewhat” aware of the program, and the remaining three thought that farmers were generally unaware of it. Four directors volunteered they would find it useful to distribute to local farmers a brochure or information packet about the program.

⁶ In 51 counties, at least one parcel was enrolled in 2007 for taxes to be paid in 2008. In addition, Cass County had no land enrolled in the Green Acres Program, but the county assessor said the program is available and, if any land qualified, it would be enrolled.

⁷ Part of the U.S. Department of Agriculture, the Farm Services Agency (FSA) has local offices in most Minnesota counties and daily interactions with farmers. Although county FSA directors do not work directly with the Green Acres Program, directors we interviewed knew of the program, and many had received farmers’ requests for verification of farm operations to qualify for it.

Farmland Preservation

Part of the rationale for the Green Acres Program is that reduced property taxes allow farmers to continue farming. Especially for farmers with marginal incomes, the tax benefits may improve cash flow to the point that they can continue to farm. But the Green Acres Program is not targeted to lower-income farmers, and data are not available on how many farmers would no longer be able to keep their land in agricultural production if their taxes were not deferred. As stated earlier, statutes do not specifically list farmland preservation as a program goal, but we found that:

- **The Green Acres Program does not effectively preserve farmland because it does not require a long-term commitment, its benefits are small in comparison with the financial gain of selling the land, and it is not targeted to high-quality farmland.**

If preservation is one of the Green Acres Program’s goals, the program would have to change to more effectively achieve preservation. The following section describes why the program’s effectiveness in preserving land is limited.

First, the program neither requires a long-term commitment to the land nor is restricted to regions zoned for long-term agricultural uses. Although the Green Acres Program requires that land be “primarily devoted to agricultural use,” it does not prevent owners from changing uses or dividing or selling the land at any time.

Second, the amount of the tax benefit can be small relative to the increased value of the land, which minimizes the program’s influence on decisions to keep land in agricultural production. As described in Chapter 1, the amount of farm market value sheltered by the Green Acres Program grew far faster than inflation over the last 14 years, in large part because of rapidly rising farmland market values. For example, the market value of an 80-acre farm in the four fast-growing counties north of the metropolitan area has gone from an average \$62,000 to \$520,000 from 1993 through 2007. The average tax benefit for such farms enrolled in the Green Acres Program was about \$1,350 for taxes paid in 2007.

The financial benefits of selling land enrolled in the Green Acres Program typically far outweigh the penalty for leaving the program.

Furthermore, the potential financial gain from selling Green Acres property can be much larger than the amount of property taxes the program reduces, even when the current owners are required to pay back three years of deferred taxes. For instance, the owner of a 76-acre Green Acres parcel in Dakota County would have owed \$905 for three years of deferred taxes had he sold the land in 2007. The payback would be equivalent to just 0.3 percent of the \$305,000 net gain, assuming the owner had bought the land 14 years earlier and the property had increased in value at the same rate as the average farmland value in the county. Even if the owner owned the land since just 2002, the three-year payback would amount to less than a half percent of the sales profit, assuming the rise in value was equivalent to the county’s average farmland values. In a second example of 33 acres, the payback would represent 2.5 percent of the net gain if the parcel was owned for 14 years or nearly 4 percent if owned since 2002 (assuming the parcel’s values increased at the county’s average rates over those periods). In

The Green Acres Program is not targeted to land at risk of being developed.

fast-growing areas, the payback amounts to a very small financial incentive for retaining the property as agricultural.

Finally, the Green Acres Program’s effect on preserving farmland is tenuous because the program is not targeted to land that is necessarily important to preserve. The program is available for any type of farmland, regardless of quality, and affects nonproductive land with poor soils as much or more as it does prime farmland. Nor is the program targeted to land that is free of nearby land-use conflicts or at risk of soon being developed. The Green Acres Program can be found in areas, such as southern and southwestern Scott County, that have seen rising land prices but are unlikely to be developed for years or perhaps decades. Landowners there will continue to receive the tax advantages each year until development approaches, at which time the owners can sell at any point.

Because the Green Acres Program’s effect on farmland preservation is short term and tenuous, the program would have to significantly change to have a lasting impact. Changes such as requiring a longer-term commitment to the land or targeting benefits to high-quality land at risk of development would likely only make small improvements to land preservation. To achieve long-term land preservation, alternate programs would likely be needed.

BENEFICIARIES OF THE PROGRAM

Equity questions arise when some people receive Green Acres Program benefits while others do not and when certain land is eligible but nearby land with similar characteristics is not. Growth in the value of Green Acres Program benefits has given such questions more importance today. We found that:

- **It is unclear whether the Green Acres Program’s goals include benefiting certain landowners and types of land that receive benefits.**

In the following sections, we describe questionable outcomes of the law’s current eligibility requirements and show how the program’s benefits make questioning these outcomes increasingly pertinent.

Who Benefits

It is reasonable to address who benefits from the program because other property owners pay more in taxes to make up for the tax relief that program participants receive. We found that:

- **Beneficiaries include participants who are not farmers and certain properties for which it is unclear that agriculture is the primary use.**

County assessors are required to determine whether applicants meet the program’s statutory eligibility criteria, and they have cases that are minimally eligible. In 23 of the 48 Green Acres counties in our sample, assessors told us about certain landowners, such as those who are not farmers, who meet the law’s legal requirements but may not conform to the law’s goals. Table 2.2 lists the various cases. Nine of the 23 county assessors said the borderline cases were

Table 2.2: Questionable Outcomes of Green Acres Program Eligibility Requirements

Landowners who:

- Are not farmers
- Buy land without homesteading it, hold it for more than seven years, and then develop it^a
- Own small parcels (roughly 10 to 20 acres) used for their residences and hobby farms
- Own parcels with small proportions of productive agricultural land
- Own primarily wooded acres for hunting or other recreational purposes while renting a small proportion of land to grow hay or graze livestock
- Have very high incomes in addition to their land wealth
- Enroll land in a conservation easement program that pays the owner for discontinuing agricultural uses
- Submit dubious income documentation that assessors have no means to verify

^a *Minnesota Statutes* 2007, 273.111, subd. 3(a)(2), requires someone who does not live on the land to possess it for seven years prior to applying for Green Acres benefits. This type of owner would have to own the land for more than 10 years to receive a benefit greater than the amount required to be paid back.

SOURCE: Office of the Legislative Auditor, analysis of data from interviewing county assessors, July and August 2007.

common in their counties, and one of those said there were likely hundreds of such parcels in his county, but we do not have a precise count of the cases statewide.

Questions about who is receiving the Green Acres benefits are especially important because of the growth in the value of the benefits between the early 1990s and today. As we showed in Chapter 1, the amount of farm market value sheltered from property taxes by the Green Acres Program increased from \$0.7 billion in 1993 to \$10.1 billion in 2007.

Four common types of cases that are legal but raise questions involve: investors or others who are not farmers, parcels with small proportions of productive land, land with added values due to aesthetics and recreational demand, and small-acreage farms. First, assessors in counties near the metropolitan area described land investors who have owned property for more than seven years and rent it out for others to farm until they sell the land for development. For example, there are several such parcels in Washington and Wright Counties ranging in value from \$300,000 to over \$5,000,000 that are owned by land developers or others outside farming who pay one-tenth or less of what their taxes would be without the Green Acres Program. For a 38-acre parcel valued at \$2.7 million, the Green Acres Program reduced the property taxes from \$12,928 to \$570. Similarly, for a 26-acre parcel valued at \$816,000, Green Acres reduced the property taxes from \$3,378 to \$340. While owners clearly benefit, some farmers renting the land

Questions about who and what types of land receive Green Acres benefits are important because of the growth in program benefits over time.

argue that they also receive a benefit if the owners lower land-rental prices more than they otherwise would.

A second type of case that raises questions involves landowners who benefit from the Green Acres Program even though most of their acreage is not in agricultural production. The law states that qualifying land must be “primarily devoted to agricultural uses,” but half of the 48 county assessors in our sample reported difficulties determining whether certain properties meet this definition. For instance, a parcel with 10 acres of land in a conservation program that pays the owner to leave the land fallow is eligible for the Green Acres Program. This is because the law on agricultural classification includes land that is at least 10 contiguous acres and has been enrolled in certain conservation programs.⁸ As another example, assessors described cases of 80-acre homesteaded parcels with 10 tillable and 70 wooded acres. Whether such a parcel is primarily agricultural is at question.

For many parcels, the nontillable land is an inseparable part of the farm, making its eligibility reasonable. But there are also parcels where most of the land is nontillable, and the nontillable portion is not productive—not used for crops or livestock grazing—and could be separated from the productive portion, although data are not available to calculate the amount of such land. Giving preferential treatment to such a parcel when similar land that is not attached to a farm does not receive any tax break is a questionable use of public dollars.

The rapidly increasing demand for nontillable farmland has made it a much larger factor in the Green Acres Program than when the program was first established. In certain counties, nontillable farmland now sells for more than tillable farmland, even if it has little agricultural value, because of its value for hunting and other recreation or as a home in the country. For example, in Houston County, the market value of nontillable land has increased from \$117 per acre in 1993 (one-sixth the value of tillable land at that time) to \$2,900 per acre in 2007 (nearly 30 percent higher than the value of tillable land). Statewide, nontillable land represents 38 percent of the farmland enrolled in Green Acres, although data are not available on what proportion of that is nonproductive land. Nontillable acres represent more than half of the land enrolled in the Green Acres Program for 11 counties, including Morrison, Kanabec, Mille Lacs, Pine, Crow Wing, and Todd counties.⁹

A third type of questionable case involves properties that have increased in value due to their desirability for hunting near wooded acreages or other aesthetic values. Some assessors have questioned whether the Green Acres Program’s objective is to lower taxable values on land that has increased in value due to recreational demands instead of development pressures. They are concerned that the program could shift considerable tax burdens onto nonparticipants because

Agricultural land that is too rocky, steep, or wet to be tilled can still qualify for Green Acres benefits.

⁸ *Minnesota Statutes* 2007, 273.13, subd. 23(c).

⁹ For example, in Morrison County, 19 percent of the land enrolled in the Green Acres Program in 2005 was pasture, 18 percent was wasteland, and 14 percent was woodland (which may or may not be productive farmland).

Some county assessors fear that expanding the Green Acres Program would involve so many land parcels that they would have to hire additional staff to administer it.

tax reductions would accrue to many agricultural parcels that provide habitat as hunting grounds. Beyond that, they fear that expanding the program to cover the numerous parcels that could possibly qualify would be an administrative burden that may require additional staff, a proposition their counties disfavor.

