

# 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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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**

## **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,<sup>1</sup> and, in 2008, its agricultural production contributed \$15.84 billion to the state's economy.<sup>2</sup>

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,<sup>3</sup> so there are experiences and models upon which the state can draw.

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

<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>
- By the early 1980s, that number was reduced by half: Minnesota was home to 94,382 farms on approximately 27,708,456 acres.<sup>5</sup>
- Between 1982 and 2010, the state lost at least another 808,456 acres of farmland and 13,382 farms.<sup>6</sup>

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

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<sup>4</sup> 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](http://www.agcensus.usda.gov/Publications/Historical_Publications/1950/vol1%20Minnesota/41644745v1p8ch1.pdf) (last visited June 15, 2012).

<sup>5</sup> 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](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).

<sup>6</sup> 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](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](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.<sup>7</sup>

- 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.<sup>8</sup>
- 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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

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<sup>7</sup> Office of the Legislative Auditor, State of Minnesota, *"Green Acres" and Agricultural Land Preservation Programs*, at 4 (February 2008).

<sup>8</sup> 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/](http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/County_Profiles/Minnesota/) (last visited June 15, 2012).

<sup>9</sup> 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](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).

<sup>10</sup> 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](http://www.farmlandinfo.org/documents/30664/FARMLAND_AND_THE_TAX_BILL_1994.pdf) (last visited June 14, 2012).

<sup>11</sup> 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](http://stats.metroc.state.mn.us/stats/pdf/MetroStats_LandUse2010.pdf) (last visited June 15, 2012).

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

## **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.<sup>15</sup> In the seven-county 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.<sup>16</sup>

Table 1, shown below, illustrates these trends.<sup>17</sup>

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

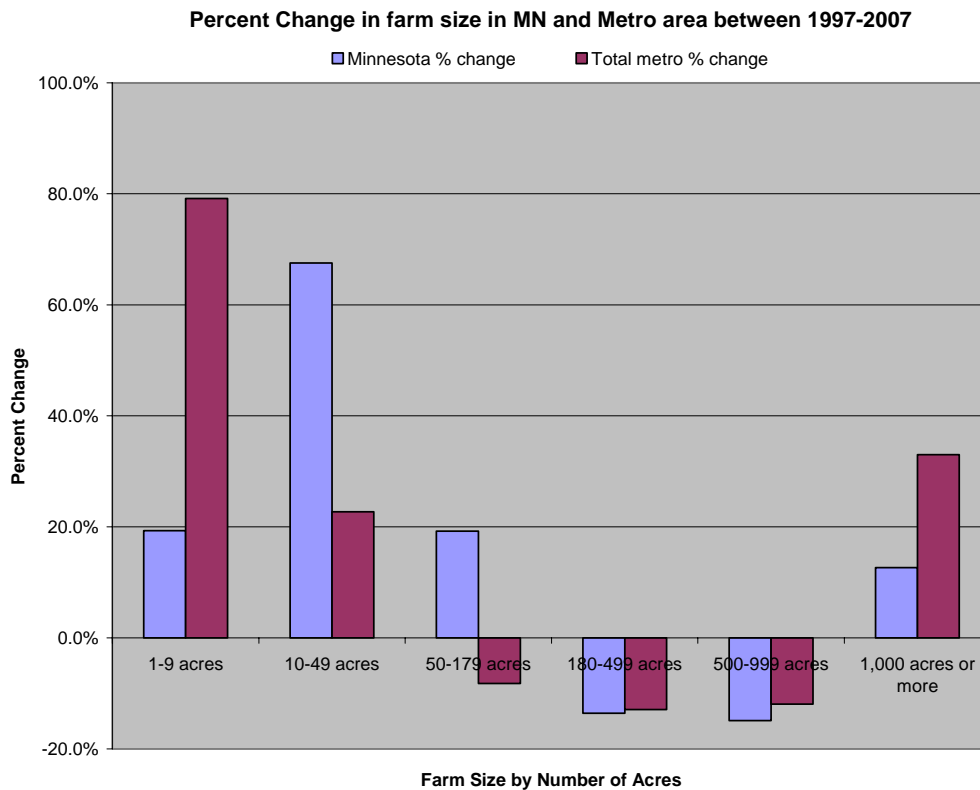
<sup>13</sup> Colin Cureton, *Farmland Preservation in Scott and Dakota Counties*, at 8 (March 1, 2011).

<sup>14</sup> 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](http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/County_Profiles/Minnesota/cp27139.pdf) (last visited June 15, 2012).

<sup>15</sup> See Table 1.

<sup>16</sup> See Table 1.

<sup>17</sup> 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\\_Profiles/Minnesota/mn-23/mn1\\_01.pdf](http://www.agcensus.usda.gov/Publications/1997/Vol_1_National_State_and_County_Profiles/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](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.<sup>18</sup> 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

<sup>18</sup> See, e.g., Agriculture of the Middle, available at [www.agofthemiddle.org](http://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.<sup>19</sup> 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

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<sup>19</sup> 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.<sup>20</sup> For instance, Minnesota’s agricultural exports grew 22 percent between 2009 and 2010, compared to a national rate of 13 percent.<sup>21</sup> 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.<sup>22</sup>

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<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> 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.<sup>23</sup>

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 movement<sup>24</sup>—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.<sup>25</sup>
- In Minnesota, the number of farmers' markets grew 60 percent in two years—from 81 in 2008 to 128 in 2010.<sup>26</sup> 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.<sup>27</sup>

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

<sup>24</sup> 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.

<sup>25</sup> 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).

<sup>26</sup> 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).

<sup>27</sup> 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;<sup>28</sup> if you add sales to local supermarkets, restaurants, and institutional buyers, that number increases to \$5 billion.<sup>29</sup>
- 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.<sup>30</sup>
- 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.<sup>31</sup>

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.<sup>32</sup>
- 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.<sup>33</sup>
- 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.<sup>34</sup>

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<sup>28</sup> 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).

<sup>29</sup> 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).

<sup>30</sup> 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).

<sup>31</sup> 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).

<sup>32</sup> 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](http://www.huffingtonpost.com/kathleen-merrigan/local-food-economy-b_1253052.html) (last visited June 15, 2012).

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

<sup>34</sup> 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.<sup>35</sup> Even with the housing market crash, agricultural land values have continued to rise,<sup>36</sup> 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.

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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).

<sup>35</sup> 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](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).

<sup>36</sup> 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."<sup>37</sup>

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.<sup>38</sup> The definition and measurement of food insecurity appeared in the 1996 Community Population Survey<sup>39</sup> and generally refers to whether all members of a household

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<sup>37</sup> 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).

<sup>38</sup> 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).

<sup>39</sup> 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.<sup>40</sup> Food insecurity has increased dramatically over the past few years, since the beginning of the recession in 2008.<sup>41</sup> Food insecurity has been associated with many wide-ranging health effects including birth defects, anemia, cognitive problems, depression, chronic disease, and poorer general health.<sup>42</sup> Farmers' markets have been associated with addressing food security because they are increasingly able to accept WIC and SNAP benefits.<sup>43</sup>

Many studies have been conducted as to the factors contributing to the growing epidemic of obesity and diabetes.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> The Centers for Disease Control and Prevention have collected many of

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<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

<sup>43</sup> 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).

<sup>44</sup> 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).

<sup>45</sup> 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).

<sup>46</sup> 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.<sup>47</sup> Food produced locally—particularly fresh produce—will tend to taste better, and be more fresh and nutritious.<sup>48</sup> Ninety-one percent of fruits and 78 percent of vegetables are grown in the urban fringes.<sup>49</sup> 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.<sup>50</sup> By 2030, the world will need 50 percent more food than we have now.<sup>51</sup> At the same time, countries around the globe are losing their ability to grow food due, among other reasons, to unchecked soil erosion.<sup>52</sup> The regions that now produce food will need to produce more, and we must have farmland on which to raise and produce that food.

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<sup>47</sup> 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).

<sup>48</sup> 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).

<sup>49</sup> 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).

<sup>50</sup> 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).

<sup>51</sup> 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).

<sup>52</sup> 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,<sup>53</sup> and unchecked development can leave communities much worse off when those developments fail or cannot be sustained.<sup>54</sup> 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.<sup>55</sup>

## **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

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<sup>53</sup> 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.

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

<sup>55</sup> 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.<sup>56</sup>

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.

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<sup>56</sup> 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](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."<sup>1</sup> 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."<sup>2</sup> Consequently, the Legislature enacted the Green Acres Program to equalize taxes on agricultural land.<sup>3</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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.”<sup>4</sup>

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.”<sup>5</sup>

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.”<sup>6</sup> 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.”<sup>7</sup>

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

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<sup>4</sup> 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).

<sup>5</sup> Minn. Stat. § 17.80, subd. 1 (2011).

<sup>6</sup> Minn. Stat. § 40A.01, subd. 1 (2011).

<sup>7</sup> 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") boundary<sup>8</sup> 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

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<sup>8</sup> 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.<sup>9</sup> 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

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<sup>9</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

abide by the terms of the easement.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.”<sup>5</sup> 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.<sup>6</sup> “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

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<sup>2</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

<sup>3</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

<sup>4</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

<sup>5</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

<sup>6</sup> 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](http://www.farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf) (last visited June 12, 2012).

remain in farm use.<sup>7</sup> 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.”<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> Outside of these instances, the Commissioner of Agriculture

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<sup>7</sup> 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](http://www.ctplanningforagriculture.com/guide/AFT_guide_web9-29.pdf) (last visited June 12, 2012).

<sup>8</sup> Minn. Stat. § 17.80, subd. 1 (2011).

<sup>9</sup> Minn. Stat. §§ 17.81; 17.82; 17.84 (2011).

<sup>10</sup> 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.”<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> Nothing in the statute requires the agency to adopt the Commissioner's recommendations. In those cases where the Commissioner does

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“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).

<sup>11</sup> Minn. Stat. § 17.81, subd. 2 (2011).

<sup>12</sup> Minn. Stat. § 17.82 (2011).

<sup>13</sup> 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."<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> The county's plan therefore provides the minimum standard that must be met.

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<sup>14</sup> Minn. Stat. § 17.84 (2011).

<sup>15</sup> 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).

<sup>16</sup> Minn. Stat. §§ 394.21 – 394.23 (2011).

<sup>17</sup> 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.<sup>18</sup>

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

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<sup>18</sup> 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).<sup>19</sup> 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.<sup>20</sup>

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.”<sup>21</sup>

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 purposes<sup>22</sup>; a property tax credit of at least \$1.50 per acre<sup>23</sup>; relief from assessments; protection from ordinances or

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<sup>19</sup> 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.

<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> 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

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<sup>23</sup> 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.<sup>24</sup> The remaining balance is forwarded to the Minnesota Conservation Fund and to the state general fund, split equally.<sup>25</sup> 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.<sup>26</sup>

If necessary, counties may draw from the Minnesota Conservation Fund if the county share is not sufficient to pay the conservation credits.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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

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<sup>24</sup> Minn. Stat. § 40A.152 (2011).

<sup>25</sup> Minn. Stat. § 40A.151, subd. 1 (2011).

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

<sup>27</sup> Minn. Stat. § 473H.10, subd. 3(e) (2011).

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

<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> According to Department of Revenue personnel, no county funds have been returned to the State General Fund since 2002.<sup>32</sup>

## **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.<sup>33</sup>

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<sup>30</sup> 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).

<sup>31</sup> 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).

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

<sup>33</sup> 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,<sup>34</sup>
- Used during the preceding year to produce agricultural products for sale,<sup>35</sup>  
or
- Enrolled in a conservation program such as the Conservation Reserve Program, the Reinvest in Minnesota Program, or “other similar programs.”<sup>36</sup>

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

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

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

<sup>34</sup> 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.

<sup>35</sup> 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).

<sup>36</sup> Minn. Stat. § 273.13, subd. 23(e) (2011).

<sup>37</sup> 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.<sup>38</sup>

## **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.<sup>39</sup>

## **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

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<sup>38</sup> 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.

<sup>39</sup> 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.<sup>40</sup> 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

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<sup>40</sup> 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.<sup>41</sup> 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.

<sup>41</sup> 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.<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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

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<sup>2</sup> 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).

<sup>3</sup> Minn. Stat. § 17.81 (2011).

<sup>4</sup> Minn. Stat. §§ 17.82; 17.84 (2011).

<sup>5</sup> Minn. Stat. § 17.82 (2011).

<sup>6</sup> Minn. Stat. § 17.84 (2011).

Minnesota Statutes, or if a political subdivision is required by law to review and approve the action.<sup>7</sup> 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.

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<sup>7</sup> 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.<sup>8</sup>

**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 counties<sup>9</sup> 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.

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

<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.

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<sup>10</sup> 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.

<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

- 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.<sup>14</sup> 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

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<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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).<sup>15</sup>

- 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.”<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> 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

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<sup>15</sup> 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](http://www.presspubs.com/messenger/news/article_63123bb8-6d28-11e1-be43-0019bb2963f4.html) (last visited June 11, 2012).

<sup>16</sup> Fillmore County Zoning Ordinance, Section 604.05, Subsec. 9, available at [http://www.co.fillmore.mn.us/zoning/documents/2011\\_Zoning\\_Ordinance\\_Sec6.pdf](http://www.co.fillmore.mn.us/zoning/documents/2011_Zoning_Ordinance_Sec6.pdf) (last visited June 8, 2012).

<sup>17</sup> 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).

<sup>18</sup> 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."<sup>19</sup>
- 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;<sup>20</sup> and (4) Protecting parcels used

<sup>19</sup> Minn. Stat. § 17.80, subd. 1 (2011).

<sup>20</sup> 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](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.<sup>21</sup> 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

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



combined.<sup>22</sup> 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.<sup>23</sup>

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<sup>22</sup> 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).

<sup>23</sup> 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.<sup>24</sup>
  - 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.<sup>25</sup>

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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.”

<sup>24</sup> 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”).

<sup>25</sup> 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.<sup>26</sup>
- 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

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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.”

