

Land Acquisition, Land Exchange and Conservation Easements

A well-designed and funded land acquisition program can play an efficient and effective role in maintaining the forestland base and mitigating the adverse impacts of parcelization in Minnesota. Acquisition and public land ownership as a land protection tool has a long history of use in the United States and is perhaps the “most widely implemented ecologically-based land-use policy”¹. Use of acquisition as a land protection tool, through either full or part interest, has increased in recent decades in the United States with increasing recognition of the need to conserve remaining natural lands. In 2003 alone, 2.7 billion dollars were invested in land protection within the United States².

Historically used in some parts of the country since the late 1800s and by the federal government since the 1930s, conservation easement activity increased dramatically as states around the country enacted specific conservation easement enabling acts. In the past decade, the use of conservation easements has dramatically increased around the country as conservation agencies and non-profit conservation organizations have recognized that easements can be an effective strategy to meet their missions.

1. Acquisition Tools

These tools include the acquisition of full or partial interest in land, acquired through options including donation, purchase, exchange, tax foreclosure, or condemnation³. Conservation easements involve the acquisition of partial interest in land.

Fee simple acquisition is the acquisition of the full interest in land and provides the most complete means of affecting land use, development, management and access on a parcel. Fee simple acquisition can occur via:

Donation: Land can be acquired as a result of a donation by a private landowner. Motivations for such donations include a love of the land and interest in long-term conservation, interest in leaving a legacy, and potential tax benefits, among others.

Purchase: Land may be acquired through several purchase options including direct purchase and bargain sales.

Land Exchange: Land may be acquired by exchanging (trading) one or more land parcels for another parcel or parcels. Land exchange is attractive for public agencies and units concerned about the amount of land under public ownership or with limited funding sources.

Conservation easements, like other types of easements, involve the acquisition of a partial interest in land. Easements can be acquired in the same manner as any other interest in land (donation, purchase, or exchange). Conservation easements are a very flexible tool with the terms negotiated between the fee owner and the entity acquiring the easement. In general, conservation easements restrict land use and development to preserve or protect specific conservation features of the covered parcel of land. The land itself remains in the existing ownership, with the current landowner and future landowners bound by the terms included in the specific easement document; in most instances in perpetuity. The easement itself is conveyed to and held by an independent party, either a non-profit conservation

organization or a governmental entity, which has the right and obligation to monitor the property and enforce the terms of the easement.

Statutory Authority

Under Minnesota Law, statutory authority is required for all state and local land acquisition. Specific statutes govern state and county acquisition of natural resource lands. Various acts of Congress provide authority for acquisition and disposal of National Forest Land⁴. Land exchange is also governed by Minnesota Statutes, with sections that describe the classes of land, the conditions for land exchange, and other actions needed to facilitate an exchange.

The Minnesota Legislature has adopted the Uniform Conservation Easement Act to enable the use of conservation easements in Minnesota. The Act requires that all conservation easements must have a conservation purpose providing benefits to the public and limits entities that can hold a conservation easement to governmental bodies empowered to hold an interest in real property and private non-profit charitable organizations with a conservation purpose. Private individuals cannot hold conservation easements. An earlier, more limited, statute also exists.

2. Current Use

There have been a number of recent, collaborative efforts to identify and prioritize land protection goals for the state of Minnesota, including the Campaign for Conservation Fifty-Year Vision⁵, The Minnesota Forests For the Future advisory report⁶, the Statewide Conservation and Preservation Plan⁷, and the Lessard-Sams Outdoor Heritage Council strategic planning process⁸. Estimated protection needs for Minnesota's northern forests, identified by these plans, range from approximately 500,000 acres to over 1,500,000 acres. Within these plans, the type of ownership, means of protection or type of acquisition is not always identified.

DNR is responsible for the administration of roughly 5.6 million acres of state land, of which nearly 4.5 million are administered by the Division of Forestry. Most of these lands have been in state ownership for several-to-many decades. DNR divisions continue to acquire lands to protect habitat, biodiversity, scientific and natural heritage values, and cultural heritage sites; to provide scenic and recreational opportunities; and to protect working forestlands through the Minnesota Forests for the Future program for economic, social, cultural and environmental values. Forestland acquisition is informed by Land Asset Management Planning, conducted for all Forestry areas. Primary motivations for forestland acquisition are to ensure access for management on current public lands and to consolidate public ownership for efficient management and land use conflict avoidance⁹.

Counties have varying approaches to land adjustment and policies regarding increases in public land. Most forested counties already have high percentages of land under public ownership, including administrative responsibilities for roughly 2.8 million acres of state-owned, tax forfeited land. Land acquisition is primarily used to consolidate ownership, minimize private inholdings and improve access and management efficiency. Acquisition resulting in protection of forestland against development is often secondary, or coincidental, to acquisition for management. Some counties also acquire forestland for natural and cultural heritage purposes and recreation opportunities.

The DNR's 2009-2013 Strategic Conservation Agenda identifies landscape changes from growth and development as one of the four key trends affecting natural resource management in Minnesota. Fee-title acquisition is identified as a "fundamental tool for protecting priority lands and waters as wildlife management areas, state parks, state forests, scientific and natural areas and other DNR-administered units". Conservation easements are recognized as an additional approach to integrated public and private land management. The Minnesota Forests for the Future (MFF) program and the Minnesota Forest Legacy (FLP) program administered by the Division of Forestry are programs specifically focused on forestland protection via fee title acquisition and the purchase of conservation easements.

Minnesota Forests for the Future Program

The Minnesota Forests for the Future program was established by the 2008 Legislature to identify and protect private forestlands throughout the state. Specific acquisition goals of MFF Program are to 1) *Retain and conserve forests with high public benefits*, and 2) *Promote strategic conservation of private forests*.

To meet these goals MFF prioritizes properties that provide public recreational access, commercial forest products, and those that provide exceptional, environmental benefits as well as properties that are large, intact blocks of forest, help consolidate and link other protected lands, are linked to other conservation efforts, and provide management access to public lands¹⁰. A policy "toolbox approach", including various acquisition tools, was recommended by the MFF Commissioner's Advisory Team; however, working forest conservation easements have been the only tool identified through specific target acreage recommendations and performance measures. The Advisory Team is in the process of revising acquisition targets and project scoring criteria. Completion of an MFF implementation report, with revised targets and criteria is anticipated in May 2010.

Minnesota Forest Legacy Program

The Minnesota Forest Legacy Program (MFLP) is a state program with federal funding, developed to implement the federal Forest Legacy Program. The federal program only allows easements to be held by government entities. As a result, MFLP has focused strictly on conservation easements. However, the program also identifies important forestlands that face potential conversion and is well integrated into MFF.

According to Lands and Minerals Division records, the DNR acquired over 80,000 acres of natural resource land in fee title, at a cost of more than \$127 million, from FY 1998 to FY 2008 (Fig. 1 and 2). Over the same time period, the Department spent just over \$28 million for the acquisition of easements on nearly 72,000 acres¹¹. Minnesotans have also donated over 78,000 acres, since record keeping began, to the Department of Natural Resources¹².