Fourth, small farms (10 to 20 acres or so) can also pose difficulties when assessors determine whether a property is “primarily devoted to agricultural use.” Assessors have to decide whether a site is a large residential property or, instead, is being farmed sufficiently to reflect a primarily agricultural use. Only the latter may become eligible. One example is of homeowners living on lakeshore with an additional 11 acres used to raise hay or grasses. While most assessors in the 48 counties we sampled reported that small farms are uncommon in their counties, 12 said that small farms are common and that the small farms are often enrolled in the Green Acres Program.

In addition, the value sheltered from taxation by the program is “invisible” and operates beyond the scrutiny of local government budgets. Once the Green Acres Program is in place, its subsidy to landowners is automatic and not debatable (unlike, for instance, a spending item in a county’s budget), yet it shifts tax burdens among taxpayers.

RECOMMENDATION

The Legislature should clarify in statute who and what types of land should benefit from the Green Acres Program.

In light of the program’s increased benefits over time, and because agricultural lands have increased in value due to recreational and other factors in addition to urban development, the Legislature should reassess whether all lands now eligible for the benefits should continue to be so. As written, the law does not now limit participation to just those who are farmers, own parcels with a large share of productive land, or farm large acreages. Nor is the program limited to just the Twin Cities metropolitan area (Greater Minnesota counties have participated from the beginning). The law requires assessors to avoid considering any added values from nonagricultural factors—it does not specify whether they are to result from development pressures, recreational demands, or any other factor forcing up farmland values. Determining who and what types of land should benefit is a policy decision appropriate for the Legislature.

In setting parameters for eligibility determinations, the Legislature should focus on the cases that now qualify marginally, such as small farms, land with small proportions of agriculturally productive land, land owned by people who are not farmers, or land that increased in value due to recreational demands. The determinations could range from restrictive, where only a core group qualifies, to more inclusive, where anyone within a general group qualifies. For example, regarding small-acreage farms, a more restrictive determination would deny the agricultural classification (and, thus, Green Acres benefits) to any parcel under a threshold number of acres—currently 10 acres—while a more inclusive determination would allow a farm of any size to qualify as long as the owner used the land for agricultural production. Regarding cases where a parcel’s share

Landowners who do not have land in the Green Acres Program pay higher property taxes in their community to make up for lower taxes on enrolled parcels.

of agriculturally productive land is limited, such as when owners build homes in the country surrounded by 9 acres of woods and attached to 10 acres of land rented for haying, a more restrictive determination would grant the agricultural classification to only the 10 tilled acres while denying Green Acres benefits to any part of the parcel. In contrast, a more inclusive determination would grant Green Acres benefits to the full parcel with the exception of the house’s one acre. Regarding land owned by those who are not farmers, a more restrictive determination would limit benefits to only those who live on the farm, actively operate it, or rent it to an immediate relative who operates it. The more inclusive determination would allow anyone regardless of occupation to benefit, as is the case today.

It is important to determine with better precision who and what types of land should benefit from the program because the program’s property tax advantages are much greater today than in the past, and other parcels in the jurisdiction bear higher tax burdens for every parcel enrolled in the program. One downside to changing eligibility requirements without “grandfathering in” current participants would be increased tax bills for program enrollees who could be disqualified as a result of changes to the program.

ELIGIBILITY CRITERIA

Statutes on the Green Acres Program specify eligibility criteria for ownership, income, and land size and use, as described in Chapter 1. Some criteria from four decades ago are still in place today, despite significant changes to the agricultural economy and farming practices. We found that:

- **Certain eligibility criteria for the Green Acres Program are outdated, difficult to implement fairly, or create inequities.**

The most problematic criteria are the minimum income threshold, the agricultural classification of property, and the determination of whether land is primarily agricultural. We discuss each of these in the following sections.

Income

To qualify, applicants must earn from the land at least \$300 plus \$10 for every tillable acre, a standard which has been in place since 1969.¹⁰ For the median size farm in Minnesota of about 160 acres, this means the owner has to produce \$1,900 yearly from the land, or less if the parcel is not fully tillable. Assessors told us this criterion is so low that it allows people to qualify for the Green Acres benefits even though the amount of farming is minimal; two-thirds of assessors in our sample of 48 said the income criterion should be updated to better reflect market rents for productive land. At the same time, the low criterion allows certain farmers, such as those who are retired or relying on Social Security incomes, to continue receiving the tax break. Fourteen of the 48 assessors also viewed the requirement for a minimum of 10 acres in production as inadequate

¹⁰ *Laws of Minnesota* 1969, chapter 1039, sec. 10.

because few farmers could realistically earn a living from only 10 acres. On the other hand, the law does not require landowners to earn their entire living from the enrolled land, and small specialty-crop farms may generate as much farm income as a larger row-crop farm, according to the Department of Agriculture. We found that:

- **Difficulties in verifying that applicants for the Green Acres Program meet the income threshold make the criterion somewhat impracticable and lead to inequities.**

Most often, assessors verify income by requiring a copy of the owners’ “Schedule F” or “E” from their income tax returns.¹¹ Many assessors, however, reported problems with verifying income. For instance, not every farmer files one of the schedules, assessors lack authority to verify income tax data (which is classified as private data), and the schedules do not identify which lands produce income and which do not. Table 2.3 lists the difficulties assessors reported about verifying applicants’ incomes. The difficulties may mean that some people who should be in the program are not, or those who should not be enrolled actually are in the program.

Table 2.3: Difficulties in Verifying That Applicants Meet Income Criterion for Green Acres Program

- Landowners resist having to provide financial information to the property assessor.
- Certain landowners are not required to file income taxes or do not file a Schedule F and may provide only informal documentation.^a
- The Schedule F does not distinguish among which properties produced the income, making verification difficult when farmers own land in multiple areas.
- Assessors have no means to verify veracity of the Schedule F, such as whether the form submitted was actually filed with the applicant’s income tax return.^b
- Certain farmers deal strictly in cash transactions, which are difficult to verify.

^a Farmers file a “Schedule F” with federal income tax forms to report profits or losses from farming.

^b Some of the submitted forms appeared dubious, such as those that were originals, not copies, and were filled in for the precise amount of income the owner needs to qualify for the Green Acres Program.

SOURCE: Office of the Legislative Auditor, analysis of data from interviewing county assessors, July and August 2007.

Furthermore, the income criterion is intended to filter out landowners who do not make sufficient agricultural income but does nothing to prevent high-income

¹¹ As a part of federal income tax returns, Schedule F allows a landowner to record profits or losses from farming. Schedule E records income or loss from renting lands.

Some landowners resist having to provide the financial information that property assessors need to verify applicants’ eligibility for the Green Acres Program.

landowners from receiving the benefits. The Green Acres tax breaks are available to millionaires as well as subsistence farmers, as long as the owners meet the other eligibility requirements. The law allows this, but some question whether it is reasonable.

Agricultural Classification

Before a parcel can be enrolled in the Green Acres Program, it must first be classified as agricultural property. Property of any other classification is ineligible. Minnesota law defines the agricultural classification, but some county assessors believe that the definitions for classifying land as agricultural need to be more precise.

For classifying land as agricultural, statutes define types of agricultural products, but they do not address how much of each type is sufficient. For instance, bees and apiary products are considered agricultural products, but it is unclear how many acres containing how many bee hives would be sufficient to constitute an agricultural classification.¹² We found that:

- **The law used to classify land as agricultural is subjective and can lead to inequities among individual taxpayers.**

Inequities are also possible between counties when an assessor’s judgment in one county differs from that in another. A landowner we interviewed expressed frustration that neither the local board of review nor a representative from the Minnesota Department of Revenue could explain what was an adequate number of sales or shrubs to define her small nursery as agricultural. Disputes also arise over whether farms of less than 10 acres qualify as “exclusively and intensively used for agricultural products,” as required by law.¹³ For instance, a second landowner told us she questioned the assessor’s decision that her nine acres used for hay, chickens, and a goat dairy were not agricultural. In the Department of Revenue’s October 2007 bulletin on Green Acres, the department acknowledges the subjectivity of interpreting the agricultural classification statute.¹⁴

Land That Is Primarily Agricultural

Once a parcel is classified as agricultural, to qualify for the Green Acres Program, the assessor must find it to be “primarily devoted to agricultural use.”¹⁵ Assessors use their judgment to decide whether, for instance, a 20-acre parcel in the country, consisting of a house on 10 wooded acres with hay grown on the remaining 10 tillable acres, is primarily devoted to agricultural use. Similar to the discussion above regarding classification, we found that:

¹² *Minnesota Statutes* 2007, 273.13, subd. 23(e)(1).

¹³ *Minnesota Statutes* 2007, 273.13, subd. 23(d).

¹⁴ Minnesota Department of Revenue, *Green Acres Bulletin #1* (St. Paul, October 2007), 15.

¹⁵ *Minnesota Statutes* 2007, 273.111, subd. 3(a).

To be enrolled in the Green Acres Program, land must first be classified as agricultural by the assessor.

- **The law requiring Green Acres land to be “primarily” agricultural is subjective and lacks precision.**

The subjectivity opens the door to charges of unfairness for taxpayers and among counties. Another landowner we interviewed, whose application for Green Acres was denied because the assessor determined the land was not primarily devoted to agriculture, was upset because he was turned down even though he met all the criteria on the application form he submitted. In the landowner’s view, he followed all the rules, but local officials did not stand by the rules that were set. Furthermore, some assessors reported that they do not view the “primarily” language as an additional criterion for eligibility. From their perspective, once the land is classified as agricultural, it automatically qualifies for the Green Acres Program (as long as the owner meets ownership and income requirements). In its 2007 bulletin on the Green Acres Program, the Department of Revenue recognizes that determining land’s primary use can be subjective.¹⁶ The department provides guidance and a list of factors, such as income from the productive acres divided by total acreage, that assessors may consider in making the determination. One recommendation is to define land as primarily agricultural only when half or more of up to 80 acres is in agricultural production; for parcels of 80 or more acres, at least 40 acres would have to be in agricultural production.¹⁷

RECOMMENDATION

The Legislature should change the Green Acres law by eliminating the criterion for a minimum income level if it also adds specificity to statutes for classifying property as agricultural and defining land that is “primarily” agricultural.

Eligibility for Green Acres requires agricultural income from the land, but proposals to increase the required amount would create problems.