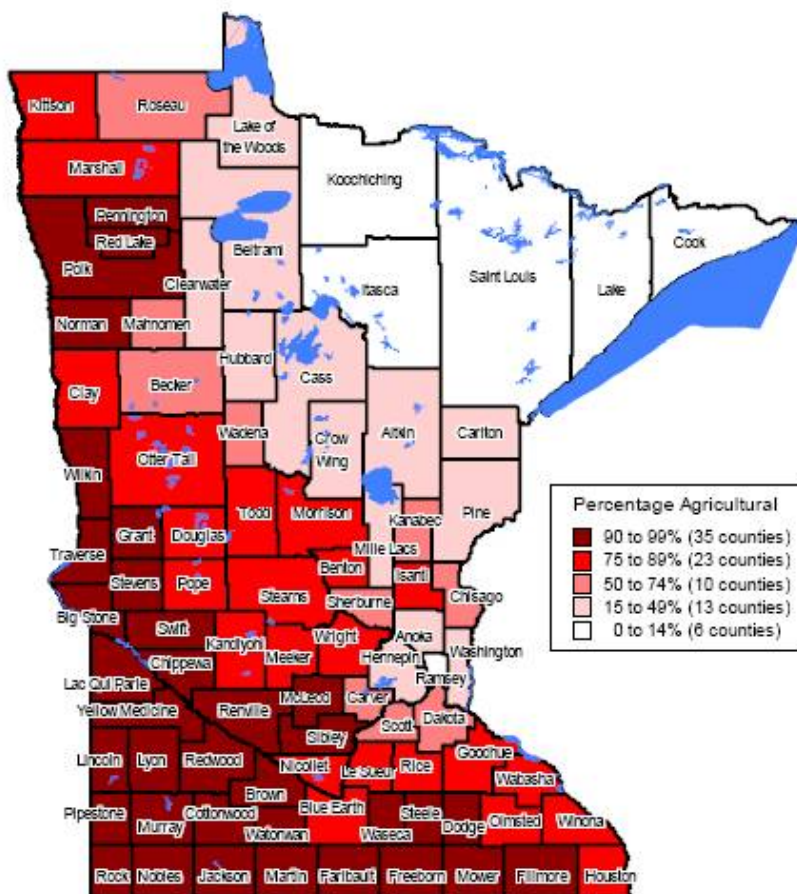
<sup>26</sup> According to the Minnesota Department of Natural Resources, local governments should prepare a Natural Resources Inventory and Assessment at least every ten years. Minnesota Department of Natural Resources, *Natural Resource Guidance Checklist - Natural Resource Inventory & Analysis for 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.<sup>27</sup> 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.

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<sup>27</sup> 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.<sup>28</sup> 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>.

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<sup>28</sup> 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 County<sup>29</sup> 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.<sup>30</sup> 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.

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<sup>29</sup> 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).

<sup>30</sup> 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.<sup>31</sup>

- 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

<sup>31</sup> 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.<sup>32</sup>

- 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

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<sup>32</sup> 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](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](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.<sup>33</sup>

- 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,<sup>34</sup> 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

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<sup>33</sup> 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.

<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>
- 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

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<sup>35</sup> Note that the Minnesota DNR holds easements on forestlands.

<sup>36</sup> 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](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.<sup>37</sup>

- 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.<sup>38</sup>

**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

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<sup>37</sup> Wis. Stat. § 91.84 (2012).

<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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);<sup>41</sup> (3) the reasonable relationship

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<sup>39</sup> Wisconsin Department of Agriculture, Trade & Consumer Protection, at [http://datcp.wi.gov/Environment/Working\\_Lands\\_Initiative/Conversion\\_Fee/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Conversion_Fee/index.aspx) (last visited June 8, 2012).

<sup>40</sup> Cal. Gov’t Code §§ 66000-66005.

<sup>41</sup> 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.<sup>42</sup>
- 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.<sup>43</sup> 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.<sup>44</sup>

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<sup>42</sup> 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.

<sup>43</sup> 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).

<sup>44</sup> 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.<sup>45</sup>

- 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

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<sup>45</sup> *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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup>

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

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<sup>46</sup> 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.

<sup>47</sup> 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](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](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).

<sup>48</sup> 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.<sup>49</sup> It is widely accepted that once zoning changes permit residential development in agricultural areas, development does occur and farmland is converted to other uses.<sup>50</sup> 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

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

<sup>50</sup> 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.<sup>51</sup> Today, however, development pressure and increased

<sup>51</sup> 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.<sup>52</sup>

- 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.<sup>53</sup> Indeed, between 2000 and 2007, Green Acres Program enrollment for the Greater Minnesota counties increased more than thirty-fold.<sup>54</sup> Legislation adopted in 2008 required all counties to implement the Green Acres Program.<sup>55</sup>
- 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.

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*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).

<sup>52</sup> 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](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).

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup> 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.

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<sup>56</sup> 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.

<sup>57</sup> 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.<sup>58</sup>

- 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.<sup>59</sup> 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

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<sup>58</sup> 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](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).

<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup> Appropriations have not generally been made for these purposes, however.<sup>62</sup>

#### *Metro Program Enrollment*

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

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

<sup>61</sup> Minn. Stat. §§ 40A.14; 40A.15 (2011).

<sup>62</sup> 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).

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

were removed from the program.<sup>64</sup> However, enrollment began to rebound slightly during the time period from 2009 to 2011 to just over 195,000 acres.<sup>65</sup> 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.<sup>66</sup>

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.<sup>67</sup> 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.

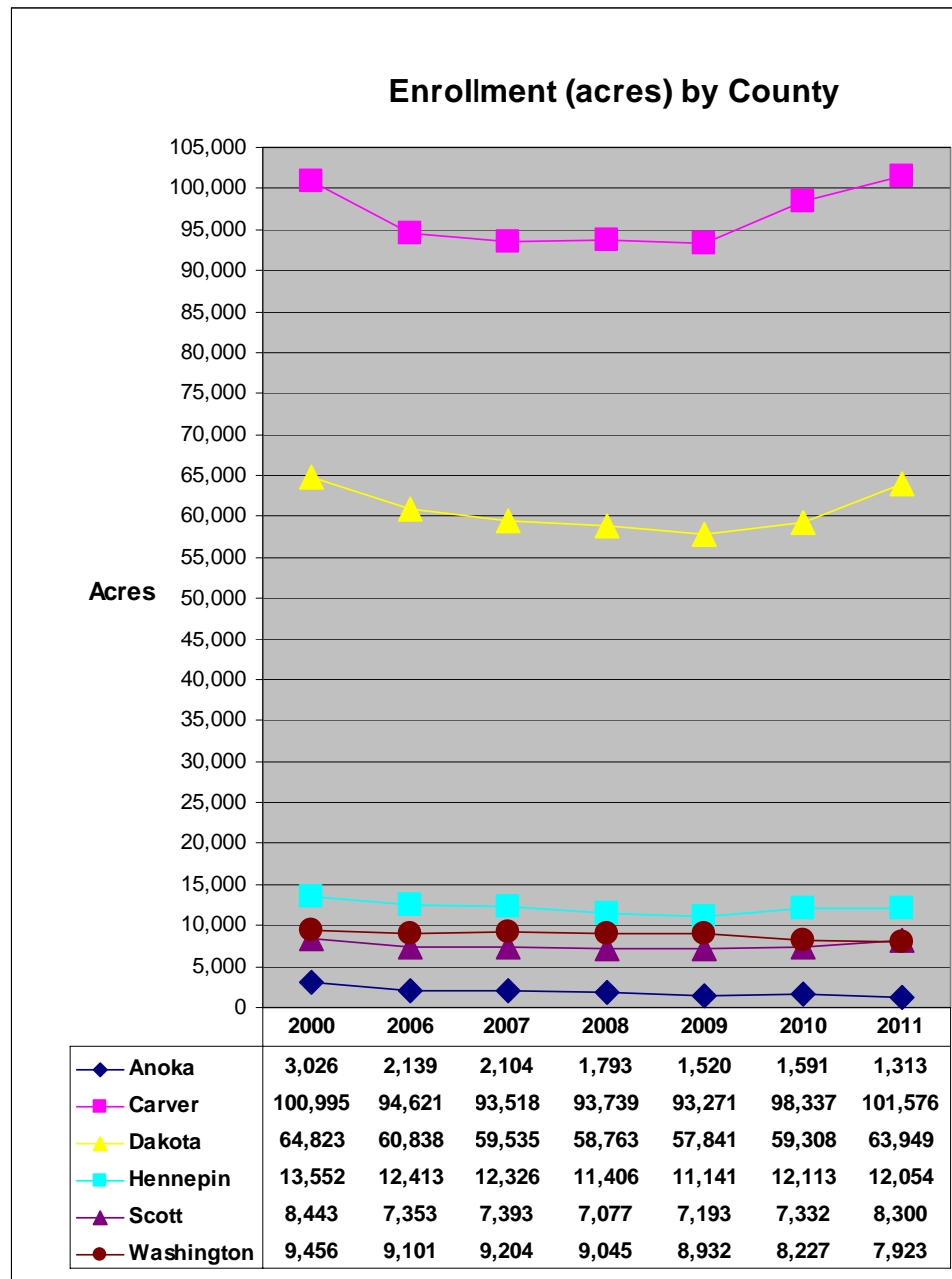
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<sup>64</sup> Metropolitan Council, *2009 Metropolitan Agricultural Preserves Program Status Report*, at 2 (May 2010), available at <http://www.metrocouncil.org/planning/landuse/AgPreservesReport2009.pdf> (last visited June 11, 2012).

<sup>65</sup> Metropolitan Council, *Metropolitan Agricultural Preserves, Status Report (2011)*, at 4.

<sup>66</sup> 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).

<sup>67</sup> Metropolitan Council, *Metropolitan Agricultural Preserves Status Report (2011)*, at 6.

Table 1<sup>68</sup>

### *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

<sup>68</sup> 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.<sup>69</sup>

**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.<sup>70</sup> 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.<sup>71</sup> 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

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<sup>69</sup> 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).

<sup>70</sup> 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.

<sup>71</sup> 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.<sup>72</sup>

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.

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<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> In contrast, more acres were withdrawn during time periods when the conservation credit dipped to low levels.<sup>75</sup> 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

<sup>73</sup> See 1999 MDA Report, at Appendix A, also available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnal.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](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).

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

<sup>75</sup> 1999 MDA Report at IV-11-IV-12, available at <http://www.mda.state.mn.us/news/publications/protecting/sustainable/evalofmnal.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.<sup>76</sup> 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.<sup>77</sup>

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<sup>76</sup> 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](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).

<sup>77</sup> 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.<sup>78</sup>

- 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.”<sup>79</sup> 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.”<sup>80</sup>
  - 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

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<sup>78</sup> 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).

<sup>79</sup> 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](http://www.metrocouncil.org/planning/rural_issues/RuralPolicyProposal.pdf) (last visited June 11, 2012).

<sup>80</sup> 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.<sup>82</sup>
- 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.<sup>83</sup>

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

<sup>83</sup> Minn. Stat. §§ 473H.08, subds. 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.<sup>84</sup>

- 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.<sup>85</sup> This precludes many farmers near urban areas from enrolling in the program.

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<sup>84</sup> 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.

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<sup>85</sup> 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).<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> 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,

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<sup>86</sup> 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).

<sup>87</sup> 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](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.

<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> 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.”<sup>91</sup>

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.<sup>92</sup> 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

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<sup>89</sup> 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).

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

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

<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> The report thus recommended its continued use.<sup>95</sup> 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.

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<sup>93</sup> Minn. Stat. § 273.13, subd. 23(f) (2011).

<sup>94</sup> 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).

<sup>95</sup> 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.<sup>96</sup>

<sup>96</sup> 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.<sup>97</sup> 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.”<sup>98</sup> 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.<sup>99</sup>

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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.

<sup>97</sup> Minn. Stat. § 273.13, subd. 23(f) (2011).

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

<sup>99</sup> 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,<sup>100</sup> 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

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<sup>100</sup> 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.”<sup>101</sup> As a result, despite being similarly situated, farmers may be found eligible for the Green Acres Program in one county and ineligible in another.<sup>102</sup> The report thus concluded that this subjectivity gives rise to “charges of unfairness for taxpayers and among counties.”<sup>103</sup> Consequently, the report recommended adding specificity to the statutes regarding the “primarily devoted to” requirement.<sup>104</sup> 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

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<sup>101</sup> 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).

<sup>102</sup> 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).

<sup>103</sup> 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).

<sup>104</sup> 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.<sup>105</sup>

- 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.<sup>106</sup> 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.

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<sup>105</sup> 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).

<sup>106</sup> 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.<sup>107</sup>
- 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.<sup>108</sup> 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.

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<sup>107</sup> Minn. Stat. § 273.13, subd. 23(b) (2011).

<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> 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."<sup>111</sup>

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.

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<sup>109</sup> See Center for Rural Affairs at [http://www.cfra.org/resources/beginning\\_farmer](http://www.cfra.org/resources/beginning_farmer) (last visited June 8, 2012).

<sup>110</sup> 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).

<sup>111</sup> 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](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.<sup>112</sup> Beginning farmers use the land for their farming operations until they have sufficient capital to acquire their own land.<sup>113</sup> 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.<sup>114</sup>
- 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."<sup>115</sup>

<sup>112</sup> 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).

<sup>113</sup> 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](http://mysare.sare.org/mySARE/assocfiles/933754AATownshipFarm.doc) (last visited June 7, 2012).

<sup>114</sup> 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).

<sup>115</sup> 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.”<sup>116</sup> 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.<sup>117</sup>

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

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

<sup>117</sup> 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](http://www.iada.state.ia.us/images/2012/2012_Tax_Credit_Brochure.pdf) (last visited June 8, 2012).

<sup>118</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

The Rural Area Task Force's findings ultimately led to the enactment of the Metropolitan Agricultural Preserves Act in 1980.<sup>3</sup>

### **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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.”<sup>7</sup> 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.<sup>8</sup> 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

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<sup>2</sup> 1999 MDA Report, at IV-3.

<sup>3</sup> 1999 MDA Report, at IV-2 – IV-3.

<sup>4</sup> 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.