On average the percent of those fee title acres that were acquired by the Division of Forestry was small. In fact, DNR forestland ownership has changed little over the past two decades¹³. Recent Forestry fee-title acquisitions have focused on inholdings within state forests and other state ownerships, parcels that provide access to state land, and protection of critical habitat and corridor linkages.

Fig. 1

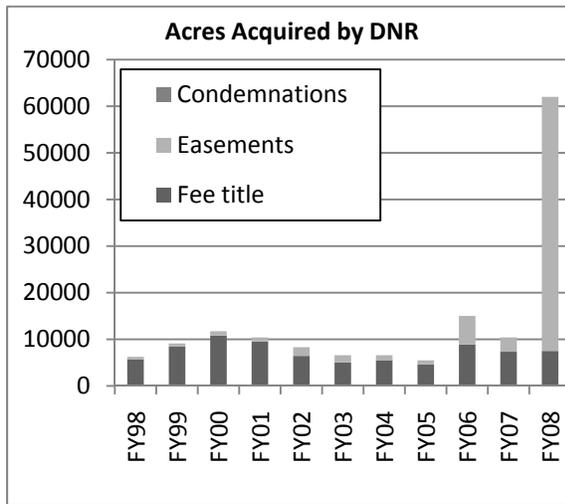
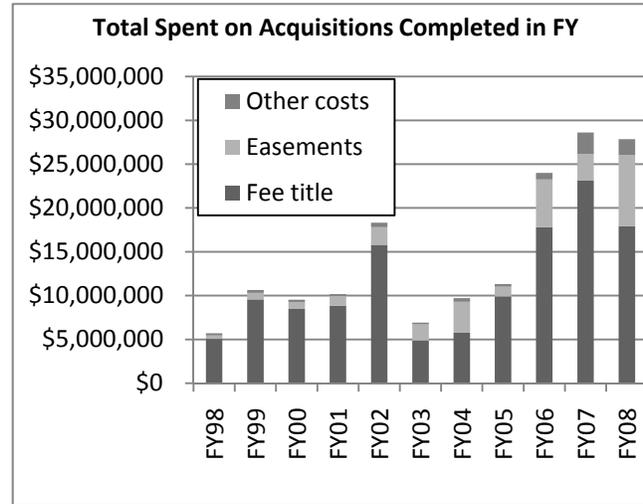


Fig. 2



The MFF and FLP acquired the bulk of the easement acreages obtained by the state. Although the number of easements held through either the earlier FLP or the more current MFF is relatively small (26) the acreage protected (65,864 acres) is quite substantial—with another 8 easements pending that will protect an additional 279,900 acres. These easements have been purchased, primarily at fair market value using comprehensive “before and after” appraisals.

From 1999-2008, the MFF and FLP programs acquired interests in 65,864 acres of land at a cost of nearly \$21 million (128 acres were donated; the remaining were all acquired by conservation easements with the state paying 44% of the costs)¹². The Upper Mississippi conservation easement will add another 187,277 acres at a cost of \$45 million, \$36 million of which was provided in state funding from the Outdoor Heritage Fund. On average, forestland easements have required only 30-60% of fee acquisition costs. By focusing more recently on the largest tracts of land available, DNR has been able to keep upfront transaction costs to a minimum.

Conservation Easements

Although the use of conservation easements has dramatically increased around the country in the past decade, data on the extent to which conservation easements are used, and by whom, are limited. In an effort to partially address this, some states have required that their natural resource agency be notified when land trusts acquire conservation easements.

The 2005 National Land Trust Census, the only national data compilation on conservation activity, notes that the effectiveness and popularity of private conservation is demonstrated by the vast gains in acreage protected and by the establishment of new land trusts in many communities across the country. This is evidenced by a tripling of the pace of private land conservation, a 148% increase in the use of conservation easements, and a doubling of total acres conserved. Private state and local land trusts have helped protect more than 37 million acres of land and now hold conservation easements on more than 6,245,900 acres of land, a dramatic increase from 2000. The Nature Conservancy alone holds easements on another 3.2 million acres of land.

While conservation easements activity is increasing across the country, much of that conservation activity has taken place in parts of the country that have the longest history of working with conservation easements and private land trusts. In the forested northeast where conservation easements have a substantial history, land trusts held conservation easements on 1,492,000 acres in Maine (with a single easement accounting for half of that acreage), 399,681 acres in Vermont, 191,095 acres in New York and 133,836 acres in New Hampshire, as of 2005. In the west, easement activity focused on huge swaths of unprotected forests and grazing lands. The existence of public funding or other conservation incentives, such as transferable tax credits in Colorado and Virginia, fueled much this conservation easement activity.

There is no statewide registry or list of conservation easements or easement holders in Minnesota. In 2006 the Minnesota Land Trust commissioned a study of conservation easement activity in Minnesota; data were updated in 2009. Entities contacted for the study included: *all federal agencies* owning or potentially owning land in Minnesota, *all state agencies* known to hold easements or potentially holding easements, *selected local units of government*¹⁴, and all those *private, nonprofit conservation organizations* known to hold easements or thought to be interested in easements.

TOP 10 STATES WITH THE MOST LAND UNDER CONSERVATION EASEMENTS HELD BY STATE AND LOCAL LAND TRUSTS	
STATE	ACRES UNDER EASEMENT
Maine	1,492,279
Colorado	849,825
California	427,411
Vermont	399,681
Virginia	365,355
Maryland	191,330
New York	191,095
New Mexico	142,072
Pennsylvania	139,301
New Hampshire	133,836

Most easements in Minnesota have been acquired through voluntary transactions with the landowner by purchase, gift or bargain sale. A few conservation easements were acquired by the federal government years ago through condemnation along the St. Croix River. Many of the easements held by local units of government have been obtained as part of local transfer of development rights programs or negotiated as part of the local development review and approval process. Most easements currently held by state or federal agencies have been purchased, often but not always at full fair market value. Easements held by non-profit organizations are more likely to be donations or deeply discounted bargain sales.

The DNR, a major conservation easement holder in Minnesota, is currently in the process of comprehensively reviewing and analyzing its easement holdings under a study funded by the Legislative-Citizens Commission on Minnesota Resources (LCCMR). DNR data will be more complete and accurate when that study is completed but is relatively accurate at this stage.

The study identified more than *12,000 easements* protecting approximately *524,200 acres* of land and almost *700 miles of shoreline*—positioning Minnesota as a major state in terms of numbers of conservation easements (Table 1). The level of activity is even greater than indicated when *pending* conservation easement activity that will close in coming months is added. This includes approved and pending very large working forest easements that will protect approximately *279,900 acres* and the most recent rounds of pending WRP/RIM Reserve easements that will protect an additional *105,000 acres*.