The existing income criterion does not sufficiently filter out those who are ineligible and is largely unnecessary for most active farmers in primarily agricultural counties. Simply adjusting the income threshold upward would better align the criterion with today’s agricultural economy and might reduce the problem somewhat, but it would also eliminate eligibility for certain farmers who arguably need the benefit more than higher-income landowners. Requiring the threshold to be a certain percentage of total family income would help disqualify some landowners who are not farmers; however, it could also make ineligible those persons who truly farm the land but happen to have spouses who work a second job. Furthermore, Minnesota’s property tax system is largely based on types of properties and land characteristics and values, not who owns them.

Despite its problems, the income criterion provides a basis for determining eligibility. We recommend its elimination only if, at the same time, changes are made to help define what land can be reasonably called primarily agricultural. Additional specificity in the land classification and Green Acres statutes would

¹⁶ Department of Revenue, *Green Acres Bulletin #1*, 4 and 18.

¹⁷ *Ibid.*, 19.

The Department of Revenue should work with farm representatives, assessors, and others to recommend to the Legislature specific standards for defining property as “primarily” agricultural.

clarify for the taxpayer what is and is not allowed and make the criteria more workable for assessors. It would provide more objective standards for determining whether a landowner manages sufficient numbers of livestock or other nondomestic animals or maintains a sufficient proportion of productive farmland to qualify. The Department of Revenue’s list of factors for determining whether land is primarily agricultural is a step in the right direction. But the department does not offer more specific standards. Working with assessors, farm service agencies, and other stakeholders, the department should recommend standards, such as proportions of productive land and animal units per acre, needed to qualify as primarily agricultural. Such standards should be explicit but may have to vary by region of the state to accommodate differences in farming practices. Ultimately, the Legislature should review the recommended standards and change statutes as necessary to reflect the revised definitions.

In light of the Department of Revenue’s plan to begin statewide implementation of the Green Acres Program for the assessment of taxes in 2009, it is possible that landowners newly eligible in 2009 would be found ineligible if a more stringent definition of “primarily” agricultural replaced the income criterion. If that possibility is widespread, it would be reasonable to delay statewide implementation of Green Acres until the criteria are more clearly defined. Furthermore, newly defined criteria would require changes to the application form used to determine eligibility for the Green Acres Program. They would also likely require assessors to take additional steps to verify that applicants meet whatever new thresholds are set.

IMPLEMENTING AND ADMINISTERING GREEN ACRES

We analyzed whether counties are consistent in the implementation and administration of the Green Acres Program. Variation from county to county and within a county can be important because it can affect whose taxes the program reduces and to whom the tax burden shifts. We also reviewed the Department of Revenue’s strategy for improving consistency, and we found that:

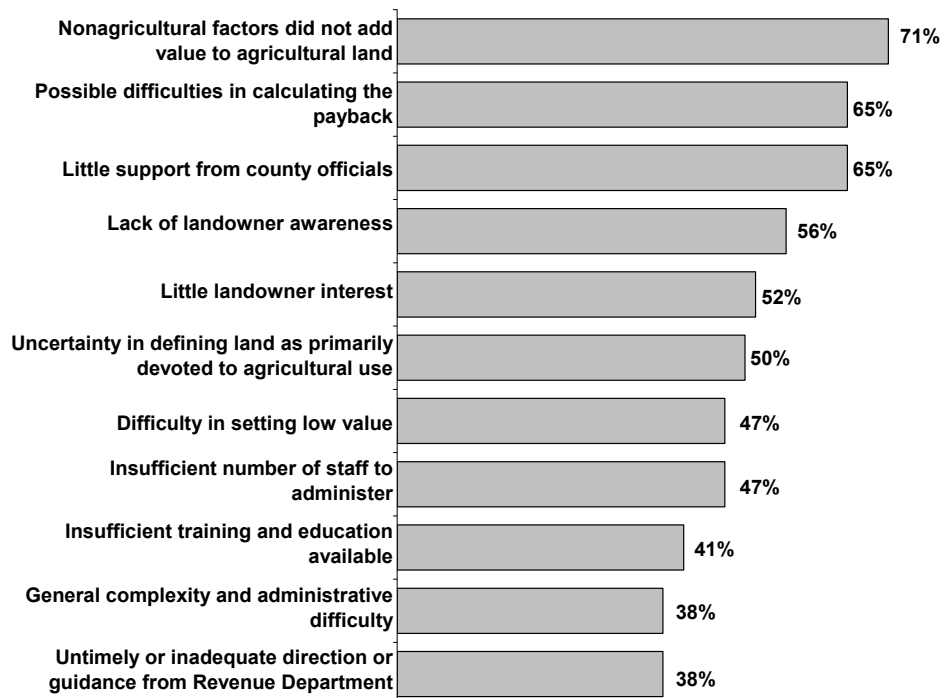
- **Not all counties that could have implemented the Green Acres Program have done so, and administration of the program is inconsistent among those that have, which may result in unequal tax burdens. The Department of Revenue’s efforts to make the program more consistent will help but can be improved.**

Beyond the availability of the Green Acres Program, counties vary in how they define land as “primarily” agricultural, whether or not they verify applicants’ income, how they treat special circumstances (such as land owned by multiple owners), how they inform landowners about the program, and their payback procedures. The following sections describe the variation as well as efforts by the Department of Revenue to make the program more consistent statewide.

Availability of the Green Acres Program

As we stated earlier, 35 counties had not implemented Green Acres by mid-2007. Because some nonparticipating counties have nonagricultural factors influencing agricultural lands, certain landowners there are not receiving the tax benefits to which the law entitles them. In most counties with little or no acreage enrolled in Green Acres, assessors reported that nonagricultural factors have not substantially influenced agricultural land values. For other counties with no Green Acres enrollment though, the key reasons for not having implemented the program included little support for the program from county officials, expected difficulties in calculating the payback when Green Acres land is sold, and insufficient staffing to handle the added work. Figure 2.1 shows how assessors explained why the program had not been implemented as of 2007.

Figure 2.1: Reasons for Not Implementing Green Acres Program, as Reported by Assessors, 2007



NOTES: The survey question read, “How significant are the following reasons why the Green Acres program was not implemented within your county as of 2007?” This figure depicts the percentage of assessors responding “very significant.” Respondents could mark multiple answers. The number of county assessors responding was 34 out of 35 respondents, except for the response on landowner interest, to which 33 assessors responded.

SOURCE: Office of the Legislative Auditor, analysis of data from surveying county assessors, July 2007.

The law requiring land to be “primarily” agricultural is applied differently from county to county.

Land That Is Primarily Agricultural

Statutes require Green Acres land to be devoted “primarily to agricultural use,” and as described earlier, this determination requires assessor judgment, especially in the cases of small parcels, hobby farms, and land with low proportions of productive acreage. We learned that assessors deal with the issue differently, which means that landowners found eligible in one county may very well be found ineligible in another. In some counties, as long as the owner has land classified as agricultural, the assessor will consider the land to be primarily in agricultural use. In others, assessors take additional steps to determine the primary use, such as calculating tillable acres and agricultural animal units expressed in acre equivalents or evaluating whether income generated from the land is incidental or sufficient to support living there. In still other counties, questions do not arise about whether land is primarily agricultural because all of the farms are large and have predominantly tillable tracts.

Verification of Income

Counties are not uniform in whether they verify applicants’ agricultural income, but the lack of consistency only becomes a problem when it can lead to inequities. This could occur in counties with farms of small size where the adequacy of income from agricultural production may be in question or in counties with high participation rates where the assessor does not have personal knowledge of each applicant’s circumstances. On the other hand, in the parts of counties with large farms in production on predominantly tillable acreages, verifying the amount of agricultural income is unnecessary because all applicants would unquestionably exceed the income threshold. In our sample of Green Acres counties, eight assessors reported that they do not verify applicants’ income or they rely on the applicants’ signed statements, and three of them were counties with either numerous small farms or moderate to high participation rates. Verifying agricultural income has problems, as noted earlier, but beyond that, inconsistency in who is verified within a county may lead to unequal treatment for similar applicants. Some county assessors require documentation of all applicants’ agricultural income, some require it only if they have questions about a particular property, and others require no verification at all; only this latter group is a cause for concern. Table 2.4 shows the different approaches.

Most assessors do not reverify landowners’ income over time, as Table 2.4 illustrates. Because the income threshold is so low, many assessors view reverifying income as necessary only when the property is divided or sold.

Multiple Ownership and Split Classifications

Variation is unwarranted in counties’ decisions on verifying eligibility for properties owned by multiple owners. Because these decisions determine who will and will not receive the tax benefits, they are important. Figure 2.2 shows that some assessors allow multiple owners to receive the benefit as long as one owner qualifies, while others prohibit this, and still others give the qualifying owner a pro rata share of the benefit.

Some assessors require documentation of all applicants’ agricultural income, some require it only in certain situations, and others require none at all.

Table 2.4: Counties' Methods for Verifying Agricultural Income Reported on Green Acres Applications, 2007

<u>Method</u>	<u>Number of Counties</u>	<u>Percentage</u>
Require tax return information or rental lease agreement	23	48%
Require written documentation, such as receipts of sales	8	17
Take the owner's word but require a Schedule F if property's eligibility is questionable	6	13
View the land or speak with the owners	3	6
No additional documentation beyond a signed application form	3	6
Do not verify income	3	6
Not applicable	<u>2</u>	<u>4</u>
Total	48	100%
 <u>Reverification Over Time</u>		
Do not reverify income ^a	25	52%
Reverify when land is divided or sold or the assessor questions the owner's use of the land	13	27
Reverify periodically	4	8
Annual verification	3	6
Not applicable	<u>3</u>	<u>6</u>
Total	48	100%

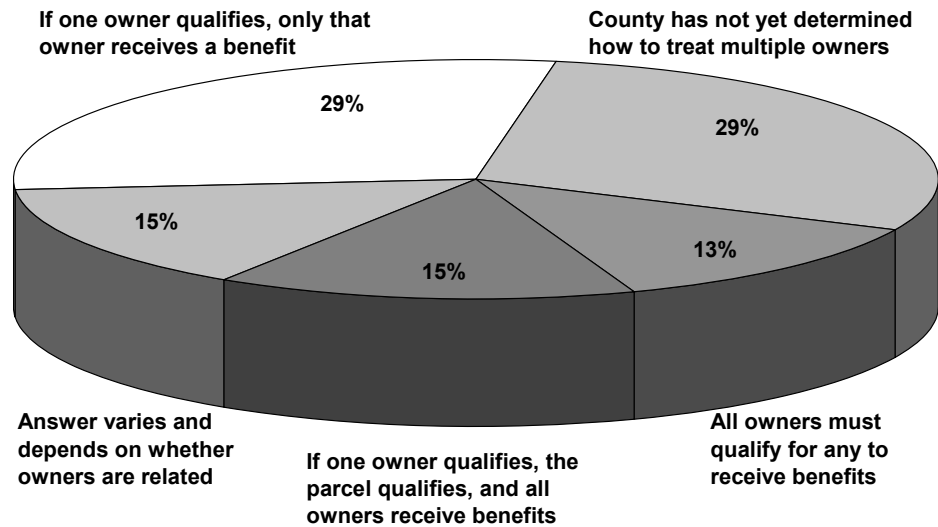
NOTES: Data represent a sample of 48 counties with land enrolled in the Green Acres Program as of 2007. Percentages may not sum to 100 due to rounding.