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

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

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

<sup>8</sup> 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.”<sup>9</sup>

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 Council<sup>10</sup>

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.

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

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.”<sup>13</sup>

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.”<sup>14</sup> Stakeholder input for the instant report showed that the report's key

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<sup>11</sup> 1999 MDA Report, at I-4 – I-5.

<sup>12</sup> 1999 MDA Report, at IV-11 – IV-12.

<sup>13</sup> 1999 MDA Report, at IV-14.

<sup>14</sup> 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.<sup>15</sup>

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."<sup>16</sup> 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.<sup>17</sup> 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

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<sup>15</sup> 1999 MDA Report, at V-1 – V-2.

<sup>16</sup> 1999 MDA Report, at V-1.

<sup>17</sup> 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.<sup>18</sup>

- 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.<sup>19</sup>
- 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.<sup>20</sup>
- 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.”<sup>21</sup>
- 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.<sup>22</sup>

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<sup>18</sup> 1999 MDA Report, at V-2.

<sup>19</sup> 1999 MDA Report, at V-2.

<sup>20</sup> 1999 MDA Report, at V-2.

<sup>21</sup> 1999 MDA Report, at V-2 – V-3.

<sup>22</sup> 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."<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup> 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."<sup>27</sup>

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<sup>23</sup> 1999 MDA Report, at V-4.

<sup>24</sup> 1999 MDA Report, at V-4 – V-5.

<sup>25</sup> 1999 MDA Report, at V-5.

<sup>26</sup> 1999 MDA Report, at V-5.

<sup>27</sup> 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.<sup>28</sup>

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."<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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."<sup>32</sup> The report further stated that for the programs to be effective, more education and outreach to landowners was needed.<sup>33</sup> It suggested New York State's experience with locally led educational efforts as a possible model for increasing program enrollment.<sup>34</sup> Stakeholder input for the instant report affirmed that the

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<sup>28</sup> 1999 MDA Report, at V-6.

<sup>29</sup> 1999 MDA Report, at V-7.

<sup>30</sup> 1999 MDA Report, at V-7.

<sup>31</sup> 1999 MDA Report, at IV-14 – IV-15.

<sup>32</sup> 1999 MDA Report, at IV-15.

<sup>33</sup> 1999 MDA Report, at IV-15.

<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.

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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.

<sup>35</sup> 1999 MDA Report, at V-8.

<sup>36</sup> 1999 MDA Report, at V-9.

<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup> 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 COUNCIL<sup>41</sup>**

#### **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.<sup>42</sup> Those recommendations are contained in his 2001 report to the Met Council.

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<sup>38</sup> 1999 MDA Report, at V-10.

<sup>39</sup> 1999 MDA Report, at V-10.

<sup>40</sup> 1999 MDA Report, at V-11.

<sup>41</sup> 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.

<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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.”<sup>45</sup>

## **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.”<sup>46</sup>

### **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.”<sup>47</sup> Instead, it stated that “an integrated package of farmland protection techniques” is required for effective farmland preservation.<sup>48</sup> The report noted that the nation’s most successful farmland protection programs “feature a combination of voluntary, regulatory, and financial

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<sup>43</sup> 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](http://stats.metc.state.mn.us/data_download/DD_start.aspx) (last visited June 6, 2012).

<sup>44</sup> 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.

<sup>45</sup> 2001 Daniels’ Report, at 3.

<sup>46</sup> 2001 Daniels’ Report, at 2.

<sup>47</sup> 2001 Daniels’ Report, at 3.

<sup>48</sup> 2001 Daniels’ Report, at 3.

compensation methods.”<sup>49</sup> These programs typically use three main techniques: growth boundaries, agricultural zoning, and purchase or transfer of development rights.<sup>50</sup> 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.”<sup>51</sup>

### **3. Permanent agricultural areas should be prioritized for preservation**

The report recommended concentrating preservation efforts within designated permanent agricultural areas.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup> 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.<sup>55</sup> Second, agricultural zoning would keep preserved farmland from “becoming surrounded by non-farm development.”<sup>56</sup>

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<sup>49</sup> 2001 Daniels’ Report, at 3-4.

<sup>50</sup> 2001 Daniels’ Report, at 10.

<sup>51</sup> 2001 Daniels’ Report, at 2.

<sup>52</sup> 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).

<sup>53</sup> 2001 Daniels’ Report, at 2.

<sup>54</sup> 2001 Daniels’ Report, at 4.

<sup>55</sup> 2001 Daniels’ Report, at 4.

<sup>56</sup> 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.”<sup>57</sup> 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.”<sup>58</sup>

#### **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.<sup>59</sup> 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.”<sup>60</sup> 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.”<sup>61</sup>

#### **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.”<sup>62</sup> The basic premise of the preservation scenarios was for the counties to acquire agricultural preservation easements, in consultation with the Met Council.<sup>63</sup> 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.

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<sup>57</sup> 2001 Daniels’ Report, at 4.

<sup>58</sup> 2001 Daniels’ Report, at 4.

<sup>59</sup> 2001 Daniels’ Report, at 5.

<sup>60</sup> 2001 Daniels’ Report, at 5.

<sup>61</sup> 2001 Daniels’ Report, at 4.

<sup>62</sup> 2001 Daniels’ Report, at 6, 8.

<sup>63</sup> 2001 Daniels’ Report, at 5.

- Scenario 1 suggested a pilot PACE program in Dakota County, lasting five to six years.<sup>64</sup> 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.<sup>65</sup> In addition, Dakota County’s farming area adjoined Rice and Goodhue counties, both “major farming counties.”<sup>66</sup>

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.<sup>67</sup> 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.<sup>68</sup> It has been cited as an exemplar of a dynamic program for farmland preservation and natural resources conservation.<sup>69</sup>

- Scenario 2 posited a five- to six-year PACE program in Dakota, Scott, and Carver counties.<sup>70</sup> 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.<sup>71</sup> 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

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<sup>64</sup> 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.

<sup>65</sup> 2001 Daniels’ Report, at 5.

<sup>66</sup> 2001 Daniels’ Report, at 5.

<sup>67</sup> 2001 Daniels’ Report, at 5.

<sup>68</sup> 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.

<sup>69</sup> 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](http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf) (last visited June 6, 2012).

<sup>70</sup> 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.

<sup>71</sup> 2001 Daniels’ Report, at 6.

noted that preservation in Scott County would help to protect farmland in neighboring LeSueur County.<sup>72</sup>

- Scenario 3 considered a six- to eight-year PACE program in six of the seven metro counties.<sup>73</sup> 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.<sup>74</sup> 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."<sup>75</sup>

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.<sup>76</sup> The Work Group used the

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<sup>72</sup> 2001 Daniels' Report, at 6.

<sup>73</sup> 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.

<sup>74</sup> 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.

<sup>75</sup> 2002 Metropolitan Council Rural Issues Work Group, at 2.

<sup>76</sup> 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.<sup>77</sup>

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.”<sup>78</sup> At the same time, the report stated that “Council policies have not always been effective in protecting rural and agricultural lands from development.”<sup>79</sup>

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.<sup>80</sup> 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.<sup>81</sup>

#### **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

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<sup>77</sup> 2002 Metropolitan Council Rural Issues Work Group, at 2.

<sup>78</sup> 2002 Metropolitan Council Rural Issues Work Group, at 1.

<sup>79</sup> 2002 Metropolitan Council Rural Issues Work Group, at 2.

<sup>80</sup> 2002 Metropolitan Council Rural Issues Work Group, at 3.

<sup>81</sup> 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.<sup>82</sup>

The Work Group noted that the primary tool used to preserve farmland in these areas was the Metropolitan Agricultural Preserves Program.<sup>83</sup> 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."<sup>84</sup> 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."<sup>85</sup>

### **C. Recommended Policy Changes for Permanent Agricultural Areas<sup>86</sup>**

#### **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.*

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<sup>82</sup> 2002 Metropolitan Council Rural Issues Work Group, at 1.

<sup>83</sup> 2002 Metropolitan Council Rural Issues Work Group, at 1.

<sup>84</sup> 2002 Metropolitan Council Rural Issues Work Group, at 1.

<sup>85</sup> 2002 Metropolitan Council Rural Issues Work Group, at 1.

<sup>86</sup> 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.*<sup>87</sup>

## **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.<sup>88</sup> 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.”<sup>89</sup> 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.”<sup>90</sup>

## **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.<sup>91</sup> The policy recommendations were:

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<sup>87</sup> 2002 Metropolitan Council Rural Issues Work Group, at 11.

<sup>88</sup> 2002 Metropolitan Council Rural Issues Work Group, at 11.

<sup>89</sup> 2002 Metropolitan Council Rural Issues Work Group, at 11.

<sup>90</sup> 2002 Metropolitan Council Rural Issues Work Group, at 11.

<sup>91</sup> 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.*<sup>92</sup>
- 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.*

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<sup>92</sup> 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.*<sup>93</sup>

#### **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*

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<sup>93</sup> 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.*<sup>94</sup>

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.<sup>95</sup> 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.<sup>96</sup> The plans would be certified by the local Soil and Water Conservation District.<sup>97</sup>

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<sup>94</sup> 2002 Metropolitan Council Rural Issues Work Group, at 20-22.

<sup>95</sup> 2002 Metropolitan Council Rural Issues Work Group, at 30.

<sup>96</sup> 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.*

<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup> 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.”<sup>100</sup> 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.<sup>101</sup>

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.<sup>102</sup> Suggested eligibility criteria included:

1. Farmland must be located within the Permanent Agricultural Area and eligible for the Metropolitan Agricultural Preserves Program;<sup>103</sup>
2. The county must provide at least matching funds of at least 50 percent of the purchase funds provided by the Council;<sup>104</sup>
3. Easements must be permanent;<sup>105</sup> and
4. Eligible parcels must be at least 50 acres in size.<sup>106</sup>

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<sup>98</sup> 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.

<sup>99</sup> 2002 Metropolitan Council Rural Issues Work Group, at 35-36.

<sup>100</sup> 2002 Metropolitan Council Rural Issues Work Group, at 34.

<sup>101</sup> 2002 Metropolitan Council Rural Issues Work Group, at 35.

<sup>102</sup> 2002 Metropolitan Council Rural Issues Work Group, at 34.

<sup>103</sup> 2002 Metropolitan Council Rural Issues Work Group, at 34.

<sup>104</sup> 2002 Metropolitan Council Rural Issues Work Group, at 34.

<sup>105</sup> 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.<sup>107</sup> 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.<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> Factors contributing to this conclusion were:

- Farmland was lost in all counties participating in the program during the time period from 1982 to 1997.<sup>111</sup> While the report noted that it was impossible to isolate the effect of the farmland preservation programs from the many other

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<sup>106</sup> 2002 Metropolitan Council Rural Issues Work Group, at 36.

<sup>107</sup> 2002 Metropolitan Council Rural Issues Work Group, at 36.

<sup>108</sup> 2002 Metropolitan Council Rural Issues Work Group, at 36.

<sup>109</sup> 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).

<sup>110</sup> 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.*

<sup>111</sup> 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.<sup>112</sup>

- The financial benefits offered by the programs are quite small in comparison to the financial gains available when farmland is converted to other uses.<sup>113</sup>
- A small number of acres are enrolled in the programs, and enrollment has steadily declined since the late 1990s.<sup>114</sup>
- Only three counties participate in the Greater Minnesota Program.<sup>115</sup>
- Participation in the programs can be easily terminated.<sup>116</sup> 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.”<sup>117</sup>
- 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.<sup>118</sup>

Consequently, the report recommended the state consider supplementing the agricultural preserves programs with other tools and policies to foster more effective farmland preservation.<sup>119</sup> 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.<sup>120</sup>

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.”<sup>121</sup> 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

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<sup>112</sup> 2008 OLA Report, at 55.

<sup>113</sup> 2008 OLA Report, at 57.

<sup>114</sup> 2008 OLA Report, at 57-58.

<sup>115</sup> 2008 OLA Report, at 59.

<sup>116</sup> 2008 OLA Report, at 60-61.

<sup>117</sup> 2008 OLA Report, at 60.

<sup>118</sup> 2008 OLA Report, at 62.

<sup>119</sup> 2008 OLA Report, at 62.

<sup>120</sup> 2008 OLA Report, at 62.

<sup>121</sup> 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.”<sup>122</sup>

## **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.”<sup>123</sup> 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.”<sup>124</sup>

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.*<sup>125</sup>
- *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.*<sup>126</sup>
- *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.*<sup>127</sup>

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

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<sup>122</sup> 2008 OLA Report, at 62.

<sup>123</sup> 2008 OLA Report, at 34.

<sup>124</sup> 2008 OLA Report, at 34.

<sup>125</sup> 2008 OLA Report, at 38.

<sup>126</sup> 2008 OLA Report, at 42.

<sup>127</sup> 2008 OLA Report, at 50.

implement the program; and requiring the valuation methodology to be re-examined.<sup>128</sup>



<sup>128</sup> 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.<sup>1</sup> Described below are the main land use policy and planning tools typically used by state and local governments to preserve farmland.<sup>2</sup>

## 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.

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<sup>1</sup> 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).

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 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).

<sup>4</sup> 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.<sup>5</sup> 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

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*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.

<sup>5</sup> 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/pdf/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.<sup>6</sup> 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.

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<sup>6</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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.<sup>8</sup> Fifteen states (not including Minnesota) also offer a credit against state income tax liability for donated conservation easements.<sup>9</sup> 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.<sup>10</sup>

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<sup>8</sup> See I.R.C. § 170(h)(4)(A).

<sup>9</sup> 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](http://www.frc.state.mn.us/documents/council/MFRC_POLICY_Revised_AppC_LandTransactions_2010-05-12.pdf) (last visited June 7, 2012).

<sup>10</sup> 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.<sup>11</sup>
- 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.

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<sup>11</sup> 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](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.<sup>12</sup>

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.<sup>13</sup> Cooperative programs typically allow

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<sup>12</sup> 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](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1047455.pdf) (last visited June 7, 2012).

<sup>13</sup> 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.<sup>14</sup>

#### **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.

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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.