Table 1. SUMMARY OF CONSERVATION EASEMENT ACTIVITY IN MINNESOTA						
October 2009						
	# OF EASEMENTS			ACRES UNDER EASEMENT		
	Permanent	Term	Total	Permanent	Term	Total
FEDERAL AGENCIES	4,534	162	4,696	164,224	14,062	178,286
STATE AGENCIES	6,277	494	6,771	289,250	10,028	299,278
LOCAL UNITS OF GOVERNMENT	418	0	418	6,929	0	6,929
CONSERVATION ORGANIZATIONS	423	0	423	39,718	0	39,718
TOTAL	11,652	656	12,308	500,121	24,090	524,211

Over 96% of easements are held by government agencies, with approximately one-half of those at the federal level and one-half at the state level. Much more *acreage* is protected by state held easement, an amount that will increase dramatically as currently pending easements close. Almost all easements held by nonprofit organizations are held by a single entity, the Minnesota Land Trust (91%). Ninety five percent or more of all conservation easements are perpetual, with most current easement programs preferring perpetual or permanent easements.

Compliance monitoring of conservation easements is handled inconsistently. Some holders monitor annually, some periodically and some not at all -- a particular problem among public agencies. There is, however, growing recognition of the need to create and implement an easement monitoring program as a hedge against more costly violations and enforcement actions. Few easement holders (and *no* public agencies) have funding dedicated to long-term stewardship and monitoring of easements. Public agencies typically rely on annual appropriations or other general operating dollars.

The DNR monitors MFF and FLP easements annually. In recognition of the importance of monitoring, DNR has included \$750,000 for conservation easement stewardship as part of its budget for its pending purchase of an interest in 189,000 acres of land in from UPM/Blandin Paper Company, approved for

funding from the Outdoor Heritage Fund, and is exploring mechanisms for protecting this funding to the extent possible.

BWSR has a long history of extensively working with conservation easements, particularly in the agricultural areas of Minnesota. Operating primarily under the authority of the Reinvest in Minnesota-Reserve Program (RIM Reserve) established by the Legislature, BWSR has used conservation easements to keep marginal agricultural lands out of crop production to protect soil and water quality and support fish and wildlife habitat. To date, easements have been focused on the Minnesota River Valley and other lands predominantly in the prairie/forest agricultural areas of the State. Easements are very restrictive—limiting development and agricultural activity—and are implemented using a standardized document. As a result, the BWSR easements exclude land suitable for even limited development or agricultural activities, averaging about 40 acres in size. Public access is not allowed.

The least amount of information is known about conservation easements held by local units of government. Collectively, contacted local units of government in Minnesota held only 418 easements protecting less than 7,000 acres of land—approximately 1% of easement-protected land in the State. These numbers, however, are marginally accurate. Only a very small segment of local units of government were contacted. In general, easements held by local units of government protect smaller acreages and are less likely to be periodically monitored.

In contrast to some states, only a handful of private, non-profit conservation organizations hold easements in Minnesota, and the vast majority of those are held by the Minnesota Land Trust. Other easement holders include mainly national organizations with Minnesota programs including The Nature Conservancy and Ducks Unlimited. Private nonprofit conservation organizations hold fewer than 500 conservation easements protecting approximately 40,000 acres of land.

Exchange

The DNR has a land exchange program to improve management efficiency, often through consolidation of public lands and targeting of private inholdings. The USDA Forest Service also uses land exchange to acquire lands. Like fee-acquisition, land exchanges are conducted to improve management efficiency, protect significant areas, and help achieve broad conservation goals. Exchanges may be identified as the most appropriate option when a need is identified to both acquire and dispose of lands. Like the state and federal agencies, counties use land exchange to consolidate and provide access to public land and minimize inholdings. Public land exchange transactions may take one-to-many years to complete.

Protection of important natural resources and public benefits are sought and prioritized through the transfer of lands. As a result of fragmented ownership and recent divestments of timber industry land, there has been significant interest in land exchange in Minnesota in recent years, with a focus on land consolidation.

In 2008, the Minnesota Legislature approved legislation to “expedite exchanges of land involving the state and governmental subdivisions of the state” (MN §94.3495). This was an acknowledgment of the mutual interest held by the State and counties to conduct large land exchanges to improve forest management efficiency and intended to make the land exchange process of publically owned lands

more efficient and less costly. The resulting legislation provided for changes in land appraisal and title requirements on public lands. School trust lands¹⁵, which are distributed across the state and often isolated, were excluded from this legislation. Staff from counties and the State indicated the legislation has had little impact on the consolidation of their lands, primarily because acquired forestlands comprise roughly 10% of state-administered land. Some county staff also noted difficulty in finding qualified, certified appraisers. A review of current state land asset planning and regional pilot projects should be conducted to determine whether identification of priorities has resulted in improved decision making or reduced assessment period for land exchange at regional levels. Development of additional pilot projects to test expedited exchange of school trust lands and improved land asset management where appropriate could also be considered.

From FY 2000 to FY 2009, the State of Minnesota conducted 75 Class A¹⁶ land exchanges (exchanging roughly 10,000 acres for 23,000 acres). Land exchanges were primarily conducted to consolidate and provide access to ownerships, acquire inholdings, exchange lakeshore lease land, and resolve trespass problems. According to Land and Minerals records, 95% of state land exchanges (Class A or B) over the past 20 years have been with private landowners (Table 2).

Table 2. State Land Exchange Partners 1990 - 2009

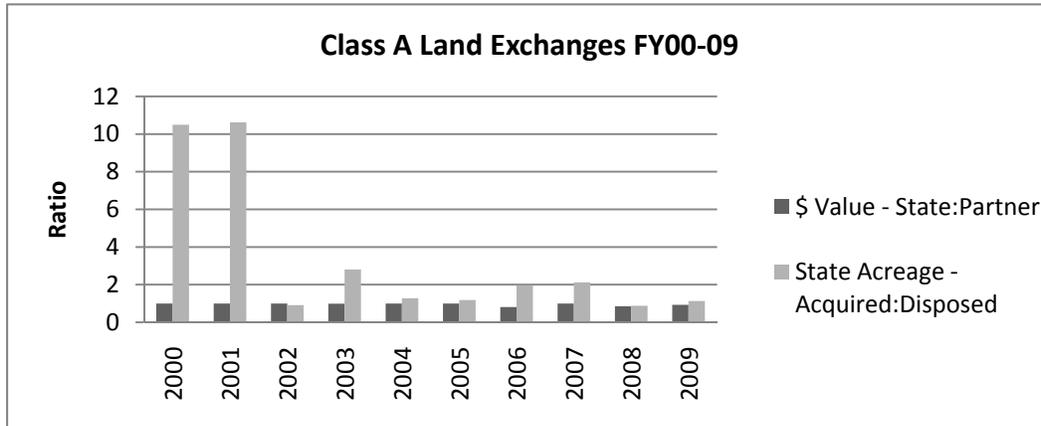
Classification	Ownerships	# of Exchanges
Class A	State and Private	225
Class B	County and Private	180
Class A/B	State and County	17
Federal	State and Federal	6

Through equal value exchanges, the State has gained more acres than it has disposed via land exchange transactions over the past 10 years (Fig. 3). Through land exchange, Minnesota has consolidated and increased public land while redirecting private land ownership. However, over similar ten-year timeframes, fee title acquisition and conservation easements protected roughly 16 to 18 times as many acres as the net gain in exchanged lands.