^a In 4 of the 25 counties, assessors said they had no need yet to reverify income because the program began within the last two years.

SOURCE: Office of the Legislative Auditor, analysis of data from interviewing county assessors, July and August 2007.

Counties also differ in the use of split classifications, where an assessor classifies one portion of the parcel as residential and the other as agricultural. Based on our interviews, 21 of 45 assessors (47 percent) do not allow parcels to have split residential-agricultural classifications. At the same time, about 38 percent of our sample of counties with Green Acres allow residential-agricultural split classifications, even if for only a few properties, and the properties can become eligible for Green Acres tax benefits. Another 16 percent allow split classifications but consider these properties ineligible for Green Acres, typically because the parcels are small and viewed as being primarily residential. We believe that county practices on this matter should be consistent.

Figure 2.2: Counties’ Practices Regarding Green Acres Eligibility of Parcels Owned by Multiple Owners, 2007



NOTES: Data represent a sample of 48 counties with land enrolled in the Green Acres Program as of 2007. Percentages do not sum to 100 due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of data from interviewing county assessors, July and August 2007.

In some counties, assessors provide information on the Green Acres Program only when landowners request it.

Informing Landowners about the Program

County assessors vary in how they inform landowners about the Green Acres Program. Lack of awareness may lead to lower participation than would otherwise be the case. In our view, the variation tends to be reasonable except in a small number of counties where there has been little effort to provide information. As Table 2.5 shows, five counties out of our sample of 48 have low participation rates—with up to 13 percent of farm acres enrolled—in the program, and assessors there provide program information only when landowners request it. Such a practice is more reasonable in counties that already have an established Green Acres Program and high participation. The Department of Revenue’s role in informing landowners has been limited to posting program information on its web site and answering queries that cannot be resolved at the county level.

Payback Procedures

Inconsistency arises over whether the buyer or seller is responsible for the payback of taxes when Green Acres land is sold. This is a problem when owners expect payback requirements to be the same across county boundaries. Most often the seller is responsible for paying the deferred taxes; but in some counties, a delay in the process prevents this from happening. Assessors in some counties

Table 2.5: County Efforts to Inform Landowners about Green Acres Program, by Rate of Acres Enrolled, 2007

	Low Enrollment ^a		Moderate to High Enrollment ^a	
	Number of Counties	Percentage	Number of Counties	Percentage
Contacts each individual owning agricultural land in the area designated for Green Acres	19	76%	5	22%
Provides information upon request	5	20	3	13
Mails notice to all agricultural landowners in the county	1	4	5	22
Initially sent letters to all agricultural landowners but now notifies only those potentially eligible	0	0	8	35
Provides information in local newspapers and county newsletters	<u>0</u>	<u>0</u>	<u>2</u>	<u>9</u>
Total	25	100%	23	100%

NOTES: Data represent a sample of 48 counties with land enrolled in the Green Acres Program as of 2007. Many counties also reported that they provide Green Acres information to local government officials. Percentages may not sum to 100 due to rounding.

^a Low enrollment includes counties with 0.01 up to 13 percent of deeded farm acreage in the Green Acres Program, and high enrollment includes all other counties (those with a minimum of 13 percent).

SOURCES: Office of the Legislative Auditor, analysis of data from surveying county assessors, July 2007, and data from the Department of Revenue’s 2007 Spring Mini Abstract.

Owners who sell their Green Acres land are typically required to pay back three years worth of tax reductions, but calculating the amount to be paid back is very difficult when the land is split and sold off piece by piece.

reported that if the county does not become aware of the sale at the time of purchase, the deferred tax is viewed as a lien against the parcel, meaning the new buyer must pay it. Under these circumstances, new owners receive an unexpected tax bill. Other counties have avoided this by working with closing agents and real estate attorneys to make them aware of the need to have responsibility for the payback determined at the sale’s closing.

Although counties vary in the procedures they follow for calculating paybacks, the variation is not a problem as much as the difficulty of making the calculation. Assessors in our sample most frequently said that especially when a parcel is split and sold off piece by piece, the complexity of Minnesota’s property tax system makes the payback calculation complicated and very time consuming. Oftentimes counties’ information technology systems have been programmed to help with the calculation, but some county assessors reported that their automated systems are not failsafe or useful when especially complex transactions occur. Besides the large administrative burden, the complexity can lead to errors. While we do not have a count of such errors, we learned anecdotally about situations where a payback was made on an entire parcel even though only part of it sold.

The Department of Revenue issued a 2007 bulletin to help implement the Green Acres Program statewide.

Department of Revenue Efforts

To address a lack of uniformity in the administration of the Green Acres Program, the Department of Revenue issued a Green Acres bulletin in October 2007.¹⁸ The bulletin describes the department’s approach for implementing the program statewide and offers guidance to assessors dealing with issues that the law fails to make clear. We found that:

- **The Department of Revenue’s recent bulletin addresses many of the inconsistencies involved with administering the Green Acres Program, but its method for valuing nontillable farmland does not adequately reflect differences in such land across the state.**

In the bulletin, the department gives specific directions for classifying a parcel that has both residential and agricultural uses and recommends against splitting its classification between the two uses when it has sufficient agricultural activities. It recommends that assessors require appropriate evidence of agricultural income from all applicants, regardless of whether the assessor personally knows an applicant. It specifies how assessors are to determine whether parcels under ten acres qualify for the agricultural classification. The department also outlines decision steps assessors should take before concluding that an applicant qualifies for the Green Acres Program. As part of this, the department offers a list of factors to help assessors determine whether land is “primarily” agricultural. In the near future, the department expects to add three more bulletins, one dealing with the application process, a second on communications about Green Acres, and a third on tax calculations and payback mechanisms.

The department is using sales of farmland that is free of nonagricultural influences in five counties as a base to set the agricultural-use values on Green Acres land in the rest of the state.

To overcome difficulties assessors found in setting agricultural-use values for Green Acres land, the department describes in the bulletin a method to be used in all counties. The law says that qualifying land should be valued solely according to its agricultural value—based on sales of land with similar agricultural characteristics.¹⁹ Because the Department of Revenue believes there are now insufficient farmland sales free of nonagricultural influences on which to base agricultural-use values, it developed an alternative method. The method uses sales of tillable farmland from 1990 through 1996 in five southwestern Minnesota counties to establish a base for an agricultural-use value that is free of nonagricultural influences. The base is compared with the median sales price of farm acres from that same time period in each county. The ratio from this comparison is used to calculate what current values are likely to be. That is, if a county’s own median farmland sales from 1990-1996 were 110 percent of the base from that time period, then today the county would set its average agricultural-use value at 110 percent of current median sales prices in the five base counties.

¹⁸ Department of Revenue, *Green Acres Bulletin #1*, 9-11.

¹⁹ *Minnesota Statutes* 2007, 273.111, subd. 4.

While most county assessors in counties with Green Acres land reported that they find this method provides reasonably acceptable valuation estimates for tillable land, the method is less useful for nontillable land.²⁰ Usable data on sales of nontillable land were not as common, and the department’s process did not yield definitive results for nontillable land. Consequently, the department opted for an alternative method that it admits has problems but at least provides a uniform basis for valuation. All nontillable land is to be divided into one of two categories: (1) productive land, such as meadow and grasslands used for grazing, and (2) nonproductive or wasteland, which includes steep slopes, dense stands of trees, or other conditions that make it unsuitable for grazing or other agricultural uses. The nontillable *productive* land will be valued for Green Acres purposes at 50 percent of the agricultural-use value for tillable land in a county. The wasteland will be at 25 percent of tillable acres’ values.

Essentially, the department’s alternative method creates a single statewide ratio that is used to calculate agricultural-use values for nontillable lands in every county. In many counties, assessors view the results of applying the ratio as acceptable approximations of their agricultural-use values. But elsewhere, county assessors view the results as unacceptable for nontillable acres.

There is no single, clearly acceptable method for estimating agricultural-use values for Green Acres land.

We recognize that there is no single, clearly acceptable method for estimating agricultural-use values for land in areas where nonagricultural factors drive up farmland values, but we think the relationships between tillable and nontillable lands differ enough across the state that using one statewide ratio is not realistic. The department acknowledges that the values for nontillable land derived by the new methodology are imperfect. In some cases, the values derived from the new method are much lower than the agricultural-use values determined by assessors. For example, in several north central Minnesota counties, the average agricultural-use value under the new methodology for nontillable productive land would be about half the current agricultural-use value.²¹ In counties where the agricultural-use values for some nontillable land are roughly equivalent to those for tillable land, as in these north central Minnesota counties, following the department’s method will force counties to substantially lower values for nontillable acres. In turn, this would mean offering the Green Acres benefits to virtually all landowners with nontillable acreage, thereby shifting the property tax burden to others.

RECOMMENDATION

The Department of Revenue should continue its efforts to make the Green Acres Program more consistent statewide. At the same time, it should make some changes including modifying its statewide approach for valuing nontillable land in the program.

²⁰ A small number of counties, including Olmsted and Rice, reported that the department’s method resulted in excessively low values for both tillable and nontillable land.

²¹ Conversely, in some south central counties, assessors reported that the new method derives values for nontillable land that are much higher than current agricultural-use values.

The Department of Revenue should define acceptable practices for informing landowners about the Green Acres Program.

In its October 2007 bulletin, the Department of Revenue advised assessors to require every applicant to document agricultural income, which is overly rigid given that verifying income is unnecessary for large parcels that are predominantly tillable and in production. Earlier we recommended replacing the income criterion; but if the current criterion remains in place, the department should focus recommendations for income verification on those cases with questionable income from agricultural production. In its forthcoming bulletins, the department should include guidance on the circumstances under which assessors need to reverify agricultural income and describe acceptable practices for informing landowners about the Green Acres Program. Furthermore, the department should provide additional specific guidance to determine whether uses of land are primarily agricultural, which may require statutory changes as we recommended earlier.