<sup>14</sup> 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](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.<sup>15</sup>

### 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.

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<sup>15</sup> 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.<sup>16</sup>

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<sup>16</sup> 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.<sup>17</sup>

## 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.

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<sup>17</sup> 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.”<sup>18</sup>

### 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.

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<sup>18</sup> 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](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.<sup>19</sup>

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

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<sup>19</sup> 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.<sup>1</sup> As a result, a law was passed in

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<sup>1</sup> 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](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.<sup>2</sup> CFP’s declared goal is to preserve 130,000 acres of farmland, with 85,000 acres specifically designated as “cropland.”<sup>3</sup>

## 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.<sup>4</sup>

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.<sup>5</sup> 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

<sup>2</sup> 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).

<sup>3</sup> 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](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).

<sup>4</sup> Conn. Gen. Stat. § 22-26cc(a) (2012).

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> Participating municipalities are required to adopt a policy in support of farmland preservation and establish an agricultural land preservation fund.<sup>12</sup> Eligible

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<sup>6</sup> 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”).

<sup>7</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 1, 5 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](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).

<sup>8</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>9</sup> Conn. Gen. Stat. § 22-26jj (2012).

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> 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.<sup>13</sup> Priority is given to projects that comply with local or regional open space or conservation and development plans.<sup>14</sup>

Towns may solicit willing landowners to apply to the CFP; the state and town then work together to purchase development rights jointly.<sup>15</sup> An applicant’s score can be raised by the opportunity to leverage local funds for the purchase.<sup>16</sup> 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.<sup>17</sup> Easements must include the same restrictions required of all easements acquired through the CFP.<sup>18</sup>

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.<sup>19</sup>

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source and by whatever means, as gifts, . . . grants or loans for agricultural land preservation purposes” or appropriation by the municipality.).

<sup>13</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>14</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>18</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>19</sup> 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.<sup>20</sup> 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.”<sup>21</sup> 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.<sup>22</sup>

### 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.<sup>23</sup> 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.<sup>24</sup> A 2007 Act also created “lump sum bonding” to ensure that \$5 million would be released to the Department of Agriculture every six months

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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.

<sup>20</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>21</sup> Conn. Gen. Stat. § 22-26nn (2012).

<sup>22</sup> State of Connecticut, Department of Agriculture, *Agriculture Commissioner Reviczky Announces Pilot Program for Community Farms Preservation*, December 6, 2011, available at [http://aginfo.tlgv.org/agvocate\\_program/PDFs%20and%20Documents/2011\\_dec\\_6\\_community\\_farms\\_program\\_final.pdf](http://aginfo.tlgv.org/agvocate_program/PDFs%20and%20Documents/2011_dec_6_community_farms_program_final.pdf) (last visited June 12, 2012).

<sup>23</sup> See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

<sup>24</sup> 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.<sup>25</sup> In 2009, farmland preservation advocates worked to defend the CIA against several proposals to use the funds to address state budget deficits.<sup>26</sup> 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.<sup>27</sup>

#### **D. Impact**

Since the Connecticut Farmland Preservation Program began, development rights to 37,262 acres have been acquired to protect 283 farms.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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

<sup>25</sup> See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

<sup>26</sup> See Working Lands Alliance, *Policy Efforts*, available at <http://www.workinglandsalliance.org/pages/efforts.html> (last visited June 12, 2012).

<sup>27</sup> 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).

<sup>28</sup> 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).

<sup>29</sup> 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).

<sup>30</sup> 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.”<sup>31</sup>

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.<sup>32</sup> 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.”<sup>33</sup> 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.”<sup>34</sup> Some farmers also find the program difficult to access and complain that it does not pay enough.<sup>35</sup> 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.<sup>36</sup>

#### **E. Connecticut’s Open Space and Watershed Land Acquisition Grants Program**

Established in 1998,<sup>37</sup> the Connecticut Open Space and Watershed Land Acquisition Grants Program is a separate PDR program providing financial

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<sup>31</sup> 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).

<sup>32</sup> 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).

<sup>33</sup> 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).

<sup>34</sup> 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).

<sup>35</sup> 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).

<sup>36</sup> 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).

<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> Landowners cannot apply directly to the program but must work with a sponsoring town, water company, or land conservation organization.<sup>40</sup> Applications are only accepted during specific grant rounds that are typically held one to two times per year depending on the availability of funding.<sup>41</sup>

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.<sup>42</sup> A 21-member Natural Heritage, Open Space and Watershed Land Acquisition Review Board assists and advises

<sup>38</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 10 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>39</sup> 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.

<sup>40</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 9 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>41</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 9 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](http://www.farmland.org/programs/states/documents/AFT_ConservationOptionsforConnecticutFarmland2006.pdf) (last visited June 12, 2012).

<sup>42</sup> American Farmland Trust, *Conservation Options for Connecticut Farmland*, at 8 (2006), available at [http://www.farmland.org/programs/states/documents/AFT\\_ConservationOptionsforConnecticutFarmland2006.pdf](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.<sup>43</sup> 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.”<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> Funding for this program comes from state bonds and the Community Investment Act.<sup>47</sup>

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.<sup>48</sup> 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

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<sup>43</sup> Conn. Gen. Stat. § 7-131e(c) (2012).

<sup>44</sup> 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).

<sup>45</sup> Conn. Gen. Stat. § 7-131d(e) (2012).

<sup>46</sup> Conn. Gen. Stat. § 7-131d(e) (2012).

<sup>47</sup> 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.”).

<sup>48</sup> 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](http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf) (last visited June 12, 2012).

future value under other uses.<sup>49</sup> The state later adopted a federal pricing mechanism, the Uniform Appraisal Standards for Federal Land Acquisition, which determines property value based on current use.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

### 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.<sup>53</sup>

<sup>49</sup> 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](http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf) (last visited June 12, 2012).

<sup>50</sup> 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](http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf) (last visited June 12, 2012).

<sup>51</sup> 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](http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf) (last visited June 12, 2012).

<sup>52</sup> 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](http://efc.muskie.usm.maine.edu/case_study_library_docs/SmartGrowthPolicy.11.06.pdf) (last visited June 12, 2012).

<sup>53</sup> 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.<sup>54</sup> After conducting informal meetings and several public hearings, LCDC adopted 19 state planning goals attempting a compromise between development and conservation objectives.<sup>55</sup> 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.<sup>56</sup> A separate law also enacted in 1973 significantly strengthened the state's exclusive farm use (EFU) zoning statutes.<sup>57</sup>

## **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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> The city and county comprehensive plans

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<sup>54</sup> 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.

<sup>55</sup> 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](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf) (last visited June 13, 2012).

<sup>56</sup> 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](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf) (last visited June 13, 2012).

<sup>57</sup> 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).

<sup>58</sup> Or. Rev. Stat. § 197.175 (2012).

<sup>59</sup> 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](http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t) (last visited June 12, 2012).

<sup>60</sup> 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](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.<sup>61</sup>

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.<sup>62</sup> The Oregon Legislature has appropriated over \$25 million in planning grants to assist local governments with the cost of creating their comprehensive plans.<sup>63</sup>

## **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.<sup>64</sup> 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.<sup>65</sup> To this end, the goal required cities and counties to incorporate the

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2012). The goals and guidelines were later incorporated into Oregon’s statutory framework and administrative rules.

<sup>61</sup> 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](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).

<sup>62</sup> 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](http://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.

<sup>63</sup> 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).

<sup>64</sup> 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](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf) (last visited June 12, 2012).

<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

Subject to certain statutory exceptions, EFU land is to be used only for farming.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup>

### **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.”<sup>71</sup> 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.<sup>72</sup>

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<sup>66</sup> 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).

<sup>67</sup> Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 995 (1998).

<sup>68</sup> Or. Rev. Stat. § 215.203(1) (2012).

<sup>69</sup> Or. Rev. Stat. § 215.780 (2012).

<sup>70</sup> 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).

<sup>71</sup> 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](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf) (last visited June 13, 2012).

<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> Local governments must show that needs cannot reasonably be met within the existing UGB before it can be expanded.<sup>75</sup>

#### **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.<sup>76</sup> As agency “orders,” these decisions were appealable to the court of appeals.<sup>77</sup> Generally, a local plan required three reviews before receiving approval, referred to as “acknowledgement of compliance.”<sup>78</sup> The final local plan and regulations were

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[http://www.oregon.gov/LCD/docs/goals/compilation\\_of\\_statewide\\_planning\\_goals.pdf](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf)  
(last visited June 13, 2012).

<sup>73</sup> 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](http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf) (last visited June 13, 2012).

<sup>74</sup> Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 317 (1998).

<sup>75</sup> 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).

<sup>76</sup> 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).

<sup>77</sup> See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315 (1998).

<sup>78</sup> 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.<sup>79</sup>

Now that all plans have been acknowledged, the statewide goals no longer apply. Land use decisions must instead comply with the plans in place.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> LCDC or its staff generally oversees the review process.<sup>83</sup> The Commission has the power to take enforcement action against local governments that habitually violate their plans or fail to update through periodic review.<sup>84</sup> Citizens may also petition the LCDC for the adoption of an enforcement order against a local government under certain circumstances.<sup>85</sup>

#### **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.<sup>86</sup> 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

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<sup>79</sup> Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 315-16 (1998).

<sup>80</sup> 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](http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t) (last visited June 12, 2012).

<sup>81</sup> Or. Rev. Stat. § 197.175(2)(e) (2012).

<sup>82</sup> Or. Rev. Stat. § 197.628 (2012).

<sup>83</sup> 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](http://www.oregon.gov/LCD/HAZ/docs/landslides/02_elements.pdf?ga=t) (last visited June 12, 2012).

<sup>84</sup> 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).

<sup>85</sup> Or. Rev. Stat. § 197.319 (2012) (Procedures Prior to Request of an Enforcement Order).

<sup>86</sup> Or. Rev. Stat. § 197.763 (2012).

reasons.<sup>87</sup> 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.<sup>88</sup> The process of review by LUBA is intended to be much simpler and faster than that of the circuit courts.<sup>89</sup>

### 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.<sup>90</sup> 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.<sup>91</sup> Some comparisons between states also suggest that UGBs have helped curb the national trend of falling urban densities.<sup>92</sup>

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,

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<sup>87</sup> 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](http://www.friends.org/sites/friends.org/files/CitizensGuideToLUBA_Final.pdf) (last visited June 14, 2011).

<sup>88</sup> 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).

<sup>89</sup> 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](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).

<sup>90</sup> Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 317 (1998).

<sup>91</sup> 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).

<sup>92</sup> 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.<sup>93</sup>

About 97 percent of all private land in Oregon located outside UGBs is zoned for farming, ranching, or forestry.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> 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."<sup>97</sup> 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.<sup>98</sup> While this regulation was intended to keep land in commercial farming, it can instead drive agricultural landowners to subdivide and market "hobby-

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<sup>93</sup> 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).

<sup>94</sup> 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).

<sup>95</sup> 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).

<sup>96</sup> 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).

<sup>97</sup> 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).

<sup>98</sup> 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.<sup>99</sup>

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.”<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup>

Another recognized threat to farmland is posed by non-farm development on land zoned for exclusive farm use.<sup>103</sup> 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.<sup>104</sup> Such statutory nonfarm uses result in the “internal conversion” of several thousand acres of farmland every year.<sup>105</sup> Arguably the largest development pressure has come not

<sup>99</sup> See Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env’t 315, 367 (1998).

<sup>100</sup> 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).

<sup>101</sup> 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).

<sup>102</sup> 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).

<sup>103</sup> Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 997 (1998).

<sup>104</sup> Or. Rev. Stat. §§ 215.213; 215.283 (2012).

<sup>105</sup> 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.<sup>106</sup> Several types of homes are permitted in EFU zones under specified circumstances.<sup>107</sup> 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.<sup>108</sup> While the allowed uses in EFU zones are determined by the Legislature, permitting decisions are made at the local level.<sup>109</sup> 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.<sup>110</sup>

#### 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.<sup>111</sup> 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.<sup>112</sup> 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

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<sup>106</sup> Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 997 (1998).

<sup>107</sup> 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)(l) (2012) (hardship dwellings); Or. Rev. Stat. § 215.705 (2012) (lot-of-record dwellings).

<sup>108</sup> 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.

<sup>109</sup> See, e.g., Or. Rev. Stat. § 197.665(3) (2012).

<sup>110</sup> Nyran Rasche, *Protecting Agricultural Lands in Oregon: An Assessment of the Exclusive Farm Use Zone System*, 77 Or. L. Rev. 993, 998 (1998).

<sup>111</sup> 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).

<sup>112</sup> 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.<sup>113</sup>

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.<sup>114</sup> 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.<sup>115</sup>

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.”<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> The full

<sup>113</sup> 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).

<sup>114</sup> 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).

<sup>115</sup> 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).

<sup>116</sup> 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).

<sup>117</sup> 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).

<sup>118</sup> 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.<sup>119</sup> 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.<sup>120</sup>

## **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.<sup>121</sup>

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.<sup>122</sup> Local governments are required to address these visions in their comprehensive plans, which must be submitted to

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<sup>119</sup> Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env't 315, 368 (1998).

<sup>120</sup> Robert Liberty, *Planned Growth: The Oregon Model*, 13 Nat. Resources & Env't 315, 369 (1998).

<sup>121</sup> Md. Code, Dep't of Agric., § 2-503 (2012).

<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup> 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).<sup>125</sup> 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.”<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup>

<sup>123</sup> 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).

<sup>124</sup> 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).

<sup>125</sup> 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).

<sup>126</sup> See generally Md. Code, Nat. Res., § 5-9A (2012).

<sup>127</sup> See Md. Code, Nat. Res., § 5-9A-02(i) (2012) (defining “Rural Legacy Areas”).

<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup>

To be eligible for an easement, property must include at least 50 contiguous acres,<sup>131</sup> 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.<sup>132</sup>

Landowners must generally submit applications to sell an easement to the county program administrator by the state's annual deadline.<sup>133</sup> 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.<sup>134</sup> The county then reviews the applications and ranks them according to its own system approved under state ranking guidelines.