Currently, most forested counties are using land exchange to adjust ownership patterns. Actual fee acquisition of natural resources land, resulting gains in public ownership, is limited and mainly focused on small parcels for access and recreational opportunities such as trails. Counties are also concerned about their ability to manage lands into the future with possible reductions in or eliminations of payments in lieu of taxes (PILT). From FY 2000 to FY 2009, there were 97 Class B land exchanges that transferred roughly 16,000 acres for 16,000 acres. Unlike the State and Federal governments, recent county land exchanges have not increased public landownership, but they have had the opportunity to

redirect private ownership and development. Counties with the most recent land exchanges include Cass, Crow Wing, Itasca and Lake.

Fig. 3



3. Particular Issues Related to Conservation Easements

Legal and Related Issues

Because of their unique nature, conservation easements often raise other legal and related issues, such as their impact on other interests, duration and the ability to amend or terminate easements.

- A conservation easement does not take precedence over any other pre-existing rights or interests in the land without consent of that party.
- The Uniform Conservation Easement Act specifically allows, and in fact has a presumption in favor of, perpetual conservation easements. But an easement does not need to be perpetual to be valid. Federal tax law requires easements to be perpetual to be deductible as charitable gifts. Most programs now favor perpetual easements.
- The Uniform Conservation Easement Act states that easements may be “released, modified, terminated or otherwise altered or affected in the same manner as other easements.” However, the ability to amend an easement may also be subject to restrictions from other sources.
- Conservation easements are designed to be difficult to terminate under most situations. However, there are limited circumstances under which an easement might be terminated.

While conservation easements are now well-accepted in most parts of the country as effective and efficient land protection tools if used under the right circumstances, there are a number of emerging concerns about easement use. Many can be addressed through appropriate program design.

Easement Stewardship and Funding

As conservation easements age, landownership changes and easement violations increase, easement holders and those that fund easements are increasingly aware of the importance of an ongoing easement stewardship and enforcement program. Through its recently created accreditation program,

the Land Trust Alliance is able to advance the importance of easement stewardship with adequate funding. Locally, the Minnesota Land Trust has completed the accreditation process and has become one of the first land trusts in the country to achieve that status. Accreditation provides recognition that a conservation easement stewardship program meets national standards for excellence.

Public agency easement holders, however, often face difficult funding challenges, relying on annual appropriations rather than dedicated funds. Private land trusts often face even more challenging funding issues. Even more importantly, many public agencies do not have a comprehensive understanding of the locations or terms of their easements, making easement monitoring impossible and enforcement based upon complaint. Many believe that easements will be increasingly violated and thereby lose legal, political and practical support if long-term stewardship issues are not systematically addressed.

Monitoring and Enforcement

Effectiveness of conservation easements as a permanent land protection tool is linked to the stewardship of those easements. Specific monitoring and enforcement rights of an easement holder are typically detailed in the easement document itself. Easement enforcement is typically limited to the easement holder or a holder of third party right of enforcement. The best way to prevent easement violations is to maintain an active easement management and monitoring program.

There are no specific legal or regulatory requirements that outline the degree of monitoring required. However, the Land Trust Alliance (LTA) recommends annual monitoring that includes landowner contact, not just evaluations of the land, to prevent easement violations. The LTA has some limited information to support that approach. Historically, public agencies have been less likely than private land trusts to create and implement comprehensive easement monitoring programs. That is now changing as both the public and the private sectors have recognized that conservation easement sustainability may well depend upon well-established easement monitoring programs, coupled with the commitment of easement holders to follow-up on easement violations.

In addition to the recognized need for monitoring and enforcement, conservation easement programs increasingly involve other management responsibilities such as responding to landowner requests for information, handling landowner outlined approvals, and keeping accurate data. Perpetual conservation easement management is not without cost. As suggested by the LTA, many non-profit conservation organizations have established programs to assist in understanding long-term easement management costs and implemented programs for funding these long-term costs. Much of this work has been documented by the LTA.

In the private nonprofit sector, a preferred approach includes building dedicated funds to a level sufficient to generate annual income to cover projected annual easement management costs along with reserves sufficient to cover potential litigation. The Minnesota Land Trust has conducted a comprehensive analysis of its easement stewardship and enforcement costs and estimates that it typically needs approximately \$700 annually to cover the costs of stewardship for each easement it holds. Therefore, the Land Trust looks for approximately \$14,000 per easement to “endow” these

annual costs along with another \$1,000 per project for its enforcement fund. Dedicating funds through this approach is rarely possible for public agencies, requiring that they typically rely on annual budget appropriations for easement management and enforcement.

Tax Issues

Federal (and state) income tax deductions for qualified conservation easements.

Since 1976, the federal tax code has recognized a gift of a conservation easement that meets the requirements specified in the tax code and related regulations as a charitable contribution that allows a taxpayer can take a federal income tax deduction for the value of the easement. The provisions in tax law that allow this deduction are an exception to the general tax rule that taxpayers may take a deduction for a gift only when they give up their entire interest in the property involved¹⁷. As a result, there are extensive requirements governing conservation easement donations that are designed to make sure that there is a public benefit in any transaction for which a donor is taking a charitable contribution deduction by ensuring that the conservation values of the property are protected in perpetuity in exchange for the tax benefits to the donor.

A limited number of studies indicate that landowners are primarily motivated to donate conservation easements by a desire to protect the land. Nevertheless, it is clear that the significant income tax benefits available from donating easements have encouraged the donation or bargain sale of conservation easements around the country. In 2008, Congress renewed a special rule, for two additional years (until December 2009), expanding the federal income tax benefits of conservation easements from a maximum deduction of 30% adjusted gross income in any year to 50%. The LTA estimates that allowing landowners to deduct a larger portion of their income, over a longer period of time, has *increased* the pace of conservation by at least *535,000 acres over the past two years*. In 2006, there were more than 3,500 federal income tax deductions for conservation easements totaling more than \$1.48 billion dollars. The average value of each conservation easement deduction was over \$422,000

Federal estate tax benefits for conservation easements.

A federal estate tax is levied on a decedent's estate. Since passage of the Economic Growth and Tax Relief Reconciliation Act of 2001, the amount of an estate that is not subject to tax has increased from \$675,000 to \$3.5 million in 2009. For tax year 2010, there is no estate tax at all. Without congressional action in 2010, the 2001 law will expire and in 2011, the estate tax will be reinstated with a more limited \$1 million credit and with tax rates at the 1997 levels of up to 55 percent from the current level of 45 percent.

As a result of these changes over the past few years, increasingly fewer estates have been liable for any estate tax. Nevertheless, estate tax appears to fall more heavily on those with appreciated assets such as farms and ranches. The U.S. Department of Agriculture estimates that while approximately 1% of all estates owe estate taxes, 4% of all farm estates owe estate taxes. As a result, estate taxes can lead to the break-up, sale and development of family-owned farm, ranch and forestlands, even when landowners would prefer to keep these lands intact.