In addition, the department should consider a method for valuing nontillable Green Acres land that better recognizes differences across the state in nontillable land values. Generally, the values for nontillable land relative to tillable land increase from the southern to northern parts of the state, as the quality of the tillable land recedes and the use of nontillable land for grazing increases. One possible method is to set the agricultural-use value for nontillable land near 100 percent of the agricultural-use value for tillable land in north central counties and gradually decrease it elsewhere until it reaches 50 percent of the tillable land values in southern counties. Using this as a starting point, the department’s regional representatives should work jointly with county assessors to determine agricultural-use values for nontillable land that are appropriate to the markets in their regions. The values may have to be “blended” even within a region to reflect actual agricultural-use values. This type of collaboration does not represent a departure in practice for those county assessors who reported that they already work with other counties to set agricultural-use values when they have inadequate numbers of agricultural land sales within their individual counties.

The method for setting values on nontillable Green Acres land should better reflect differences in land values around the state.

Our approach would replace the department’s single, statewide ratio between values of tillable and nontillable land with ratios that better reflect the actual relationships between tillable and nontillable land in different parts of the state. Generally speaking, the result of this process in certain northern counties would produce higher agricultural-use values for nontillable productive land relative to tillable land. These ratios of value would gradually decrease as one proceeded toward the southern counties where one is more likely to find much lower agricultural-use value for nontillable than tillable land. The difference in nontillable land values between the north and the south would be lower than under the department’s method, thereby requiring less blending of values to produce the equalization that is the department’s objective.

Green Acres Applications Denied

Most county assessors keep records of the reasons why they deny Green Acres applications, but a few do not; some have not received any applications that were ineligible. We reviewed applications in six of the ten counties that had denied at

least seven applications in 2006 and maintained records of denied applications.²² In reviewing applications, we found that:

- **County assessors denied eligibility to only a small percentage of landowners who submitted written applications for the Green Acres Program in 2006, and the basis for the denials was generally reasonable.**

Based on our review, nearly all applications were denied because the applicant was clearly ineligible for one or several objective and straightforward reasons. Most commonly, applicants were denied because they either had insufficient agricultural income or they failed to provide evidence of their agricultural income (such as a Schedule F filed with income tax forms). A small number of cases were denied solely because the assessor had deemed that the property was not “primarily devoted to agricultural use,” which requires the assessor to make judgment calls. Based on information in the files, we believe these judgments appeared reasonable. Yet one landowner we interviewed could not understand why his application was denied when the information he supplied appeared to meet all the program’s criteria. Unbeknownst to him, the decision regarding “primarily” agricultural land was made independent of the information on the application form.

²² Some assessors have no records of denying applications because, instead of completing applications, landowners decide against applying after speaking with the assessor who describes the minimum acreage and agricultural income levels.

Programs to Preserve Agricultural Land

SUMMARY

Minnesota's primary state programs for preserving agricultural land can help control the shape and pace of development but do not adequately preserve farmland for the long term. The number of acres enrolled in the preservation programs is small and has been declining since the late 1990s. In most of the nine counties with land enrolled, local officials indicated that the preservation programs were beneficial, but several noted that their counties or cities would likely have developed very similarly without the program's tax incentives. Besides low enrollment, the programs' effectiveness is limited because their tax benefits are small relative to the potential gain from selling the land. Furthermore, relatively few local governments participate overall, and participants may terminate the preservation commitments after eight years. A small number of agricultural preserves were terminated even before the eight-year waiting period, but no agency is charged with overseeing this. The Legislature should supplement the programs with alternative strategies if it wishes to preserve land for the long term, and it should improve current programs by specifying responsibility for enforcement. In addition, some of the natural resource conservation projects funded by revenues generated via the land preservation programs may not meet a strict interpretation of the uses allowed in law. The Legislature should define unallowable activities more specifically if it concludes that such projects are inappropriate.

Minnesota's two agricultural land preservation programs share important features with the Green Acres Program, as Chapter 1 described, but they have a longer-term focus. This chapter analyzes the Metropolitan Agricultural Preserves Program in the Twin Cities and the Agricultural Land Preservation Program in Greater Minnesota. Specifically, we address the following questions:

- **How well have the agricultural land preservation programs worked to preserve land for farm uses?**
- **How have the dollars raised as part of the agricultural land preservation programs been spent, and who oversees that spending?**

To answer these questions, we studied state statutes and background materials on the land preservation programs. We analyzed data from the Department of Revenue on tax credits and acreage and value of land enrolled in the land preservation programs. We interviewed representatives of the Department of Agriculture and the Metropolitan Council. We also interviewed county and municipal officials in the nine counties where the two programs operate. From four of these counties, we received data to analyze the number of covenant renewals and terminations. Using a sample of six counties that do not participate

in the programs but share similarities with counties that do, we studied land-use ordinances and interviewed planning and zoning officers and other local officials. For information on counties’ conservation accounts, we interviewed heads of the organizations that spend conservation-account money.

EFFECTIVENESS OF THE LAND PRESERVATION PROGRAMS

For individual landowners deciding whether to keep agricultural land or sell it for other uses, many factors come into play, such as the strength of the agricultural economy, the local land market, the owners’ interest in continuing to farm, and the owners’ age relative to retirement. Participation in one of the land preservation programs may also be a factor. As described in Chapter 1, the programs’ goals include maintaining productive farm operations in the metropolitan area, preserving farmland, and encouraging the orderly development of rural and urban land uses. In analyzing the two programs designed to preserve agricultural land, we found that:

- **The Metropolitan Agricultural Preserves Program and the Agricultural Land Preservation Program in Greater Minnesota can help shape development and slow its pace, but they are not adequate to preserve farmland for the long term, particularly in areas facing development pressures.**

We spoke with county and municipal officials about the programs’ impacts on development. We also examined data on the loss of farmland to other uses and analyzed factors that could limit the effectiveness of the programs, including competing financial incentives, acres enrolled, local government participation, and the duration of farmers’ and local governments’ commitments to preservation. The following sections describe first the programs’ impacts on development, followed by farmland loss and limitations on the programs’ effectiveness.

Impacts on Development

Minnesota’s agricultural land preservation programs do not stop land development, but they can help keep agricultural areas from urban encroachment. We found that:

- **The agricultural land preservation programs can help shape development or slow urban growth.**

Among local officials we interviewed, many described preservation programs as a positive “tool in their toolbox” to support agricultural land policies. They view the programs as a means for staging or slowing down the rate of development and an incentive for farmers to continue to farm. As long as the agricultural preserve stays in place, it helps farmers remain in farming and prevents land development. Beyond that, certain county representatives said that the program prevents cities from annexing township land and helps contain urban sprawl. With their requirements for zoning land for long-term agricultural uses, the

In general, county and municipal officials described the agricultural land preservation programs as a useful tool that supports their local farmland policies.

Local officials' commitment to retaining farmland can be as important as a land preservation program.

programs allow for orderly development instead of “scattered site” development with conflicts arising between residential dwellers and nearby farms. Some county representatives reported that the programs also keep townships’ public-service delivery costs low because the agricultural preserve areas do not receive paved roads, sewer and water systems, and similar urban amenities.

At the same time, many local officials we interviewed (including supporters of the program) believe that, lacking the preservation programs’ financial benefits, their counties or cities would not likely have developed much differently. They view the programs as reinforcements that buttress local strategies to preserve agricultural land but said that factors such as local elected officials’ commitment to preservation are as important. In Greater Minnesota, county representatives also mentioned that the amount of the tax advantage is relatively small and has not kept pace with the changing agricultural economy.

The programs’ impacts are most obvious in areas that face strong development pressures but have the largest number of acres enrolled—Carver County and southern Dakota County. A partial indication of the program’s effectiveness in preserving farmland is the rate of farmland loss over time, which is discussed below. The programs’ overall effect on development patterns or on land preservation is likely to be limited by: competing financial incentives, low enrollment, low participation by counties in Greater Minnesota, and the limited duration of development restrictions. We discuss these below, following a summary of the trend in declining agricultural acreage.

Loss of Farmland

Counties have lost farmland for a variety of reasons, including population growth, increased demand for large-lot residential development in the country, and increased demand for farmland for recreational purposes. In analyzing how much land remains in agricultural use over time, we cannot isolate the effect of the farmland preservation programs amidst the many economic and market factors in play. In addition, market forces often differ from one county to another, making comparisons of farmland losses difficult. Furthermore, the agricultural land preservation programs cannot realistically be expected to fully stop the conversion of farmland to other uses. Data on farmland losses are an incomplete measure of the success of Minnesota’s agricultural land preservation programs because they do not account for the programs’ impacts on shaping development. Notwithstanding these difficulties, we examined the trend in farmland losses as a partial indication of the programs’ impact on land preservation. Table 3.1 shows for 1982 through 1997 (the most recent period for which comparable data are available) that rates of farmland losses in the Twin Cities metropolitan area were far greater than elsewhere.¹ Among the three Greater Minnesota counties with land enrolled in the Agricultural Land Preservation Program, Wright County lost about 6 percent of farmland during

¹ Property tax assessment data for the more recent period of 1998-2007 show similar trends in farmland loss. However, for certain individual counties, the property tax data show greater rates of loss, and it is unknown how much of that is due to actual losses or changes in assessment practices.

Table 3.1: Farmland Loss in Counties with Land Enrolled in Agricultural Land Preservation Programs and in the Rest of the State, 1982-1997

	Farmland Acres (thousands)		Percentage Loss
	1982	1997	
Anoka	77	57	26%
Carver	188	167	11
Dakota	258	210	18
Hennepin	103	73	29
Scott	153	137	10
Washington	152	123	19
Waseca ^a	246	244	1
Winona ^a	231	227	2
Wright	294	278	6
Twin Cities metropolitan area	939	769	18
Greater Minnesota	25,959	25,623	1
Statewide	26,897	26,392	2%

NOTES: Farmland includes cultivated and uncultivated cropland, pastureland, and Conservation Reserve Program land. Because the data are based on sampling, the final results are more statistically conclusive for regions and the state than for individual counties. More recent comparable data are not available. Property tax assessment data for the more recent period of 1998-2007 show similar trends in farmland loss for some counties but show greater rates of loss for other counties, and it is unknown whether that is due to actual losses or changes in assessment practices.

^a Statistical uncertainty about the data for Waseca and Winona counties means that farmland loss there is inconclusive.

SOURCE: Office of the Legislative Auditor, analysis of data from the National Resources Inventory compiled by the U.S. Department of Agriculture's Natural Resources Conservation Service.

Loss of farmland in most counties that participate in the agricultural land preservation programs suggests that the programs' impacts on preserving land are limited.

that period. Statistical uncertainty about the data for Waseca and Winona counties means that farmland loss there is inconclusive for those years.