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<sup>129</sup> Md. Code, Dep't of Agric., § 2-504 (2012) (detailing appointment, composition, terms, and duties of county agricultural preservation advisory boards).

<sup>130</sup> 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.").

<sup>131</sup> 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).

<sup>132</sup> 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).

<sup>133</sup> Md. Code, Dep't of Agric., § 2-510(b) (2012).

<sup>134</sup> 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.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup>

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.<sup>138</sup> 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.”<sup>139</sup> 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.<sup>140</sup> No restrictions are imposed on who may receive this

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<sup>135</sup> 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).

<sup>136</sup> 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).

<sup>137</sup> 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).

<sup>138</sup> 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).

<sup>139</sup> 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).

<sup>140</sup> 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.<sup>141</sup> 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.<sup>142</sup> 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.”<sup>143</sup> Counties are responsible for determining whether a property qualifies for the program, using specified criteria.<sup>144</sup> 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.<sup>145</sup> 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

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[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).

<sup>141</sup> 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).

<sup>142</sup> Md. Code, Dep’t of Agric., § 2-513(b)(4) and (5) (2012).

<sup>143</sup> Md. Code, Dep’t of Agric., § 2-517(a)(2) (2012).

<sup>144</sup> Md. Code, Dep’t of Agric., § 2-517(b) (2012).

<sup>145</sup> 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.<sup>146</sup> 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.”<sup>147</sup>

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.<sup>148</sup> 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.<sup>149</sup> 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.<sup>150</sup>

### 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.<sup>151</sup> Local governments and private land trusts are encouraged to

<sup>146</sup> Ed Bolen, *et al.*, *Smart Growth*, 8 Hastings W.-N.W. J. Env. L. & Pol’y 145, 173 (2002).

<sup>147</sup> 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).

<sup>148</sup> Md. Code, State Fin. & Proc., § 5-7B-02 (2012) (detailing areas considered Priority Funding Areas).

<sup>149</sup> Md. Code, State Fin. & Proc., § 5-7B-02 (2012) (detailing areas considered Priority Funding Areas).

<sup>150</sup> Md. Code, State Fin. & Proc., § 5-7B-03 (2012) (detailing designation of Priority Funding Areas).

<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup>

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.<sup>154</sup> 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.<sup>155</sup>

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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.

<sup>152</sup> 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).

<sup>153</sup> Md. Code, Nat. Res., § 5-9A-05(c) (2012).

<sup>154</sup> 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).

<sup>155</sup> 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.<sup>156</sup> 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.”<sup>157</sup> 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.”<sup>158</sup> Second, “the amount of public funding needed for conservation and recreation far exceeds estimated funding for the foreseeable future.”<sup>159</sup> Further, when MALPF cannot afford to acquire easements on farmland

<sup>156</sup> 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](http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf) (last visited June 12, 2012).

<sup>157</sup> 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](http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf) (last visited June 12, 2012).

<sup>158</sup> 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](http://www.mdp.state.md.us/PDF/OurProducts/Publications/Misc/Web_LPPRP_Vol_1.pdf) (last visited June 12, 2012).

<sup>159</sup> 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](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.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup> Finally, and

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available at [www.farmlandinfo.org/documents/36291/MALPF\\_Final\\_report\\_10-28.pdf](http://www.farmlandinfo.org/documents/36291/MALPF_Final_report_10-28.pdf) (last visited June 12, 2012).

<sup>160</sup> John W. Frece, *Smart Growth Prioritizing State Investments*, 15 Nat'l Res. & Env't 236, 276 (Spring 2001).

<sup>161</sup> 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).

<sup>162</sup> J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 415-16 (2004).

<sup>163</sup> 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.<sup>164</sup>

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.<sup>165</sup> 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.<sup>166</sup> 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.<sup>167</sup> 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.”<sup>168</sup>

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

<sup>164</sup> J. Celeste Sakowicz, *Urban Sprawl: Florida’s and Maryland’s Approaches*, 19 J. Land Use & Envtl. L. 377, 416 (2004).

<sup>165</sup> 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).

<sup>166</sup> 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).

<sup>167</sup> 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).

<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup> 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.<sup>171</sup> 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.<sup>172</sup>

### 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.”<sup>173</sup> 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.<sup>174</sup> Although significant conservation money and effort are being concentrated in Rural Legacy Areas,

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<sup>169</sup> 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).

<sup>170</sup> 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).

<sup>171</sup> 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).

<sup>172</sup> 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).

<sup>173</sup> 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](http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf) (last visited June 14, 2012).

<sup>174</sup> 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](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.<sup>175</sup> 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.<sup>176</sup>

## V. WISCONSIN – OVERHAULING A DECADES-OLD PROGRAM FOR A NEW CENTURY

### A. Origins

Wisconsin first enacted farmland preservation laws in 1977.<sup>177</sup> The goals of the 1977 Farmland Preservation Act<sup>178</sup> 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,<sup>179</sup> it was

<sup>175</sup> 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](http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf) (last visited June 14, 2012).

<sup>176</sup> 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](http://www.mdp.state.md.us/pdf/OurWork/rurallegacy/Report_NoMaps.pdf) (last visited June 14, 2012).

<sup>177</sup> 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).

<sup>178</sup> An interesting overview of that legislation is available here: [http://www.farmlandinfo.org/documents/29562/THE\\_WISCONSIN\\_FARMLAND\\_PRESERVATION\\_PROGRAM\\_SEPT-OCT\\_1978.pdf](http://www.farmlandinfo.org/documents/29562/THE_WISCONSIN_FARMLAND_PRESERVATION_PROGRAM_SEPT-OCT_1978.pdf) (last visited June 12, 2012).

<sup>179</sup> 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.<sup>180</sup> Participation in that program peaked in the early 1990s and has declined markedly since.<sup>181</sup>

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.<sup>182</sup> 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.<sup>183</sup> Additionally, in the years following the Act, inconsistencies between newly enacted Smart Growth planning requirements<sup>184</sup> 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.<sup>185</sup>

To address the limitations imposed by the existing law, the DATCP Secretary appointed a Working Lands Steering Committee in July of 2005.<sup>186</sup> 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.”<sup>187</sup> The purpose of the committee was to assess the tools available for farmland preservation and make

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<sup>180</sup> 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).

<sup>181</sup> 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).

<sup>182</sup> 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).

<sup>183</sup> 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).

<sup>184</sup> Wis. Stat. § 66.1001 (2011).

<sup>185</sup> 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).

<sup>186</sup> 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).

<sup>187</sup> 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.<sup>188</sup> In 2006, the committee issued its recommendations in a report to the DATCP Secretary.<sup>189</sup> 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.<sup>190</sup> 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).<sup>191</sup> Based upon its evaluation of those surveys, the subcommittee developed a set of recommendations to retain and improve the Farmland Preservation Program.<sup>192</sup>

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.”<sup>193</sup>

The committee cited community collaboration as a key strategy in its plan for preservation and development.<sup>194</sup> In its Final Report, the Working Lands Steering

<sup>188</sup> 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).

<sup>189</sup> 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).

<sup>190</sup> 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).

<sup>191</sup> 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).

<sup>192</sup> 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).

<sup>193</sup> 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).

<sup>194</sup> 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.<sup>195</sup>

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.<sup>196</sup> These easements prohibit “development that would make the land unavailable or unsuitable for agricultural use.”<sup>197</sup> DATCP is authorized to pay half of the fair market value of the easement plus reasonable transaction costs related to the purchase.<sup>198</sup> 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.”<sup>199</sup>

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.<sup>200</sup> In an effort to curb unwanted development where it is most likely

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<sup>195</sup> 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).

<sup>196</sup> Wis. Stat. § 93.73 (2011).

<sup>197</sup> James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 43 (December 2009).

<sup>198</sup> Wis. Stat. § 93.73 (2)(a) (2011).

<sup>199</sup> 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).

<sup>200</sup> 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.<sup>201</sup> 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.<sup>202</sup> DATCP reviews county and local zoning ordinances and certifies those that meet or exceed state standards as defined by statute.<sup>203</sup> 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.<sup>204</sup> 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.<sup>205</sup>

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.”<sup>206</sup> 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

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If an ordinance certification expires before the end of a tax year, farmers lose tax-credit eligibility for that year.”).

<sup>201</sup> Wis. Stat. § 91.14 (2011).

<sup>202</sup> James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

<sup>203</sup> Wis. Stat. § 91.36(8) (2011); James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

<sup>204</sup> Wis. Stat. § 91.30 (2011); James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 8 (December 2009).

<sup>205</sup> 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).

<sup>206</sup> 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.<sup>207</sup>

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.”<sup>208</sup> 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.<sup>209</sup> 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.<sup>210</sup> 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.<sup>211</sup>

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.”<sup>212</sup>

### 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

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<sup>207</sup> 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).

<sup>208</sup> James K. Matson, *Wisconsin’s Working Lands: Securing Our Future*, 82-DEC Wis. Law. 6, 40 (December 2009).

<sup>209</sup> Wis. Stat. § 91.84 (2011).

<sup>210</sup> Wis. Stat. § 91.84 (2011).

<sup>211</sup> Wis. Stat. § 71.613(2)(a) and (c) (2011).

<sup>212</sup> 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\\_land.html](http://www4.uwsp.edu/cnr/landcenter/tracker/spring2007/working_land.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.<sup>213</sup> 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,<sup>214</sup> reduces bonding authority for Working Lands by \$12 million,<sup>215</sup> and requires DATCP to conduct a year-long study of the program before any more funding is approved.<sup>216</sup> 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.”<sup>217</sup> 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.<sup>218</sup>

As mentioned above, the 2011 Act also eliminated the rezoning conversion fee.<sup>219</sup> 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

<sup>213</sup> 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](http://chippewa.com/dunnconnect/agriculture/article_6d8c66c2-8e2b-11e0-8784-001cc4c002e0.html) (last visited June 12, 2012).

<sup>214</sup> Bonding authority for PACE was initially authorized by Wis. Stat. § 20.866(2)(wg), regarding the public debt. That statute has since been repealed.

<sup>215</sup> 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).

<sup>216</sup> 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).

<sup>217</sup> 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).

<sup>218</sup> 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).

<sup>219</sup> 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.”<sup>220</sup> Opposition was reported to have come largely from developers and those confused about the impact the fees may have on farmers.<sup>221</sup>

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.

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<sup>220</sup> 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](http://chippewa.com/dunnconnect/agriculture/article_6d8c66c2-8e2b-11e0-8784-001cc4c002e0.html) (last visited June 12, 2012).

<sup>221</sup> 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.<sup>222</sup>

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.<sup>223</sup> 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.<sup>224</sup>

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.<sup>225</sup> 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.<sup>226</sup> For example, under this

<sup>222</sup> 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).

<sup>223</sup> *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

<sup>224</sup> 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).

<sup>225</sup> Program Requirements, 42 U.S.C. § 1758(j)(3) (2006).

<sup>226</sup> 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.<sup>227</sup>

## 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.<sup>228</sup>

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.<sup>229</sup> 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.<sup>230</sup>

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<sup>227</sup> *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.

<sup>228</sup> National School Lunch Program, 7 C.F.R. § 210.21(g) (2011).

<sup>229</sup> 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](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](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).

<sup>230</sup> 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.<sup>231</sup> 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

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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).

<sup>231</sup> 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](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.<sup>232</sup>

- 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.<sup>233</sup> 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.<sup>234</sup> 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

<sup>232</sup> 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).

<sup>233</sup> Colo. Rev. Stat. § 8-18-103 (2012).

<sup>234</sup> Mont. Code Ann. 18-4-132 (2011).



budget without supplemental funds.<sup>235</sup> 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.<sup>236</sup> 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.<sup>237</sup> 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.

<sup>235</sup> Derrick Braaten and Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. of Agric. Law 9, 30 (Spring 2010).

<sup>236</sup> Or. Rev. Stat. § 279A.128 (2012).

<sup>237</sup> 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."<sup>238</sup> 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."<sup>239</sup> 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."<sup>240</sup> 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.<sup>241</sup> 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

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<sup>238</sup> Agricultural Food Products Grown in State, Minn. Stat. § 16C.12 (2011).

<sup>239</sup> Acquisitions: Other States with Resident Preference, Minn. Stat. § 16C.06(7) (2011).

<sup>240</sup> Acquisitions, Minn. Stat. § 16C.06 (2011).

<sup>241</sup> 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.<sup>242</sup> 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.<sup>243</sup> 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.<sup>244</sup> 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.”<sup>245</sup> This provides more flexibility for interested state buyers to procure

<sup>242</sup> 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).

<sup>243</sup> Local Food, Farms and Jobs Act, 30 Ill. Comp. Stat. 595 (2009).

<sup>244</sup> 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).

<sup>245</sup> 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)<sup>246</sup>**

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

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preference to local products. Local Food, Farms and Jobs Act, 30 Ill. Comp. Stat 595 § 10(c) (2009).

<sup>246</sup> 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.<sup>247</sup> 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.<sup>248</sup>

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. Vermont<sup>249</sup>

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).<sup>250</sup> In January 2011, the Farm-to-Plate Strategic Plan Executive Summary was released, detailing 33 goals

<sup>247</sup> Iowa Local Farmer and Food Security Act, Analysis Section, S.S.B. 3236, 83rd Gen. Assemb. (Iowa 2010).

<sup>248</sup> 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.

<sup>249</sup> Economic Development—Agriculture, H. 287, 2011-2012 Legis. Sess. (Vt. 2011).

<sup>250</sup> 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.<sup>251</sup> The Plan created the Farm-to-Plate Network, a collaborative group that will coordinate action among organizations to accomplish these goals.<sup>252</sup> The Plan predicted that every five percent increase in consumption of food produced in the state would create 1,500 new jobs.<sup>253</sup> Since the Plan was released, Vermont's food system added approximately 500 private sector jobs and approximately 110 establishments.<sup>254</sup> 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.<sup>255</sup> 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.<sup>256</sup> 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.<sup>257</sup>

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

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<sup>251</sup> 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](http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf) (last visited June 18, 2012).

<sup>252</sup> 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](http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf) (last visited June 18, 2012).