Other data indicate that the impact of estate taxes may be even greater for forestland than for farmland. Findings from a recent study reported in a publication of the Society of American Foresters indicated that 38% of forest estates owed federal estate tax, a rate obviously many times higher than for U.S. estates in general. In 28% of the cases where estate tax was due, timber or land was sold because other assets were not adequate. In 29% of the cases where land was sold, it was converted to a more developed use. Given concern about this issue, the U.S. Forest Service has recently written an entire book geared at assisting nonindustrial private forest owners with estate planning¹⁸.

State conservation tax credits

While taxpayers who donate conservation easements often qualify for the federal income tax deduction described above, 15 states (not including Minnesota) also provide for more extended state income tax benefits for conserving land by offering a *credit* against state income tax liability. The Conservation Resource Center, a nonprofit organization that specializes in transferring or selling tax credits, concluded in 2007 that effectiveness of tax credit programs to *increase* land protection was dependent upon the *value of the credit* available to a taxpayer and the *transferability of credits*. In short, programs with high-value, transferable credits will drive significant additional land protection.

Property tax issues related to conservation easements

For many rural landowners, high property taxes are a primary reason they sell all or part of their lands for development. Landowners financially stressed by property taxes often look to property tax relief programs as an alternative.

In contrast, local units of government relying on property taxes to support needed local services are typically concerned about programs that either lower land values (and as a result the taxes based upon those values) or otherwise impact property tax revenues. Consequently, many local governments are concerned about programs and practices that limit development, including conservation easement programs, generally believing that development will enhance land values and thereby increase the resultant taxes. There is little direct data, however, regarding the impact of conservation easements on land values, property taxes and property tax revenues in Minnesota.

Minnesota Statute Section 273.117 does recognize that conservation easements can affect land values but leaves the analysis to the discretion of the local assessor:

The value of real property which is subject to a conservation restriction or easement may be adjusted by the assessor if:

- *the restriction or easement is for a conservation purpose as defined in section 84.64, subdivision 2, and is recorded on the property;*
- *the property is being used in accordance with the terms of the conservation restriction or easement.* [Emphasis added]

In 2005, the Minnesota Legislature tasked the Minnesota Department of Revenue to study property tax assessment practices related to lands enrolled in selected conservation programs in agricultural areas,

some of which involved the use of permanent conservation easements. The study concluded that there was a significant lack of data available, a major factor leading to inconsistent valuation approaches among assessors. The report also concluded that state law provided inadequate guidance to assessors to promote uniformity or consistency in assessing protected land and that the Department of Revenue should play a greater role in this area. Finally, from the limited data available, the report concluded that not all temporary or permanent conservation restrictions negatively impact land value—a conclusion that led to the changes in the statute set out above giving county assessors greater discretion in evaluating an easement’s impact.

A later study commissioned by Embrace Open Space, a collaborative of public and private organizations working to conserve land in the greater metropolitan area, evaluated the relationship between proximity to open space and residential home values in Washington County. The study looked at a range of open spaces; including conservation easement protected property, and concluded that homes directly adjacent to open space were worth an average of \$16,750 more than those that were not; resulting in a positive impact on Washington County property tax revenues of more than \$1.56 million.

There is also very limited data from other states about the relationship between conservation easements and property taxes. A frequently cited 2004 study of Vermont towns assessing overall impact of easements on the local tax base found that conservation easements were either neutral or diminished property taxes over the long run. A 2005 study by the Trust for Public Land (TPL) looked more broadly at the effect of land conservation—both through fee title land acquisition and conservation easements—on municipal property taxes in New Hampshire in comparison to the effect of development on property taxes. The study looked at both short-term and long-term impacts. In the short term, the TPL study found that permanent protection of land generally results in a tax increase to local taxpayers. In the long term, however, and contrary to common perception that development will result in lower taxes, property tax bills are generally higher in more developed towns than in rural towns.

4. Lessons from Land Conservation Programs

Most states have at least one land conservation program, protecting benefits ranging from recreational opportunities to cultural resources to resource industries to open space and biodiversity¹⁹. Based on an analysis of existing Minnesota programs and review of several major land protection programs and associated literature, the following is a summary of principles that should be maintained or incorporated into Minnesota’s forestland protection efforts (including specific examples from Florida Forever, Land for Maine’s Future, New York’s Open Space Program, and Wisconsin’s Knowles-Nelson Stewardship program).

A. STRUCTURE: Developing a Clear Program Structure and Organization

Conservation programs and projects are most successful when they advance a vision developed through collaboration of diverse partners and are grounded in locally-based initiatives²⁰. Designation of an entity to communicate opportunities, share information, and coordinate implementation enhances the efficiency of partners. Too often conservation programs are insular, often due to a lack of resources and a need to focus on specific mandates. Minnesota has established land protection programs and funding;

however, the effectiveness of these programs could be enhanced to better address forest fragmentation through increase coordination and directed implementation.

A coordinated program, built on existing, experienced parties can provide information and a strategic perspective. Designation of a “central” entity provides a clear path for communication of new information and a resource for partners that are external to, or from different, conservation networks. Initiatives to create stable sources of funding have been the catalyst for most state land conservation programs, providing the capacity and resources over time to engage partners and leverage funds.

Establishment of the Minnesota Forests for the Future (MFF) program, as envisioned by the DNR Commissioner’s Advisory Team in their 2008 report²¹, was recommended to:

...provide overall guidance for acquisition and stewardship of forest conservation easements and application of other forest conservation tools in Minnesota...[and to] collaborate with public and private partners to prevent the parcelization, conversion, and fragmentation of Minnesota’s private working forests...

The Minnesota Forests for the Future program was subsequently established by the 2008 Minnesota legislature (MN § 84.66), providing an existing platform for a coordinated and more efficient approach to forest land conservation

Like Minnesota Forests for the Future, the Land for Maine’s Future (LMF) program was designed to respond to changing land ownership patterns and land uses that threatened natural and cultural heritage values and Maine’s resource-based economy. In developing the LMF program, Maine adopted and relied upon a broad set of acquisition priorities. Over the years, locally-driven acquisition projects aided the success of the LMF program, resulting in local support and acceptance of projects. Similarly, local support of forestland conservation can be fostered by the MFF program if the program serves as a source of information and strategic direction based on well-defined priorities.

B. INVOLVEMENT: Collaboration and Partnerships Strengthen Programs

Minnesota has clear experience in developing and advancing programs and initiatives through collaboration of diverse partners, resulting in additional funding sources, complimentary projects, and additional support for program initiatives. Dialogue among partners can be an efficient way to identify mutual goals and objectives. Providing opportunities for public involvement through open meetings, listening sessions and advancement of locally-driven initiatives maintains program support, provides oversight and fosters a more transparent program.

Effective programs throughout the country often involve government agencies and private, nonprofit conservation organizations with expertise in working forest conservation easement transactions and funding as well as the landowners of protected lands. In addition to facilitating negotiations, private nonprofit organizations, as well as public agencies, should be funded to buy land or hold easements as appropriate. These multi-party public/private partnerships can provide the strength, durability and flexibility needed to insure long-term program success.