In Chapter 1, we showed that the Twin Cities metropolitan area and Greater Minnesota lost farmland between 1982 and 1997. This includes seven of the nine counties that participate in the agricultural preservation programs, while data for the remaining two (Waseca and Winona counties) show small losses but are statistically inconclusive. In the metropolitan area, six of the seven counties participate in the Metropolitan Agricultural Preserves Program; but as a group, they lost 18 percent of their farmland between 1982 and 1997, compared with 1 percent for Greater Minnesota. Even Carver County, which has the largest enrollment in agricultural preserves, lost 11 percent of its farm acres in that period. While an incomplete measure, the data on farmland loss suggest that the land preservation programs' impacts on preserving land are limited amidst the economic forces and other factors we discuss below.

Competing Financial Incentives

Particularly in the metropolitan area, development pressures have inflated property values, and land sales have resulted in housing and commercial developments and other land uses at the expense of farmland. In the midst of these economic forces, programs to preserve farmland are likely to have a limited effect because:

- **The financial benefits of the agricultural land preservation programs can be small relative to financial gains available when farmland is converted to other uses.**

Even though the agricultural preservation programs offer nonfinancial benefits, such as protections from annexation described in Chapter 1, their financial benefits can be small in comparison with the financial gain landowners may receive from selling their land. In the Twin Cities area, the Metropolitan Agricultural Preserves Program offers two financial advantages over the Green Acres Program—the \$1.50 per acre credit and no requirement to pay back three years worth of deferred taxes should the land be developed. But both of these are small relative to the \$59 per acre average tax benefit received by Green Acres landowners in the Twin Cities. Plus, in Greater Minnesota, the program does not lower the taxable value of the land and offers just \$1.50 per acre per year for an eight-year farming commitment. These benefits are small compared with increases in farmland values. Between 1997 and 2007, estimated market values for farmland increased by an average of \$8,100 per acre in the Twin Cities area and by over \$1,400 per acre in Greater Minnesota. Due to the high market values, landowners may not want to postpone the option of selling their land for development.

Between 1997 and 2007, estimated market values for farmland increased by an average of \$8,100 per acre in the Twin Cities area and \$1,400 per acre elsewhere.

At the same time, lands enrolled in the agricultural land preservation programs are not charged when local governments use special assessments to pay for public improvements. In some areas, the financial benefit of avoiding those special assessments can be significant, but statewide data are not available on the extent of special assessments near agricultural preserves.

Acres Enrolled

Another factor that limits the effectiveness of the agricultural land preservation programs is the lack of farmland enrolled in the programs overall. We found that:

- **The number of acres enrolled in the agricultural land preservation programs is small in nearly all participating counties and has been declining in all of them.**

As we showed in Chapter 1, the Metropolitan Agricultural Preserves Program enrolls 25 percent of farmland in the Twin Cities area. Only Carver County has more than one-third of its farmland enrolled in the program (56 percent). In Greater Minnesota, Waseca enrolled 33 percent of its farmland, but Winona and Wright counties enrolled less than 15 percent.

Enrollment in the agricultural land preservation programs peaked in the late 1990s.

In addition, the number of acres enrolled in these preservation programs has been declining in all nine participating counties, as Table 3.2 illustrates. As we discussed in Chapter 1, enrollment reached its peak in the late 1990s, but has steadily declined over the last decade. One reason for the declining enrollment is the programs' small financial benefit relative to the gains of selling the land, as discussed earlier.

Table 3.2: Land Enrolled in Agricultural Land Preservation Programs, from Peak Enrollment to 2007

	Enrolled Acres		Percentage Loss
	1998	2007	
<u>Metropolitan Agricultural Preserves</u>			
Anoka	2,938	1,816	38%
Carver	102,554	93,727	9
Dakota	64,818	59,803	8
Hennepin	13,377	10,496	22
Scott	8,475	7,185	15
Washington	<u>10,285</u>	<u>9,053</u>	12
Twin Cities metropolitan area total	202,447	182,080	10%
<u>Agricultural Land Preservation</u>			
Waseca	84,139	82,989	1%
Winona	42,029	41,062	2
Wright	<u>11,456</u>	<u>9,158</u>	20
Greater Minnesota total	137,624	133,209	3%
<u>Both Programs</u>			
Statewide	340,071	315,289	7%

NOTE: Overall, enrollment peaked in 1998, but it peaked between one and five years earlier in Anoka, Hennepin, Scott, Washington, Winona, and Wright counties.

SOURCES: Office of Legislative Auditor, analysis of: data from the Minnesota Department of Revenue's 2007 Spring Mini Abstract; conservation account data from the Department of Revenue; and the Land Economics database maintained by the University of Minnesota, Department of Applied Economics.

Carver County has the highest enrollment in agricultural preservation programs combined with strong land-use controls for township land. However, most Carver County municipalities with land enrolled saw enrollments peak in 1998 or earlier and generally decline since then. Beyond that, the county lost about 11 percent of its farmland acres between 1982 and 1997. Its losses are smaller than those in most other metropolitan area counties, but they reflect how hard it is for preservation programs to overcome economic forces in the Twin Cities area. Moreover, it is not clear how much of the successful agricultural preservation in Carver County is attributable to the Metropolitan Agricultural Preserves Program's financial benefits, the county's strong land-use controls, or the preservation commitment of its local officials.

Local Government Participation

A third factor that limits the effectiveness of the agricultural preservation programs is low participation by local governments in Greater Minnesota. As described in Chapter 1:

- **Only Waseca, Winona, and Wright counties have ever had land enrolled in the Agricultural Land Preservation Program in Greater Minnesota.**

It appears unlikely that participation will expand, both because of the program's minimal financial benefits and because nonparticipating counties have adopted other controls to manage farmland.

We interviewed county representatives in a sample of six counties that do not participate in the land preservation programs.² In our sample, county officials for the most part indicated little interest in extending the Agricultural Land Preservation Program to their residents or said that their own planning and zoning initiatives were sufficient for their needs. At the same time, however, Stearns County officials have recently proposed that the county consider participating in the Agricultural Land Preservation Program.³ Because the topic was still under discussion in early 2008, it was unclear whether the proposed change would be adopted and how it would affect Stearns County, which already has in place zoning ordinances designating lands for long-term agricultural use.⁴

Counties not involved with Greater Minnesota's land preservation program use planning, zoning, and other development controls to prevent the conversion of farmland to other uses, but these methods do not necessarily preserve farmland for the long term and may produce unintended results. In general, counties and plans we reviewed show concern for preserving farmland. Our analysis of comprehensive plans in the six sample counties indicates that all six have designated agricultural zones, although Chisago County has no land within its agricultural district and is considering lowering the required number of acres for such a district. Four of the six counties restrict densities to no more than 1 dwelling per 40 acres.⁵ Three of the counties control the development of agricultural land with policies that permit development only on land with lower

Most of the six counties in our case studies that do not participate in the Agricultural Land Preservation Program indicated little interest in the program because they have adopted local controls to protect farmland.

² Most Minnesota counties have adopted comprehensive land-use plans to guide development, but our sample contained six that have large amounts of agricultural property and also face significant development pressures: Chisago, Kandiyohi, Morrison, Olmsted, Rice, and Stearns counties.

³ Stearns County Environmental Services, *Stearns County Draft Comprehensive Plan Update*, 7-27, www.co.stearns.mn.us/Government/6129.htm, accessed December 12, 2007.

⁴ Stearns County has designated three agricultural zones with zoning densities of 1 dwelling per 160 acres, 1 per 80 acres, and 1 per 40 acres, respectively. In contrast to the county, many rural townships there have expressed interest in changing their zoning requirements to encourage development. If the county adopts its draft comprehensive-plan update, the agricultural preservation measure would not prevent development but could likely slow down the development process, according to a Department of Agriculture official.

⁵ One of the four allows a second dwelling unit in special circumstances, such as when the parcel contains an abandoned farm homestead site.

quality soil conditions. Some counties allow owners to transfer development rights from their land to elsewhere in the county; once development rights have transferred from a parcel, that parcel is restricted to agricultural and open space. These various land-use controls help protect agricultural land, but some are subject to change as county plans and policies change. For instance, one county we spoke with was in the process of considering a change to allow a density of 4 dwellings per 40 acres. Further, in counties where townships have developed their own land-use ordinances, the county’s intent to preserve land may conflict with a township’s desire to develop. As an example of unintended results, one county that allows landowners to transfer development rights found its program to be successful, but the program has also been used to transfer development rights *out* of areas intended for near-future development. In another county, landowners transferred their development rights, but their land was soon annexed and rezoned, followed by additional dwellings being built on the lands from which the development rights had transferred.

Removing Land from Preservation

The effectiveness of Minnesota’s agricultural preservation programs to preserve land for the long term is also hampered because preservation commitments may last for only eight years, and terminating from the program carries minimal consequences. We found that:

- **Either landowners or local governments may end their commitment to agricultural preserves by filing notice to terminate a preserve and then waiting eight years.**

When allowing an agricultural preserve to expire, metropolitan-area landowners do not have to pay back any of the reduced property taxes they received while in the program, unlike in the Green Acres Program. In Greater Minnesota, though, owners become ineligible for the \$1.50 per acre tax credit once they file notice to terminate the preserve.⁶ The Greater Minnesota program does not reduce enrolled lands’ taxable value, as Chapter 1 explained, so participants who leave the program see no change in tax burden beyond the loss of the tax credits.

Many acres of farmland that were once in an agricultural preserve have expired from the program.⁷ The proportion of expired acreage is higher in and near the metropolitan area, as Table 3.3 shows.

The success of Minnesota’s land preservation programs depends in part on the landowner and in part on the willingness of local units of government to maintain zones designated for agricultural preserves. Certain local units of government that in the past supported agricultural preserves have changed positions as their residents’ situations changed and residents’ interests in selling their land grew.

Some local governments that supported agricultural preserves in the past have since changed their position.

⁶ *Minnesota Statutes* 2007, 273.119, subd. 1.

⁷ Aggregate expiration data are not available for each county, but over the last decade enrollment declined in all nine counties with land enrolled in preservation programs, as noted earlier.

Particularly in and near the Twin Cities area, many farmland acres once in an agricultural preserve are no longer enrolled.

Table 3.3: Farmland Acres Expired from Agricultural Preserves, by County, 2007

	Carver	Scott	Waseca	Wright
Peak acreage enrolled ^a	102,554	8,840	84,139	11,468
Acres expired	15,910	3,490	2,090	2,735
Expired acres as percentage of peak enrolled acres	16%	39%	2%	24%

NOTE: Data on expired acres are not available from the other five counties with land enrolled in Minnesota’s agricultural land preservation programs.