<sup>253</sup> 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](http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf) (last visited June 18, 2012).

<sup>254</sup> 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](http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf) (last visited June 18, 2012).

<sup>255</sup> Vermont Sustainable Jobs Fund, *Grantee Profiles*, available at <http://www.vsjf.org/project-details/6/grantee-profiles> (last visited June 12, 2012).

<sup>256</sup> 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](http://www.vsjf.org/assets/files/Agriculture/Farm%20to%20Plate%20Annual%20Report_FY11.pdf) (last visited June 18, 2012).

<sup>257</sup> 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](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.”<sup>258</sup>

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.



<sup>258</sup> 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.<sup>1</sup> 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.<sup>2</sup> If a county has adopted a comprehensive plan, the

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<sup>1</sup> 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).

<sup>2</sup> Minn. Stat. §§ 394.21-394.23 (2011).



township official controls must not be “inconsistent with or less restrictive” than the county’s official controls.<sup>3</sup> 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.”<sup>4</sup> The Development Guide includes the Regional Development Framework and system plans for water resources management, parks, and transportation.<sup>5</sup>

The MLPA authorizes the Met Council to regulate development through the review and approval of comprehensive plans, which occur every ten years.<sup>6</sup> Each local government unit<sup>7</sup> 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.<sup>8</sup> The Met Council reviews comprehensive plans to ensure conformity with the metropolitan system plans.<sup>9</sup> After the Council approves the LGU’s comprehensive plan, each plan is implemented through adoption of official

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<sup>3</sup> Minn. Stat. § 394.33 (2011).

<sup>4</sup> Minn. Stat. § 473.145 (2011).

<sup>5</sup> 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).

<sup>6</sup> Minn. Stat. § 473.856 (2011).

<sup>7</sup> A local government unit is a city, county, or town within the metropolitan area. Minn. Stat. § 473.852, subd. 7 (2011).

<sup>8</sup> *Planning Handbook*, 1-8.

<sup>9</sup> Minn. Stat. § 473.175 (2011).

controls, such as ordinances and rules, which are included and described within the plan.<sup>10</sup>

The MLPA requires comprehensive plans to have specific content.<sup>11</sup> 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.<sup>12</sup>

In addition, Washington, Scott and Carver counties are required to include a land use plan for the unincorporated areas of those counties.<sup>13</sup> 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,<sup>14</sup> 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."<sup>15</sup> Nothing else in the statutory section governing the content of comprehensive plans requires comprehensive plans in the metropolitan area to specifically address farmland preservation.<sup>16</sup>

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<sup>10</sup> Minn. Stat. § 473.865, subd. 1 (2011).

<sup>11</sup> 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.

<sup>12</sup> Minn. Stat. §§ 473.86; 473.861 (2011).

<sup>13</sup> Minn. Stat. § 473.862, subd. 1(a) (2011).

<sup>14</sup> 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.

<sup>15</sup> Minn. Stat. §§ 473.859, subd. 2(d); 473.859, subd. 2(a) (2011).

<sup>16</sup> 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.<sup>17</sup> 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.”<sup>18</sup> 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.<sup>19</sup>

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.”<sup>20</sup> 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.”<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

<sup>17</sup> Minn. Stat. §§ 394.21-394.23 (2011).

<sup>18</sup> Minn. Stat. § 394.22, subd. 9 (2011).

<sup>19</sup> Minn. Stat. § 394.23 (2011).

<sup>20</sup> 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).

<sup>21</sup> Minn. Stat. § 394.231 (2011).

<sup>22</sup> Minn. Stat. § 394.231 (2011).

<sup>23</sup> 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.

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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.<sup>1</sup> 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.<sup>2</sup>

## II. THE METROPOLITAN AREA AGRICULTURAL PRESERVES PROGRAM

### A. Background

Passed in 1980, the Metropolitan Agricultural Preserves Act (MAP) established the Metro Program.<sup>3</sup> The policy and purpose section of the MAP clearly lays out its goal of preserving farmland located within the seven-county metropolitan area:

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<sup>1</sup> 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](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.

<sup>2</sup> OLA Report, at 16, 20.

<sup>3</sup> 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.”<sup>4</sup>

## **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.<sup>5</sup> 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.<sup>6</sup> Thereafter, the local government may adopt a resolution certifying the designated areas as agricultural preserve areas.<sup>7</sup> Finally, the local government’s comprehensive plan and zoning must be updated to reflect

<sup>4</sup> 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).

<sup>5</sup> 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”).

<sup>6</sup> Minn. Stat. § 473H.04, subd. 1 (2011).

<sup>7</sup> Minn. Stat. § 473H.04, subd. 1 (2011).

designated agricultural preserve areas that are set aside for long-term agricultural use.<sup>8</sup> Zoning controls must restrict non-farm uses in agricultural preserve areas, and limit residential dwellings to one for every 40 acres.<sup>9</sup>

## 2. Property and landowner requirements

To qualify for enrollment in the Metro Program, land must be located within a designated agricultural preserve area.<sup>10</sup> In addition, the parcel of property generally must be at least 40 acres and be zoned for only one residential structure per 40 acres.<sup>11</sup>

To enroll in the Metro Program, farmers within an agricultural preserve area must sign a covenant to use the property for agricultural use only.<sup>12</sup> The minimum duration for the covenant is eight years.<sup>13</sup> The restriction must be reflected on the land's certificate of title.<sup>14</sup> Commercial and industrial uses are generally not

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<sup>8</sup> 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.”).

<sup>9</sup> Minn. Stat. § 473H.02, subd. 7 (2011).

<sup>10</sup> Minn. Stat. §§ 437H.05; 473.02, subd. 2 (2011).

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> Minn. Stat. § 473H.08, subd. 2 (2011).

<sup>14</sup> Minn. Stat. § 473H.06, subd. 2 (2011).



permitted in an agricultural preserve.<sup>15</sup> The local zoning and planning authority is responsible for enforcing the land use restrictions.<sup>16</sup>

Once land is enrolled in an agricultural preserve, it must be “farmed and otherwise managed according to sound soil and water conservation management practices.”<sup>17</sup> 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.”<sup>18</sup>

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.<sup>19</sup> Enforcement is supposed to be carried out in consultation with the county soil and water conservation district.<sup>20</sup> 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.<sup>21</sup> Landowners can also be required to pay costs incurred by the zoning and planning authority in enforcing the conservation provisions.<sup>22</sup>

### **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:

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<sup>15</sup> 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).

<sup>16</sup> Minn. Stat. § 473H.17, subd. 1 (2011).

<sup>17</sup> Minn. Stat. § 473H.16, subd. 1 (2011).

<sup>18</sup> Minn. Stat. § 473H.16, subd. 1 (2011).

<sup>19</sup> Minn. Stat. §§ 473.16, subd. 2; 473.02, subd. 4 (2011) (defining “authority”).

<sup>20</sup> Minn. Stat. § 473.16, subd. 2 (2011).

<sup>21</sup> Minn. Stat. § 473H.16, subds. 2 and 3.

<sup>22</sup> 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.<sup>23</sup> No additional value from nonagricultural factors may be considered in setting the land's taxable value.<sup>24</sup> 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.<sup>25</sup> Unlike the Green Acres Program, there is no requirement for repayment of deferred taxes when land is withdrawn from the program.<sup>26</sup>

### *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.<sup>27</sup> 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.<sup>28</sup> In the

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<sup>23</sup> 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](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.

<sup>24</sup> Minn. Stat. § 473H.10, subd. 2 (2011).

<sup>25</sup> 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/evalofmnap.pdf> (July 1999) (last visited May 24, 2012), hereafter referred to as 1999 MDA Report.

<sup>26</sup> 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](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx) (last visited June 6, 2012).

<sup>27</sup> 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.

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

## **2. Limitations on public projects and assessments**

Public water and sewer systems are prohibited in agricultural preserves.<sup>31</sup> 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.<sup>32</sup>

## **3. Protection for normal farm practices**

The Metro Program prohibits local governments from enacting ordinances or other regulations restricting normal agricultural practices.<sup>33</sup>

## **4. Procedural protections related to annexation and eminent domain**

The Program places some limits on the power to annex enrolled lands.<sup>34</sup> It also includes procedural protections that apply to the acquisition of enrolled land via eminent domain.<sup>35</sup> 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.<sup>36</sup>

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

<sup>29</sup> Minn. Stat. § 473H.10, subd. 3(d); OLA Report, at 14.

<sup>30</sup> 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).

<sup>31</sup> Minn. Stat. § 473H.11 (2011).

<sup>32</sup> 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.

<sup>33</sup> Minn. Stat. § 473H.12 (2011).

<sup>34</sup> Minn. Stat. § 473H.14 (2011).

<sup>35</sup> Minn. Stat. § 473H.15 (2011).

<sup>36</sup> 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.<sup>37</sup> 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 Program<sup>38</sup>; 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.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> Note that the Greater

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<sup>37</sup> 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.

<sup>38</sup> Minn. Stat. § 40A.121 (2011).

<sup>39</sup> 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).

<sup>40</sup> Minn. Stat. § 473H.15 subd. 1 (2011).

<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

#### **E. Funding Mechanism**

Funding for the Metro Program property tax credits comes through a \$5.00 fee on all mortgage registration and deed transfers.<sup>47</sup> Counties in the seven-county

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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).

<sup>42</sup> Minn. Stat. §§ 40A.122, subd. 1; 473H.15 (2011).

<sup>43</sup> 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).

<sup>44</sup> Minn. Stat. § 473H.08, subd. 2 (2011).

<sup>45</sup> Minn. Stat. § 473H.08, subds. 3 and 4 (2011).

<sup>46</sup> Minn. Stat. § 473H.08, subds. 2 and 3 (2011).

<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> The remaining balance is forwarded to the state conservation fund and to the state general fund, split equally.<sup>50</sup> 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.<sup>51</sup>

If necessary, metro area counties may draw from the state conservation fund if the county share is not sufficient to pay the conservation credits.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup> 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.<sup>56</sup> According to personnel at the Department

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<sup>48</sup> Minn. Stat. § 40A.152, subd. 1 (2011). In Greater Minnesota, only the three counties participating in the Agricultural Land Preservation Program charge the fee.

<sup>49</sup> Minn. Stat. § 40A.152, subd. 1 (2011).

<sup>50</sup> Minn. Stat. § 40A.151, subd. 1 (2011).

<sup>51</sup> Minn. Stat. §§ 40A.151, subd. 2; 273.119, subd. 2 (2011).

<sup>52</sup> Minn. Stat. § 473H.10, subd. 3(e) (2011).

<sup>53</sup> Minn. Stat. § 473H.10, subd. 3(e) (2011).

<sup>54</sup> 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](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx) (last visited June 6, 2012).

<sup>55</sup> 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.

<sup>56</sup> Minn. Stat. § 40A.152, subds. 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.<sup>57</sup>

### **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.<sup>58</sup> 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.”<sup>59</sup> 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.”<sup>60</sup>

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.<sup>61</sup> Since its inception, only three counties—Waseca, Winona, and Wright—have chosen to participate in the Program.<sup>62</sup>

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<sup>57</sup> We were unable to obtain Department of Revenue data regarding remitted funds for the years preceding 2002.

<sup>58</sup> Laws of Minnesota 1984, chapter 654, art. 3, sec. 31-47.

<sup>59</sup> Minn. Stat. § 40A.01, subd. 1 (2011).

<sup>60</sup> 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).

<sup>61</sup> OLA Report, at 17. According to the report, some of the money went unused and was returned to the state treasury.

<sup>62</sup> 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.<sup>63</sup> An agricultural land preservation plan must designate land for long-term agricultural use, while also providing for expected growth around urbanized areas.<sup>64</sup> These designations must be incorporated into the county's comprehensive plan and official controls.<sup>65</sup> 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.<sup>66</sup>

### **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.”<sup>67</sup> In contrast to the Metro Program, there is no minimum parcel size requirement.<sup>68</sup> 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.<sup>69</sup>

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<sup>63</sup> Minn. Stat. §§ 40A.04; 40A.05 (2011).

<sup>64</sup> OLA Report, at 16.

<sup>65</sup> 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).

<sup>66</sup> 1999 MDA Report, at IV-16.

<sup>67</sup> Minn. Stat. § 40A.09 (2011).

<sup>68</sup> 1999 MDA Report, at IV-16, 17.

<sup>69</sup> 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.”<sup>70</sup>

### **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.<sup>71</sup> 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.<sup>72</sup>

#### **3. Protection for normal farm practices**

The Greater Minnesota Program prohibits local governments from enacting ordinances or regulations restricting normal agricultural practices within an

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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).

<sup>70</sup> Minn. Stat. § 40A.13 (2011).

<sup>71</sup> Minn. Stat. § 273.119, subd. 1 (2011).

<sup>72</sup> Minn. Stat. § 40A.123 (2011).

agricultural preserve unless the restriction “has a direct relationship to public health and safety.”<sup>73</sup>

#### **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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup>

#### **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

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<sup>73</sup> 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).

<sup>74</sup> Minn. Stat. §§ 40A.121; 40A.122 (2011).

<sup>75</sup> Minn. Stat. § 40A.11, subd. 1 (2011).

<sup>76</sup> Minn. Stat. §§ 40A.11, subd. 5; 40A.122, subd. 7 (2011).

<sup>77</sup> Minn. Stat. § 273.119, subd. 1 (2011).

<sup>78</sup> Minn. Stat. § 40A.11, subd. 3 (2011).

<sup>79</sup> 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.<sup>80</sup> The lack of a guarantee has been cited as a significant factor in counties’ decisions not to participate in the Greater Minnesota Program.<sup>81</sup>



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<sup>80</sup> 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).

<sup>81</sup> 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.”<sup>1</sup> 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.”<sup>2</sup> 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.”<sup>3</sup>

Consequently, the Legislature enacted the Green Acres Program to equalize taxes on agricultural land.<sup>4</sup>

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.

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<sup>1</sup> Laws of Minnesota, 1967 Extra Session, Chapter 60.

<sup>2</sup> 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).