Successful programs have also recognized the need to make land protection actions relevant to the local economy, as illustrated by New York's Open Space Program which recently advanced protection of 160,000 acres in the middle of the Adirondack region via a conservation easement formally supported by 29 towns whose development needs were incorporated into the project plan.

Both New York and Maine have relied heavily on regional advisory groups with representatives from diverse interests. Based on over two decades of experience with the LMF Program, the most successful initiatives were regionally based and, often, championed locally. As a result, a recent review of the program recommended additional resources be provided to regional planning entities and alignment of state agency resources to support "regional conservation partnerships"²². Investments in staff and resources also can fuel volunteer engagement.

Some programs, such as New Hampshire's Land and Community Heritage Investment Program (LCHIP) support regional initiatives primarily through grants to local communities and organizations for the conservation of important natural, cultural and historic resources. Of the 28 land conservation programs recently reviewed by the Environmental Law Institute, 75% administered grant programs for land acquisition and half of the programs protected land solely through grants to units of local government and other entities²³.

C. TOOLS: Information, Planning, and Implementation

Information and Planning

The tension between strategic planning for protection and quick and efficient land acquisition requires proactive development of conservation priorities²⁴. Land acquisition targeting for conservation is extensive²⁵, but the application, implementation and effectiveness of prioritization tools is far from perfected. To effectively invest conservation dollars, programs must strategically identify and communicate priorities with public and private conservation partners. States often adopt prioritization strategies by developing or drawing upon existing conservation plans and data resources.

Effective working forest protection programs incorporate provisions that address issues unique to forest settings and protect lands that provide multiple benefits. To insure that conservation investments most effectively meet program goals, Maine, New Hampshire, New York and Vermont, all with long-standing forest conservation programs, have established mechanisms for setting acquisition priorities and setting criteria for the use of public money. Maine's Land Acquisition Priorities Advisory Committee has developed a set of priorities for acquisition efforts in the northern forest. New York's Open Space Plan, first completed in 1992 and updated every three years, has consistently guided the use of hundreds of millions of dollars from the state's Environmental Protection Fund as well as other conservation strategies. Similarly, the federal Forest Legacy Program requires participating states to identify project areas in which Forest Legacy funds will be spent, insuring that more than \$1.5 billion dollars have been focused on the highest priorities.

The recent development of several statewide conservation plans and supporting geospatial data in Minnesota has provided direction for investments; however, the volume of information has limited effective communication of priorities for comprehensive, complimentary conservation. A synthesis of

these and other statewide land protection priorities could be communicated among conservation partners via a strategic document similar to Wisconsin's Land Legacy Report²⁶. At the same time, strategic application of conservation measures does not necessarily require a statewide "master" plan as long there is a clear framework of priorities or criteria with which to assess projects²⁷. If effectively communicated, priority mapping and criteria refinement underway by the MFF program can provide strategic direction to all forest conservation partners in Minnesota.

The Conservation Toolbox

Over time, programs designed to focus on fee acquisition have shifted emphasis to conservation easements and other incentives with the recognition that a variety of tools are needed and will be applicable in different situations. For example, the LMF program in Maine has increasingly used conservation easements and partnerships in acquisitions and management²⁸. In New York, conservation easement projects outnumber fee acquisitions by nearly 9:1²⁹.

As of 2008, the Florida government has spent approximately \$300 million per year on protecting over 2 million acres of conservation lands since 1990 via fee acquisition and conservation easements. Nearly 80% of the acres have been protected by fee acquisition³⁰. *Florida Forever*, and its precursor *Preservation 2000*, has been recognized by many as the most ambitious land acquisition program, and one of the most successful, in the nation³¹. Criticisms of the program include the great cost, tax base reductions, a loss of available private lands, and maintenance needs on acquired lands (resulting in annual appropriations for management). A recent review of Florida Forever and other land conservation programs in Florida identified the need to use additional land conservation tools if the conservation programs are to remain effective into the future³².

Similarly, here in Minnesota, the 2008 Strategic Report of the DNR Commissioner's Advisory Team on the Minnesota Forests for the Future Program³³ recommended that the state

use a toolbox approach, in which multiple tools are applied to meet forest conservation goals. The range of tools includes easements, fee title acquisition, land exchanges, tax policies, and cost-share programs.

While listed as a conservation tool, land exchange is not extensively used in other state land protection programs. In fact, Minnesota's Land Exchange Program has been used as an example of active land exchange programs³⁴. Given an average of 10-12 exchanges per year in Minnesota and even fewer exchanges reported by other states, land exchange is either underutilized or too complex to be as effective as other tools.

Revolving acquisition funds are in use by some jurisdictions at the state and county levels, providing a more nimble alternative, or facilitating mechanism, to land exchange. Current examples of revolving funds in Minnesota include the LCCMR 2006 Land Exchange Revolving Fund loans to Aitkin, Cass and Crow Wing counties and the LCCMR 2008 Forests for the Future Revolving Account. Land sales have slowed as a result of current economic forces, hindering repayment of revolving funds. At the same time, the amount of funding available limits the ability of programs to respond to real estate

opportunities. A current legislative directive to sell state lands to address budget deficits has also limited acquisition activity.

Long-term Stewardship and Management

A long-term commitment to protect the public investment comes with land acquisition or conservation easements. Long-term costs associated with owning land or holding easements, including management, monitoring and enforcement, should always be calculated and considered in any land protection decision. As a necessary component of long-term land protection, stewardship is an appropriate use of public and private conservation funding.

Approaches to address long-term funding needs include an emphasis on acquisitions that consolidate ownerships and reduce management costs, inclusion of the level of management and potential revenue in acquisition decisions, incorporating management costs into project funding, establishing new funding sources for management (e.g. partnering with private fundraising organizations or foundations), or establishing dedicated funds for long-term stewardship and management.

In Maine, funds from the LMF program did not support long-term management. Instead, the state supported the Maine Community Foundation in development of an endowment that now provides grants to support the stewardship of their Outdoor Heritage projects³⁵. Maine's Bureau of Parks and Lands requires that easements it acquires come with endowments to pay for monitoring to ensure the terms of the easement are met.

Similarly, a portion of the *Florida Forever* Conservation and Recreation Lands Trust Fund is set aside to account for increased management associated with increasing public land ownership. In Connecticut's Recreation and Natural Heritage Trust Program an amount not to exceed 20% of the appraised value of the acquired natural heritage lands may be allocated for management or deposited in a stewardship account. New Hampshire established a Land Conservation Endowment Fund in association with its *Land Conservation Investment Program* (LCIP) for the long-term management and monitoring of easements. Instead of maintaining a stewardship fund, the Vermont Housing and Conservation Board makes grants to private parties for stewardship. Here in Minnesota, we have a model stewardship fund legislated by the Minnesota Forests for the Future Fund (\$84.66), which required the commissioner to

establish a long-term program for monitoring and enforcing Minnesota forests for the future easements. The program must require that a financial contribution be made for each easement to cover the costs of managing, monitoring, and enforcing the easement.

To date, a stewardship program or dedicated fund has not been established. The need for long-term stewardship of acquired lands and easements has been recognized and funded in projects supported by both the Legislative Citizens Commission on Natural Resources and the Lessard-Sams Outdoor Heritage Council.