^a The peak enrollment year was 1991 for Scott County, 1997 for Wright County, and 1998 for Carver and Waseca counties.

SOURCE: Office of the Legislative Auditor, analysis of data from county auditors or planning officials in Carver, Scott, Waseca, and Wright counties.

As an example, in Scott County, land in about a dozen different communities had been designated for agricultural preserves since the law passed in 1980, but today, only three townships and parts of two others still have the dwelling densities of 1 unit per 40 acres, with one of those two likely to change soon. On the other hand, Carver County continues to maintain in its townships a density ratio of no more than 1 dwelling unit per 40 acres of land, and the number of acres preserved has remained more steady there than in neighboring Scott County.⁸

In addition:

- **No state or local agency has enforcement authority over land held in agricultural preserves.**

We learned of a small number of cases where land in an agricultural preserve was developed before the eight years ended and even before notice of an expiration was filed. In some of these cases, township officials had issued permits allowing the development without first changing their comprehensive plans or zoning ordinances to remove the long-term agricultural use designation. County officials who discovered the development had no authority to enforce the law or stop the development and could only remove the agricultural-preserves tax benefits. Nor is there authority to resolve questions that arise in the course of using the programs. For example, when an owner signed and notarized a notice to terminate a preserve in one year but the notice was not recorded in the county until two years later, whether the expiration became effective eight years from the time of signing the notice or from the time of the recording was in dispute.

⁸ At the same time, Carver County cities, whose comprehensive plans are independent of the county’s, have lost most of their agricultural preserves acreage, with only 39 acres remaining enrolled in Carver County cities as of 2007.

RECOMMENDATION

If Minnesota wishes to preserve lands for agricultural uses over the long term, the Legislature should consider supplementing existing agricultural land preservation programs with other strategies. Furthermore, it should improve the existing laws by specifying who has authority to enforce them.

As the law now stands, the land-preservation benefit may be lost after eight years. If longer-term land preservation is desirable, the Legislature has options, but they all carry tradeoffs. The Legislature could change existing law to add incentives to attract owners for periods longer than eight years. But this could reduce participation in the programs overall for those who foresee using their lands for alternative purposes at some future time. Changing the programs by focusing incentives on only the best quality farmlands would help preserve high-priority land, but the program still would not assure long-term land preservation, and the change would likely make ineligible certain landowners who have been participating. Increasing the amount of the tax credit may attract additional participants; however, it is uncertain whether even doubling or tripling the \$1.50 per acre tax credit would be sufficient incentive for some areas in light of the market forces that have contributed to declining participation. Adding to the Greater Minnesota program, the benefit of lower “agricultural-use” assessments might increase the number of participants, but it would be useful only in areas where nonagricultural factors are adding to farmland values and would duplicate what the Green Acres Program already offers. As described in Chapter 2, the Department of Revenue is taking steps to expand Green Acres more consistently statewide.

As another option for preserving farmland, the Legislature could modify local land-use planning authority to require a statewide standard on high-priority agricultural lands, but land-use planning has customarily been a local function. Such a change would have far-reaching ramifications on state and local government relations that go beyond the agricultural land preservation programs themselves. It would also require funding to set the standards and enforce them. The Legislature could also offer permanent easements for agricultural lands, add to existing easement programs, or provide for land acquisitions of property that would be leased permanently for agricultural uses. Although these options achieve long-range preservation, they can be very costly and would require funds for program administration as well as for the easements or acquisitions.

To improve the existing agricultural land preservation programs, the Legislature should specify who has enforcement authority and provide sanctions for those who do not follow the law. Although various options are plausible, one possibility would give enforcement authority to the Metropolitan Council for the seven-county metropolitan area and to the Department of Agriculture for the rest of the state. This would not alter local government roles in the land preservation programs but would provide oversight in cases when the covenants are not fulfilled as the law prescribes.

The Legislature should provide sanctions for those who violate the legal requirements of agricultural land preservation programs.

Revenues raised from a \$5 fee on mortgage and deed transactions are shared between counties and the state to pay for tax credits provided by the agricultural land preservation programs.

CONSERVATION ACCOUNT REVENUES

As specified in law, counties in the seven-county metropolitan area and the three Greater Minnesota counties participating in the Agricultural Land Preservation Program pay for the \$1.50 per acre tax credit awarded to program participants by charging a \$5 fee on mortgage and deed registrations.⁹ As Chapter 1 explained, revenues left over in counties' conservation accounts after reimbursing localities for the tax credits may be spent on statutorily-specified purposes. We found that:

- **In a few cases, counties have spent money raised through the farmland preservation programs on natural resource conservation projects that may not meet a strict interpretation of state statutes, but additional oversight is necessary only if the Legislature wants to further restrict the spending.**

In the remainder of this section, we explain how much counties have raised with the \$5 fee and how they spent the revenues. We first present information on the use of the conservation accounts to reimburse tax credits, followed by use of the accounts for spending on other purposes.

Reimbursements for the Tax Credit

Money from the \$5 fee charged on mortgage and deed recordings and registrations is divided between the state and counties, as Chapter 1 described. The revenues generated go to the state Conservation Fund, the state General Fund, and county conservation accounts. We found that:

- **The combination of county conservation accounts and the state Conservation Fund has been adequate to reimburse tax credits provided to landowners participating in the agricultural land preservation programs.**

Every year since 1999, the counties' share of revenues from the \$5 fee has been sufficient to pay for the agricultural land preservation tax credits in six of the nine counties participating in the program.

In each year since 1999, six of the nine participating counties used their individual county conservation accounts to cover the full cost of the property tax credits paid to program participants. After making reimbursements for property tax credits in 2006, these six counties together with Ramsey County had net revenues of \$916,000 in their conservation accounts, as shown in Table 3.4. The total net revenue declined from \$1.4 million in 2003, when real estate activity was at a peak. While further declines are expected in 2007 and 2008, most of these six county accounts should still have enough revenue to fully reimburse the tax credits. Of the six counties, only Dakota County used more than 25 percent of its conservation account to reimburse tax credits in 2006 (it used 59 percent of conservation account revenue to reimburse credits that year).

For the three counties—Carver, Waseca, and Winona—whose conservation accounts had insufficient revenue to fully reimburse tax credits, the state's Conservation Fund covered the remaining credit reimbursement. The county

⁹ *Minnesota Statutes* 2007, 40A.152, subd. 1.

Table 3.4: County Conservation Accounts, 2006

County	County Conservation Account Revenue	Agricultural-Land Preservation Tax Credits Reimbursed From County Account	Amount Left in County Conservation Account	Tax Credits Reimbursed From State Conservation Fund
Anoka	\$ 147,724	\$ 3,210	\$144,514	\$ 0
Carver	38,418	38,418	0	103,409
Dakota	158,890	93,647	65,243	0
Hennepin	419,520	29,114	390,406	0
Ramsey	138,618	0	138,618	0
Scott	60,875	11,034	49,841	0
Waseca	6,025	6,025	0	119,008
Washington	94,823	13,513	81,310	0
Winona	12,845	12,845	0	49,407
Wright	60,675	14,263	46,412	0
Total	\$1,138,413	\$222,069	\$916,344	\$271,824

NOTE: County conservation account revenues include the county share of the \$5 fee on mortgage and deed recordings and registrations for 2005, which are used to pay agricultural preservation tax credits for taxes paid in 2006. No Ramsey County land is enrolled in the Metropolitan Agricultural Preserves Program, but the county is required to charge the \$5 fee.

SOURCE: Office of the Legislative Auditor, analysis of data from the Minnesota Department of Revenue.

In most years, the state's revenues from the \$5 fee far exceeded what was needed to pay the state's share of tax credit costs from the agricultural land preservation programs.

conservation accounts covered less than a third of the tax credit reimbursements for each of these three counties. Overall, the Minnesota Conservation Fund paid \$272,000 towards the credit reimbursements in 2006.

In each year except 1987, 1995, and 1996, less than half of the Minnesota Conservation Fund's revenue was needed to supplement the tax-credit reimbursements from county accounts. Focusing on years 2001 through 2006, the state fund paid between \$250,000 and \$300,000 to reimburse the tax credits but had revenues of at least \$569,000. State General Fund money has not been used to supplement the Minnesota Conservation Fund with the exception of fiscal year 1987 when the fund was first established.

Spending on Natural Resources Conservation

For the six counties that had money remaining in their conservation accounts after reimbursing the farmland preservation tax credits, we reviewed how the remainder was spent in the past five years. As described in Chapter 1, statutes limit spending of the conservation account money to agricultural land preservation and conservation planning, soil conservation, incentives for landowners who create exclusive agricultural land zones, and payments to

With money left over after paying for the agricultural land preservation tax credits, counties have generally paid for natural resource management, such as soil conservation activities.

municipalities for any of these purposes.¹⁰ None of the money was spent on the latter two purposes.

Generally speaking, counties have used the conservation account dollars to help fund their natural resource management entities, such as soil and water conservation districts, which operate multiple projects aimed at conserving natural resources. For example, some of these entities use the money to administer Minnesota's Wetland Conservation Act, which requires a landowner proposing to drain or fill a wetland to, first, avoid losing the wetland or, second, replace it. Although wetlands preservation is not specifically listed among the purposes on which conservation account dollars may be spent, such preservation helps prevent sedimentation of waterways and erosion problems, which we believe can be reasonably defined as "soil conservation activities." In addition, these projects help fulfill one goal of the Agricultural Land Preservation Program in Greater Minnesota: to preserve and conserve soil and water resources. (The Metropolitan Agricultural Preserves Act does not explicitly contain the same goal.)

At the same time, we found that:

- **Some natural resources projects funded with the conservation account dollars appear worthy but only broadly connected to the statutory purposes for the funding.**

These include master gardener programs, educating young people about the role of agriculture in their lives, recording the county history of agriculture, and paying for costs of appraisals and title surveys associated with conservation easements on land being preserved for critical habitat.

No state agency oversees the county conservation accounts. Oversight is provided either by the elected members of the conservation districts, county staff who are separate from the entity doing the spending, or county board members reviewing agency spending through their typical budgeting process. In one county, oversight is delegated to the county's Extension Committee and a subcommittee specifically established by the county board to review and recommend projects for conservation-account spending.

RECOMMENDATION

The Legislature should determine whether spending the mortgage and deed fee revenues on natural resource projects other than agricultural land preservation and soil conservation is unacceptable, and if so, it should change Minnesota Statutes to specify unallowable activities.