<sup>3</sup> 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](http://www.revenue.state.mn.us/propertytax/factsheets/factsheet_05.pdf) (last visited June 5, 2012).

<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

## 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

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<sup>5</sup> Minn. Stat. § 273.111, subd. 2(a) (2011).

<sup>6</sup> 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).

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

### 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.<sup>13</sup>

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.<sup>14</sup> In

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<sup>8</sup> Minn. Stat. § 273.111, subds. 4, 5, and 8 (2011).

<sup>9</sup> Minn. Stat. § 273.111, subd. 16 (2011).

<sup>10</sup> See Stat. § 273.111, subd. 4(a) (2011).

<sup>11</sup> Minn. Stat. § 270C.85, subd. 1 (2011).

<sup>12</sup> Minn. Stat. §§ 270C.85, subd. 2(f); 270C.92, subd. 1; and 270.12, subds. 2 and 5 (2011).

<sup>13</sup> 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.

<sup>14</sup> 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.<sup>15</sup>

### **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,<sup>16</sup>
- Used during the preceding year to produce agricultural products for sale,<sup>17</sup> or
- Enrolled in a conservation program such as the Conservation Reserve Program, the Reinvest in Minnesota program, or “other similar programs.”<sup>18</sup>

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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).

<sup>15</sup> Minn. Stat. § 273.111, subd. 3(a) (2011).

<sup>16</sup> 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.

<sup>17</sup> 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.<sup>19</sup> Class 2b land is, however, eligible for enrollment in the Rural Preserve Property Tax Program; that program is described below in section VIII.<sup>20</sup>

**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.”<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

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<sup>18</sup> Minn. Stat. § 273.13, subd. 23(e) (2011).

<sup>19</sup> Minn. Stat. § 273.13, subd. 23(b) (2011).

<sup>20</sup> Minn. Stat. § 273.114 (2011).

<sup>21</sup> Minn. Stat. § 273.13, subd. 23(b) (2011).

<sup>22</sup> See Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands* (September 24, 2009).

<sup>23</sup> 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.”<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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.

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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.

<sup>24</sup> Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 3 (September 24, 2009).

<sup>25</sup> Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 3-4 (September 24, 2009).

<sup>26</sup> Minnesota Department of Revenue, bulletin to county assessors, *Determining “Impractical to Separate” Lands*, at 4 (September 24, 2009).

<sup>27</sup> 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.<sup>28</sup> 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).<sup>29</sup>

### 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

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<sup>28</sup> 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.

<sup>29</sup> 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.<sup>30</sup>

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.”<sup>31</sup>

An owner of land used for a nursery or greenhouse operation is also eligible for the Green Acres Program.<sup>32</sup> 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.<sup>33</sup> 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.”<sup>34</sup> Thus, it seems likely that if an entity’s shareholder, member, or partner resided on a

<sup>30</sup> Minn. Stat. § 273.111, subd. 3(a)(1)-(2) (2011).

<sup>31</sup> Minn. Stat. § 273.111, subds. 3(a)(3) and 3(b) (2011).

<sup>32</sup> 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.

<sup>33</sup> Minn. Stat. § 273.124, subd. 8(a) (2011).

<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup>

#### 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.”<sup>37</sup> Next, the assessor must determine the agricultural value

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<sup>35</sup> 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).

<sup>36</sup> 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).

<sup>37</sup> 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.<sup>38</sup> During this process, the assessor must consult with the DOR to determine the appropriate agricultural value.<sup>39</sup> 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.<sup>40</sup>

## 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.<sup>41</sup> Taxes deferred earlier than the most recent three years do not need to be repaid.<sup>42</sup> 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.<sup>43</sup>

## 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.<sup>44</sup> The income requirements were eliminated by legislation passed

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[http://www.revenue.state.mn.us/propertytax/factsheets/factsheet\\_05.pdf](http://www.revenue.state.mn.us/propertytax/factsheets/factsheet_05.pdf) (last visited June 05, 2012).

<sup>38</sup> Minn. Stat. § 273.111, subds. 4 and 5 (2011).

<sup>39</sup> Minn. Stat. § 273.111, subd. 4 (2011).

<sup>40</sup> Minn. Stat. § 273.111, subd. 11 (2011).

<sup>41</sup> Minn. Stat. § 273.111, subd. 9 (2011).

<sup>42</sup> Minn. Stat. § 273.111, subd. 3(c) (2011).

<sup>43</sup> 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](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/atmanual.aspx).

<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

## 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.<sup>47</sup> At that time, the law stated an assessor should determine the agricultural value by using agricultural sales outside the seven-county metropolitan region.<sup>48</sup> 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."<sup>49</sup>

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

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[http://www.revenue.state.mn.us/propertytax/reports/acp\\_06\\_agland.pdf](http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf) (last visited June 5, 2012).

<sup>45</sup> Minn. Stat. § 273.111, subd. 8 (2011).

<sup>46</sup> Minn. Stat. § 273.111, subd. 9(a) (2011).

<sup>47</sup> 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](http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf) (last visited June 5, 2012).

<sup>48</sup> 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](http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf) (last visited June 5, 2012).

<sup>49</sup> 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](http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf) (last visited June 5, 2012).

valuation was developed.<sup>50</sup> 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.”<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> 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.”<sup>54</sup>

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,

<sup>50</sup> 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](http://www.revenue.state.mn.us/propertytax/reports/acp_06_agland.pdf) (last visited June 5, 2012).

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> 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.”<sup>55</sup> 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.<sup>56</sup> The report thus recommended its continued use.<sup>57</sup> 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.”<sup>58</sup> 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.<sup>59</sup>

## **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**

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<sup>55</sup> Laws of Minnesota, 2011 Regular Session, Chapter 13, Sec. 7.

<sup>56</sup> 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).

<sup>57</sup> 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).

<sup>58</sup> 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).

<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup>

## **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.<sup>62</sup>

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.<sup>63</sup>

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<sup>60</sup> Minn. Stat. § 273.114, subd. 3 (2011).

<sup>61</sup> Laws of Minnesota, 2011 Regular Session, Chapter 13.

<sup>62</sup> Minn. Stat. § 273.114, subd. 2 (2011).

<sup>63</sup> 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.<sup>64</sup>

### 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."<sup>65</sup>

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<sup>64</sup> Minn. Stat. § 273.114, subd. 6 (2011).

<sup>65</sup> 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.<sup>1</sup> Legislation that allowed local governments to develop and use Transfer of Development Rights (TDR) programs was adopted in 1997.<sup>2</sup> 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.”<sup>3</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> Laws of Minnesota 1997, Chapter 200, codified in Minn. Stat. §§ 394.25 (county planning and zoning) and 462.357 (municipal planning and zoning).

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup> 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

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<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

#### **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.<sup>12</sup>

As of June 2012, the County had completed 45 farmland preservation projects, totaling approximately 5,312 acres of preserved farmland. Fourteen projects

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> January 9, 2011, interview with Dakota County Land Conservation Manager, Al Singer.

<sup>12</sup> 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.<sup>13</sup>

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."<sup>14</sup> 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.<sup>15</sup>

### **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."<sup>16</sup>

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<sup>13</sup> January 2012 Dakota County Board Power Point presentation by Dakota County Land Conservation Manager, Al Singer.

<sup>14</sup> 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](http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf) (last visited June 5, 2012).

<sup>15</sup> January 9, 2011, interview with Dakota County Land Conservation Manager, Al Singer.

<sup>16</sup> 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](http://www.farmland.org/documents/The_Changing_Landscape_for_Farmland_Protection.pdf) (last visited June 5, 2012).



### III. TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

As of 2008, 150 densities had been transferred under the program and 6,000 acres of farmland protected.<sup>21</sup>

#### 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

<sup>17</sup> 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.

<sup>18</sup> Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at [http://www.farmlandinfo.org/documents/37001/TDR\\_04-2008.pdf](http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf) (last visited June 5, 2012).

<sup>19</sup> Blue Earth County Zoning Ordinance, Chapter 24, Article III, Section 24-114 (October 17, 2006).

<sup>20</sup> Blue Earth County Zoning Ordinance, Chapter 24, Article III, Section 24-114 (October 17, 2006).

<sup>21</sup> Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at [http://www.farmlandinfo.org/documents/37001/TDR\\_04-2008.pdf](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.<sup>22</sup>

In 2008, 11 densities had been transferred through the program and 290 acres had been protected.<sup>23</sup> As of June 2012, there have not been any additional transfers.<sup>24</sup>

### 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.<sup>25</sup>

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.<sup>26</sup>

As of 2008, 102 densities were transferred through the program and 3,252 acres were protected.<sup>27</sup>

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<sup>22</sup> Chisago County Zoning Ordinance, Section 6.10 (December 30, 2008).

<sup>23</sup> Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at [http://www.farmlandinfo.org/documents/37001/TDR\\_04-2008.pdf](http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf) (last visited June 5, 2012).

<sup>24</sup> June 6, 2012, interview with Chisago County Assistant Zoning Director, Tara Guy.

<sup>25</sup> Rice County Zoning Ordinance, Section 520.02 (July 2007).

<sup>26</sup> Rice County Zoning Ordinance, Section 520.04 (July 2007).

<sup>27</sup> Farmland Information Center, *Fact Sheet, Transfer of Development Rights* (April 2008), available at [http://www.farmlandinfo.org/documents/37001/TDR\\_04-2008.pdf](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.<sup>28</sup> 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.”<sup>29</sup> The program also seeks to provide additional “economic opportunities” to rural landowners, while simultaneously managing and channeling the impact of development.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup> Since 2000, the County has preserved approximately 30,000 acres through its zoning ordinance provision.<sup>34</sup>

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<sup>28</sup> 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).

<sup>29</sup> 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.

<sup>30</sup> Stearns County Zoning Ordinance, Section 11.1.1 (updated May 15, 2012).

<sup>31</sup> Stearns County Zoning Ordinance, Section 11.1.3 (updated May 15, 2012).

<sup>32</sup> Stearns County Zoning Ordinance, Section 11.1.1 (updated May 15, 2012).

<sup>33</sup> Stearns County Zoning Ordinance, Section 9.117-9.118 (updated May 15, 2012).

<sup>34</sup> 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."<sup>35</sup>

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.<sup>36</sup>

As of June 2012, there have been six TDR certificates issued and 240 acres protected through the program.<sup>37</sup> The slow housing market has stifled participation in this relatively young TDR program.<sup>38</sup>

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<sup>35</sup> 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).

<sup>36</sup> 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).

<sup>37</sup> 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).

<sup>38</sup> 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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## **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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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."<sup>3</sup>

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.'<sup>4</sup> 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.<sup>5</sup>

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

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<sup>3</sup> 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](http://taxes.state.mn.us/property_tax_administrators/pages/other_supporting_content_propertytaxadministratorsmanual.aspx).

<sup>4</sup> See Minnesota Property Tax Administrator's Manual, Module 3, at 15-20.

<sup>5</sup> 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.<sup>6</sup>

<b>Data Source</b>	<b>Agricultural Land in MN, 1990 (thousand acres)</b>	<b>Agricultural Land in MN, 2000 (thousand acres)</b>	<b>Area Lost (acres)</b>	<b>Percent Lost</b>
MnGeo	26,775	23,543	3,232	12.07
USDA	30,000	27,900	2,100	7.00

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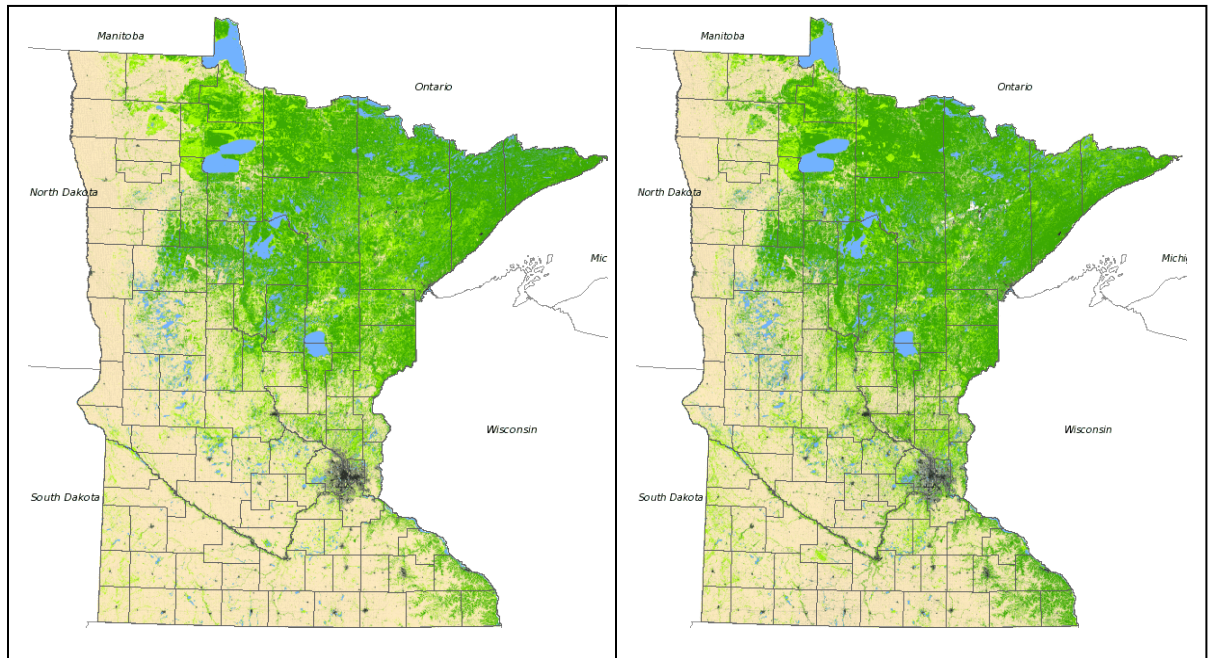
<sup>6</sup> MnGeo statewide data is available at [http://land.umn.edu/maps/impervious/landbrowse.php?year\\_imp=1990&type=county&county](http://land.umn.edu/maps/impervious/landbrowse.php?year_imp=1990&type=county&county), and USDA Farm Census Data is available at [http://www.nass.usda.gov/Data\\_and\\_Statistics/Quick\\_Stats/index.asp](http://www.nass.usda.gov/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 <sup>7</sup>	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 <sup>8</sup>
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.