Recognizing the long-term commitment associated with Minnesota's current investments in land merits consideration and development of a comprehensive easement stewardship program and similar consideration for the long-term management of acquired natural resources lands.

5. Evaluation of Land Acquisition and Protection Tools

Effectiveness

Fee title acquisition has been described as the “surest and most effective tool in the biodiversity conservation toolbox”³⁶. Protection by fee title acquisition, by exchange or through a conservation easement can be an effective means to inhibit parcelization of both an individual parcel, as well as the surrounding landscape if properly targeted and associated with a broad landscape initiative. The identification of *which lands* to protect and *in what pattern* is important.

Because acquisition requires a willing seller, strategic acquisition of the most critical parcels may be limited. Targeting of public acquisition must be iterative and consider the current configuration of protected lands, among other criteria³⁷. Land exchanges are also opportunity driven and limited in strategic application by time and landowner interest. Because easements are voluntary, landowner interest depends upon the level of funding or other incentives available and the acceptability of any required easement terms.

Public ownership, via fee-title acquisition or exchange, provides a fairly permanent conservation tool to protect natural and cultural resources and provides opportunities for compatible public use. Public ownership also provides an unmatched level of control over land management by one entity. Permanent protection is, however, limited by the option for disposal by future administrations.

Conservation easements can be very effective and more efficient at limiting parcelization on working forestland. Easement terms directed at prohibiting or limiting the division of property into separate parcels are typical in most conservation easements and are quite easy to draft. Additional provisions and restrictions can be included in easements to insure that the land remains available for forestry.

Perpetual conservation easements are recognized under Minnesota law, requiring only a single transaction to achieve long-term protection. Properly drafted easements are typically upheld by the courts, assuring their long-term effectiveness. Long-term effectiveness does, however, require an easement holder with the commitment and resources to monitor, manage and enforce the easements it holds.

A Landscape Approach: Considering Land Adjacent to the Parcel

Strategic land conservation can protect adjacent land by influencing future protection; primarily due to subsequent conservation efforts to connect protected areas³⁸. However, without cumulative land protection or support from other conservation tools, there is scant, if any, evidence that land acquisition protects neighboring lands from development³⁹.

Poorly informed land acquisition can be counter-productive, resulting in increased land conversion on adjacent parcels⁴⁰. In fact, using geospatial modeling Robinson and Brown⁴¹ found that forestland acquisition policies shifted developer behavior; in some cases creating an emphasis on less forest cover in developed areas and resulting in decreased forest cover overall, highlighting the importance of the relationship between planning for developments and acquisition policies. *Land protection and development planning must be coordinated.*

Studies have documented contrasting impacts of land protection on development patterns. Permanent protection is often an attractive amenity⁴². Public acquisition can also displace local development and decrease the pool of available private land on the market, affecting land prices and generating negative feedback. For example, the creation and subsequent expansion of the Northern Highland-American Legion Forest in Oneida and Vilas counties in Wisconsin resulted in substantial land value increases and development relative to those of other forested counties in Wisconsin⁴³. A more recent study of land development rates from 1940 to 2000 in northern Wisconsin demonstrated concentrated housing growth rates along the boundaries of large public lands, with growth rates 1.5 times higher in areas within a 1-kilometer buffer of public land than those in more distant areas⁴⁴. Such development results in a mosaic of ownerships and land use activities. In the latter Wisconsin study, development rates were not concentrated around cities, roads or other urban features.

In Minnesota, evidence of protected lands attracting acquisition and development is primarily anecdotal. However, over half of parcel splits in Itasca County from 1999-2006 were adjacent to public land⁴⁵. Because over half of Itasca County is publically owned, whether parcelization near public lands occurred due to landowner interest or chance land availability could not be determined.

While the example from northern Wisconsin demonstrates the value of forestland for development, proximity to protected forestland does not always impact land value. As observed in Michigan, forestland amenity values may be related to the relative amount of forestland available in an area⁴⁶. Research in Minnesota has primarily emphasized the relationship of land values and natural areas in suburban and urban areas, but results indicate that natural amenities are of value to Minnesotans⁴⁷. Such increases in amenity value limit future public land acquisition opportunities⁴⁸ and suggest that, without the support of other conservation tools, land acquisition may simply shift local development.

Land exchange can be an effective alternative in cases where the land value exceeds interest in, or funding for, full fee or easement acquisition, and particularly in transactions with private landowners that would result in increased public acreage. Of the land exchange opportunities, those conducted between public and private land owners will be the most valuable in addressing the parcelization of forestland. Public-to-private land exchange can increase the size of a protected landscape complex, improve ownership recognition and direct development to areas primarily under private ownership.

Efficiency

While expensive, planning and protection are less costly than restoration. Funds for acquisition remain scarce compared with the lands identified for acquisition priorities⁴⁹ and cost varies greatly as a result of initial landscape conditions⁵⁰ and parcel size⁵¹. However costly acquisition may be conserved public lands provide significant environmental and social benefits⁵² and protection will only become more expensive.

The direct cost of purchasing a conservation easement is almost always considerably less than the cost of purchasing land in fee title, although the specific terms of the easement and the nature and location of the land will affect any easement's value. In Minnesota, the average cost of forest conservation easements prior to the Upper Mississippi Forest easement was \$318.00/acre⁵³. Fee acquisition of

forestland has been about 2 to 4.5 times the cost of an easement⁵⁴. While conservation easements usually cost less than full fee title acquisition, easements face many of the same limitations as full-fee acquisition and their complexity results in tradeoffs associated with recording, monitoring and enforcement⁵⁵.

Creating an easement program that meshes with other available incentives may keep program costs lower. Historically, many landowners have been willing to convey conservation easements at well below their fair market value. Other transaction costs associated with acquiring a conservation easement are similar to acquiring land in fee title. To be effective, all working forest conservation easements must be unique—geared to the specific parcel of land and the specific landowner. Each must be negotiated on a case-by-case basis. As a result, easements can be complicated and time-consuming to negotiate, draft and appraise, thereby increasing transaction costs. However, investing in model documents or templates and relying on existing experienced organizations and entities can enhance efficiencies. Some training may be necessary. Easements also require long-term monitoring and management with resultant additional costs. These costs, however, are typically less than the costs associated with owning and managing land in fee.

Ownership requires long-term management and stewardship of a site to protect public investments in land. Minnesota also currently pays over \$5.00/acre to counties for payment in lieu of property taxes on acquired lands. In 2009, the state paid \$22 million in PILT to counties, a small percentage of which supports retention of tax-forfeited lands⁵⁶. PILT payments are not designed to replace lost taxes but are an important source of funding for county land departments. Across the nation, states have gained local support for acquisition programs by providing some sort of payment in lieu of taxes. The approach used in Florida, payment only to counties below a certain population level, could be considered for use in Minnesota. These payments keep forestland management closer to the affected communities, increase county capacity and result in local support of public ownership.