Although local units of government vary in the degree to which the projects they fund adhere to the statutory purposes for conservation account spending, all are

¹⁰ *Minnesota Statutes* 2007, 40A.152, subd. 2(1)-(4).

putting the dollars toward projects related to agriculture or natural resources conservation. If the Legislature wants to restrict uses of the money to just the purposes stated in law, it will need to add specific language clarifying what projects are unacceptable for funding. One problem with more specific language is that it may not reflect particular projects that are designed to meet local needs and that local officials have judged to be justifiable.

Discussion

SUMMARY

Collectively, the Green Acres Program and the Metropolitan Agricultural Preserves Program effectively equalize tax burdens. The Agricultural Land Preservation Program in Greater Minnesota provides only minimal tax equalization. Although the agricultural land preservation programs have had some success in shaping development and slowing its rate, neither program, nor the Green Acres Program, assures long-term preservation of agricultural land. If the state's goal is permanent preservation, it must consider supplementing existing programs with other approaches.

The three agriculture protection programs described in this report operate independently of one another, and we evaluated them individually. In this chapter, we address:

- **Taken as a group, how well do the Green Acres, Metropolitan Agricultural Preserves, and Agricultural Land Preservation programs work?**

In looking at the three programs together, we note that measuring the value of a program depends on what the state is trying to achieve. If the objective is to reduce property taxes, a different strategy is needed than if the objective is to preserve land for the long term. We look first at how well the programs equalize taxes and second at farmland preservation.

First, as we pointed out in earlier chapters, both the Green Acres and Metropolitan Agricultural Preserves programs help equalize taxes by lowering the taxable value of qualifying land. (The Agricultural Land Preservation Program in Greater Minnesota does not have this feature.)¹ But, the programs do not apply to all agricultural land in the state. To benefit, landowners have to apply, and they must meet eligibility requirements.

If Minnesota had wanted to provide tax reductions to farmland around the state, it would have done so with programs that are open to all farmland owners instead of to a select number. The property tax system has features that are available to all farmland owners, such as the low class rates that are applied to all land classified as agricultural. The Legislature did not intend the benefits of the Green Acres and farm preservation programs, however, to be equally available to all. As long as this is the case, the programs will continue to have eligibility criteria (and local administrators will face the attendant problems of determining who is qualified), and a select group will receive the tax relief.

The programs help equalize taxes for qualifying landowners.

¹ Some land in the Agricultural Land Preservation Program in Winona and Wright counties has also been enrolled in the Green Acres Program and, therefore, receives the lower taxable value.

None of the programs effectively preserves agricultural land for the long term, but alternatives are costly.

Second, regarding the objective of farmland preservation, none of the three programs we evaluated is structured to preserve agricultural land for the long-term future. Where they are in place, the two agricultural land preservation programs help communities and landowners stage the pace of development, but their effect is limited because relatively few acres have been enrolled overall, they are not designed for long-term preservation, and they depend on the willingness of landowners and local officials to continue preserving the land. Whether the Green Acres Program's goal is to preserve farmland is not clear in law, but if preservation is a goal, the program would have to change to more effectively achieve preservation, as Chapter 2 describes. We believe it is important to modify the existing programs to make them as fair and effective as possible. Chapters 2 and 3 contain recommendations that we think will help do this. Incremental changes to the programs, however, will not change the basic fact that they operate within markets over which government has little direct control. Unless the programs are dramatically changed, they will not provide enough incentive to outweigh the land value increases evident in developing areas. The benefit amounts would have to be large enough to compensate for the speculative value of land that leads to land sales for tens of thousands of dollars per acre.

Furthermore, if the state's goal is permanent preservation, it has to consider alternatives such as land easements, which may involve purchasing development rights from current owners, or outright land acquisitions. The programs would have to be designed for permanent protection and could not rely on 20-year easements, as is allowed in certain programs today, such as some components of the Reinvest in Minnesota program. Permanent preservation, however, is costly. Programs elsewhere to purchase development rights have resulted in low numbers of acres preserved, due in large part to high costs.

We do not recommend dismantling the existing programs.

We are not recommending that the existing Green Acres and agricultural land preservation programs be dismantled. As long as the state believes it is important to equalize certain landowners' property tax burdens, the Green Acres and Metropolitan Agricultural Preserves programs serve a purpose. To far less of a degree, the land preservation program in Greater Minnesota helps serve that purpose. At the same time, it is important to recognize that the programs are not structured as tax relief for all farmers, and there are questions about whether their goals support providing the relief to all who now benefit. Regarding land preservation, the programs have limited effects of a short- to medium-term nature. The land preservation programs curb the rate of development and can help shape it, but none of the three programs we evaluated assures land preservation for the long term, and the Green Acres Program in particular is not targeted to lands important to preserve.

List of Recommendations

- The Legislature should clarify in statute who and what types of land should benefit from the Green Acres Program (p. 38).
- The Legislature should change the Green Acres law by eliminating the criterion for a minimum income level if it also adds specificity to statutes for classifying property as agricultural and defining land that is “primarily” agricultural (p. 42).
- The Department of Revenue should continue its efforts to make the Green Acres Program more consistent statewide. At the same time, it should make some changes including modifying its statewide approach for valuing nontillable land in the program (p. 50).
- If Minnesota wishes to preserve lands for agricultural uses over the long term, the Legislature should consider supplementing existing agricultural land preservation programs with other strategies. Furthermore, it should improve the existing laws by specifying who has authority to enforce them (p. 62).
- The Legislature should determine whether spending the mortgage and deed fee revenues on natural resource projects other than agricultural land preservation and soil conservation is unacceptable, and if so, it should change Minnesota Statutes to specify unallowable activities (p. 65).

MINNESOTA · REVENUE

January 24, 2008

James R. Nobles
Legislative Auditor
Office of the Legislative Auditor
658 Cedar Street
140 Centennial Office Building
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

We thank the Office of Legislative Auditor for its thoughtful review and analysis of the Green Acres and Agricultural Land Preservation Programs. We agree with the report's findings and fully support the recommendations.

Of particular interest to the Department is the first recommendation which states that "***The Legislature should clarify who and what types of properties should benefit from the Green Acres Program.***" We feel that this is a very important and necessary recommendation. Clarification of legislative intent will greatly assist the department and the counties to establish appropriate and consistent definitions and criteria for program eligibility and better ensure uniformity in program implementation throughout the state.

The report appropriately identifies several policy questions that need to be clarified. These include:

1. Is the program's primary purpose to "equalize" taxes on property used for agricultural purposes or is it also to preserve agricultural land?
2. To what extent should the program provide a benefit to land that is used for only "agricultural" purposes and to adjacent land that is used for hunting and recreation?
3. Should eligibility for the program be based on the characteristics and use of the land (such as acres tilled or "primarily tilled) and/or on the characteristics of the owner (such as the owner's farm income)?

This past year, the Department and county assessors worked together to develop and issue a revised Green Acres Bulletin which establishes eligibility criteria and administrative guidelines for the Green Acres Program and agricultural definitions that best reflect our interpretation of current law. In preparing the bulletin we quickly discovered the differences in practices throughout the state and the difficulty in reaching agreement on policy directives in the absence of more clarity regarding legislative purpose and intent. As a result, we issued the bulletin with an effective date of 2009 and

identified the following six policy issues that merit legislative review and policy clarification:

1. Development and implementation of a new “green acres agricultural” valuation methodology for tillable and non-tillable land;
2. Clarification of the phrase “exclusively and intensively used for agricultural purposes” in order for parcels less than ten acres to qualify for an agricultural classification;
3. Clarification of the phrase “primarily devoted to agricultural use”;
4. Whether or not splitting the classification of a parcel between residential and agricultural use should be allowed, and if so, under what circumstances;
5. Whether or not qualifying “farm” income thresholds should be changed; and
6. Whether or not the payback provisions should be extended for more than three years.

If the legislature can clarify the policy direction and legislative intent for the Green Acres Program, the department and county assessors will work together to address the specific policy issues and improve the administration of Green Acres Program.

Again, we want to thank the OLA for their review and analysis of the Green Acre and Agricultural Land Preservation Programs and we look forward to working with the legislature, county commissioners and assessors in addressing the recommendations of the report.

Sincerely,



Ward Einess
Commissioner

January 25, 2008

James Nobles
Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

Dear Mr. Nobles:

The report, "*Green Acres*" and *Agricultural Land Preservation Programs* provides a solid foundation for further discussions about agricultural land preservation in Minnesota. The report accurately describes the Green Acres and agricultural land preservation programs and documents important trends in assessors land classifications, agricultural land loss, and program participation. It also begins to show the complexity of the issue of agricultural land preservation and how it fits into broader policy issues of land use and growth.

We agree with the overall thrust of the report's recommendations. For Green Acres, the question of who the program benefits needs to be examined, and eligibility requirements may need to be adjusted. Green Acres provides tax breaks to some landowners with questionable agricultural land use, yet the risk of tightening requirements is the removal of those very same tax breaks that are still needed for legitimate and valuable agricultural enterprises, such as fruit and vegetable farms.

Current agricultural land preservation programs may need to be supplemented to provide longer-term protection to agricultural land. The Metropolitan and Greater Minnesota agricultural land preservation programs are important tools for protecting agricultural land and shaping growth, and should be supported and strengthened.

Based on our experience agricultural land is best preserved through use of a variety of tools. The Minnesota "toolbox" includes a differential tax assessment program (Green Acres), agricultural planning and zoning, agricultural districting programs (the Metropolitan Agricultural Land Presentation Program and the Greater Minnesota program), purchase of development rights programs (PDR, e.g., the Dakota County Farmland and Natural Areas Program), and transfer of development rights programs (TDR, such as the Chisago County program).

James Nobles, Legislative Auditor

January 25, 2008

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PDR and TDR programs offer perpetual or very long-term protection of agricultural land. However, because of the high cost of development rights purchase, the acreage that can feasibly be protected is relatively small. The programs, therefore, must be targeted to protect the land in greatest need of preservation.

Differential taxation has a place in the land preservation arsenal by allowing farmers to weather increasing land values and assessments caused by non-agricultural influences such as in areas of transition to urban uses. This is particularly important to specialty crop operations.

To affect much larger areas, and to shape growth, less expensive and less complicated tools are needed, such as agricultural zoning and districting. The backbone of effective agricultural land preservation and growth control is guided by good planning and agricultural zoning. Although agricultural zoning can be changed, agricultural districts help to bolster and stabilize agricultural zones, and build support among farmers.

The Legislative Audit Report provides a solid starting point for further discussion of the issue, in which MDA wants to be an integral part.

Sincerely,



Gene Hugoson
Commissioner

GH:AgD:bp

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