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<sup>7</sup> The definitions of the land cover classifications can be found at [http://land.umn.edu/methods/landcov\\_class.html](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).

<sup>8</sup> 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 <sup>9</sup>
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.

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<sup>9</sup> 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.

<b>SCOTT COUNTY</b>				
<b>Category</b>	<b>2005 Totals</b>	<b>2010 Totals</b>	<b>Loss/Gain</b>	<b>Percent Change*</b>
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.”<sup>10</sup> 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.<sup>11</sup>

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.

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<sup>10</sup> 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.

<sup>11</sup> 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

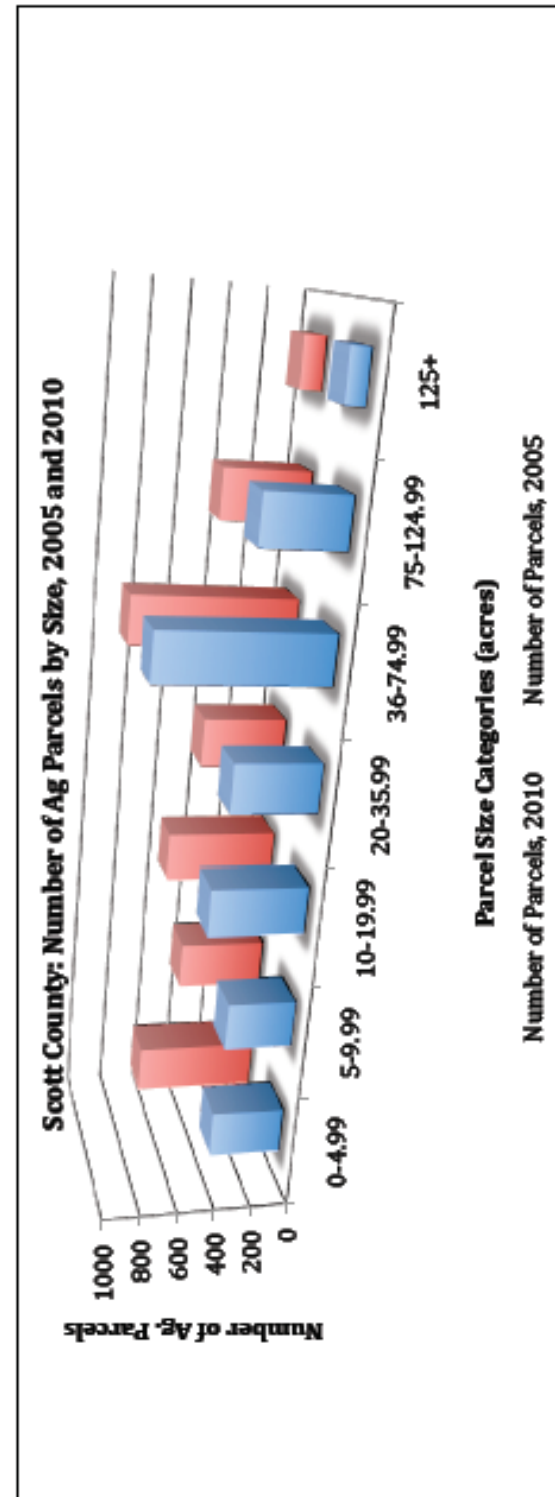


Figure 1

Attachment A (continued): Loss of Agricultural Parcels in Scott County, 2005-2010

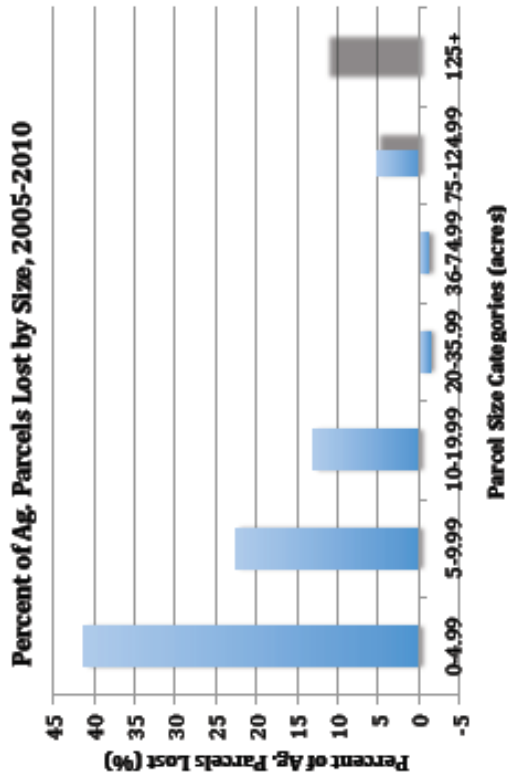


Figure 3

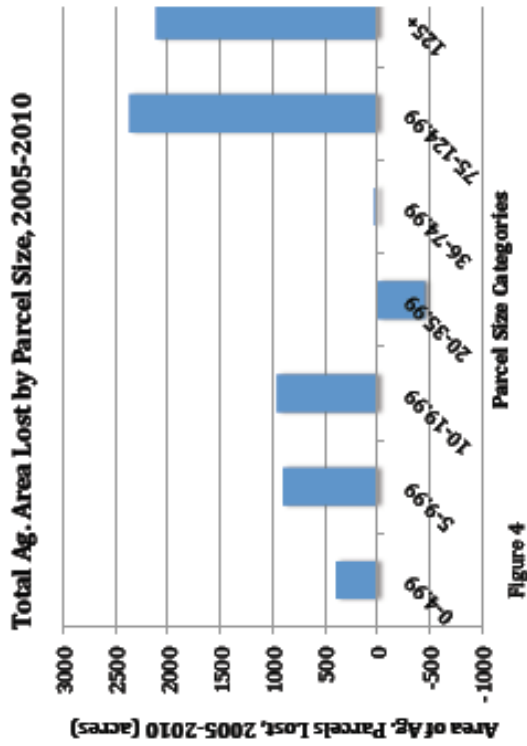
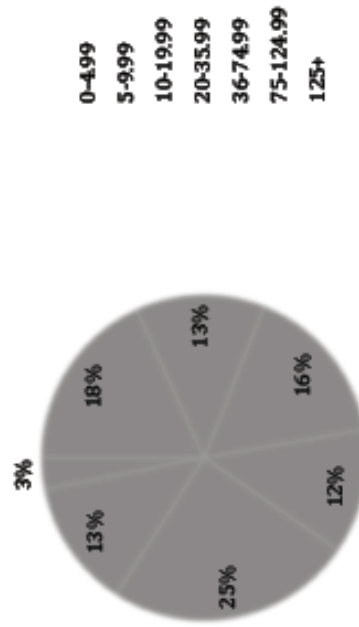


Figure 4

**Number of Ag. Parcels by Size (acres), 2005**



**Number of Ag. Parcels by Size (acres), 2010**

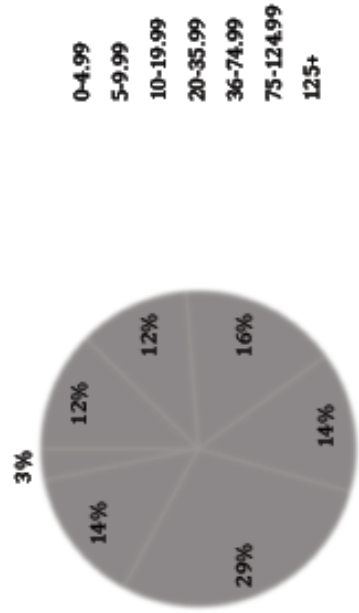


Figure 2

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

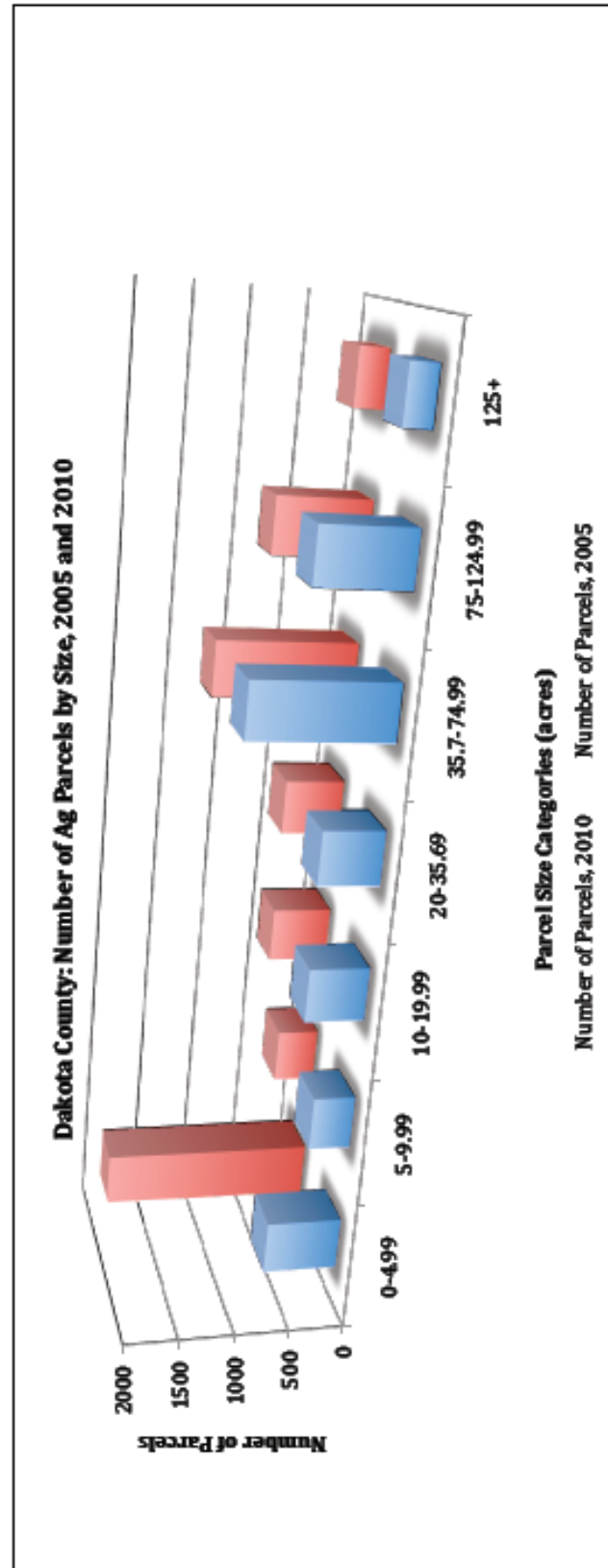
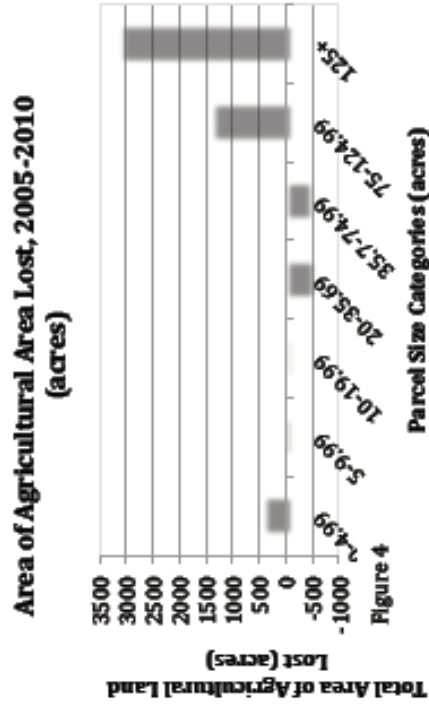
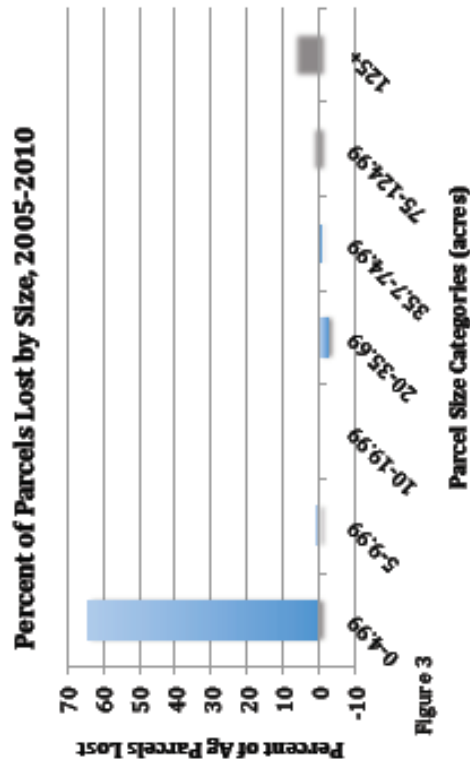
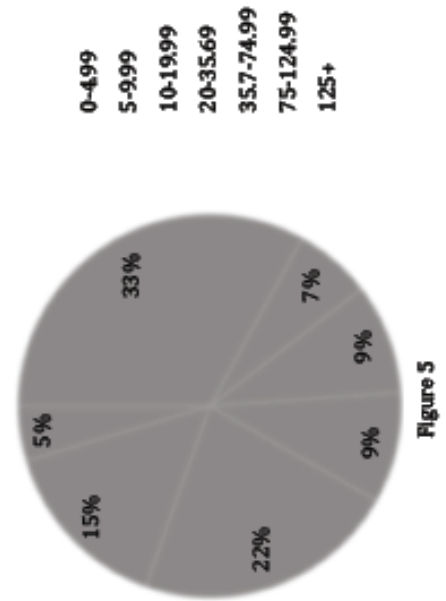


Figure 2

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**



## 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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup> 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.<sup>4</sup>

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

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<sup>2</sup> 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](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").

<sup>3</sup> 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](http://www.startribune.com/templates/Print_This_Story?sid=111387519) (last visited on May 14, 2012).

<sup>4</sup> 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.



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