With conservation easements, targeting larger parcels in identified areas can assure the greatest impact from the fewest number of transactions, minimizing program costs. Selecting sites and designing easements that protect multiple conservation objectives can maximize the public benefits associated with each transaction, enhancing efficiency. A focus on large parcels for cost effectiveness, however, limits the ability to address fragmentation of protected lands because protection of various parcel sizes is usually needed to maximize land consolidation⁵⁷. The need to protect various sizes of parcels to minimize fragmentation of protected areas supports application of both full-fee and partial interest acquisitions, along with other protection tools. Land should be acquired in fee where protection is justified based upon the resource values of the site, where public management will protect and improve the condition of the forest, and where the threat of parcelization warrants public intervention.

Because the cost of fee title land acquisition and protection via conservation easement limits application, land exchange can be a valuable tool to consolidate public ownership and redirect private development. However, complications associated with appraisals and review of lands to be exchanged may result in administrative expenses that far exceed those of fee acquisition transactions. If administrative costs are constrained, land exchange provides an inexpensive means to adjust land

ownership and dispose of isolated parcels that are inefficient to manage. Depending upon the involved ownerships, land exchange may take from one-to-many years. The process, necessary to ensure land exchanges are for public benefit, limits the speed with which this tool can address opportunities.

While purchasing only from willing sellers is good practice, it is not ideal for strategic land protection and may result in a mismatch between priorities and actual transactions; restricting the ability to best allocate scarce dollars. Because acquisition can be so opportunity driven, it is a challenge to balance efficient transactions with strategic planning. Often, priority parcels are adjacent to public lands, an amenity valued by many private owners. Similarly, land exchanges are limited by interested landowners and are highly opportunistic.

Palatability

In addition to cost, social and political considerations limit the amount of land protected by public ownership⁵⁸. Minnesota ranks among the top 20 U.S. states for public land ownership⁵⁹. With the majority of Minnesota's public lands occurring in northern forested counties, government fee-title acquisition is unlikely to be a successful broad-scale conservation strategy, especially given anticipated budget shortfalls. In counties concerned about adding to the public land base, land exchanges are often more palatable than acquisitions, but there are potential concerns about the comparability of lands traded away and acquired. Privately owned land under easement remains on local property tax rolls, providing local units of government with a continued stream of property tax income; but political palatability may also depend upon what entity holds the easements.

On a local level, removal of large areas of land from private ownership may limit economic growth for communities. Such impacts are generally greater in small, rural towns and counties—places likely targeted for conservation of forestlands. Positive consequences associated with increased land values and reduced spending on local infrastructure and services, however, may outweigh lost development opportunities⁶⁰. Combined with lower costs, PILT and revenue sharing payments made annually by governments can help offset reduced tax revenue. Some Minnesota counties do not embrace the concept of perpetual conservation easements due to similar concerns about the impact that easements may have on property values and, as a result, on property taxes.

Private landowners are protected through a willing-seller approach and fair market value payments. As they also involve voluntary transactions, conservation easements are typically well accepted. Accountability in transaction negotiations is not always clear and privacy rules make it difficult for public oversight of investments. In addition, paying for land to avoid development or conserve forests de-emphasizes responsibility of private landowners to maintain forests and may be considered to undercut regulation efforts. There is long-term value in keeping private landowners involved in management and sustainability.

Conservation easements are privately created arrangements between the landowner and the easement holder. This requires easement holders to exercise judgment and discretion in determining which lands to protect. Many believe that this is what makes easement programs nimble and effective and avoids unnecessary bureaucratic involvement. Others are concerned about the lack of public oversight of

transactions that can permanently affect the landscape. While this may be a concern for donated easements, there is typically more public oversight or involvement when public funds are used in easement transactions. Well-drafted program criteria for publicly funded programs can go a long way in providing appropriate levels of oversight and accountability. A working forest easement program that provides appropriate accountability for use of public funds will be more likely to be accepted at the legislative level.

Equitability

Information on the social equity of conservation investments is limited and additional research is needed⁶¹. Protection of land may increase remaining private property tax values⁶². As a result, local governments may actually experience increased revenues associated with land value increases. At the same time, increased land values and associated increases in property taxes may be difficult for current landowners to absorb and may have negative impacts on compatible land uses and forest management.

Protection of priority resources precludes equal investment in, and access to, public lands across the state. Because forestlands are not distributed equally throughout the State, an easement program would affect some counties differently than others. Similarly, land exchanges suffer from border issues with concerns over which jurisdictions gain and lose lands. While there may be concerns about the comparability of lands traded away and acquired, opportunity for public review is provided.

Consistently applied program criteria and opportunities for public involvement are necessary for any public acquisition program. Adequate funding and a standardized approach to valuing easements can ensure that a working forest conservation easement program is equitably applied to landowners in forested areas throughout the State.

Technical Feasibility and Administrative Ease

Acquisition of fee title is not difficult, but it is time consuming. Once completed, acquisition and land exchanges may improve the administration of public lands as parcels are consolidated. Public ownership also comes with tails such as long-term management and payments in lieu of taxes. The state, as well as forested counties and federal government, has land management capabilities; however, support for long-term management is a concern.

Conservation easements are very technical and require a high degree of skill to negotiate, draft, appraise and manage. However, there are a number of nonprofit conservation organizations in the State with existing expertise. The Minnesota DNR also has existing expertise and a growing understanding of the complexities of easement programs. A conservation easement program requires ongoing attention to prevent easement violations and to enforce easement terms. In addition to ongoing monitoring, education of subsequent landowners to make sure they understand the terms of the restrictions on their property is an important component of any easement stewardship program. Many working forest easements require management plans or other approvals, again requiring ongoing attention. There are numerous models for working forest conservation easement programs around the country that can provide insight into creating an effective long-term conservation easement stewardship program in Minnesota.

Land exchanges can also be complex as a result of the time required to approve and process the disposal and acquisition of the parcels in consideration, equal valuation requirements, disagreements in appraisal valuation, difficulties associated with disposing of public land valued by citizens, finding land available to exchange and restrictions on the type of land that can be exchanged. Because township approval carries a good deal of weight in land exchange decisions, conflicts of interest may arise. The complexity of the land exchange process also increases when multiple public ownerships are involved, as each entity has different review processes and requirements.

Additional capacity in the private and/or public sectors will be necessary in Minnesota, however, as everyone with expertise already has more work than they can handle. Some training may also be necessary to ensure that necessary expertise exists for all components of a forest protection program.

6. Key Findings and Recommendations

- **Minnesota has established land protection programs and funding; however, the effectiveness of these programs could be enhanced to better address forest fragmentation with through increased coordination and directed implementation.** As established by the 2008 Minnesota legislature, the MFF program emphasized working forest conservation easements and fee title acquisition to the exclusion of other forest conservation tools. Expansion of the existing MFF program to include the suite of conservation tools as originally intended could provide a platform for a coordinated and more efficient approach to forest land conservation.
- **The recent development of several statewide conservation plans and supporting geospatial data in Minnesota has provided direction for investments; however, the volume of information has limited effective communication of priorities for comprehensive, complimentary conservation.** To effectively invest conservation dollars, any program to protect Minnesota's working forests must strategically identify and communicate priorities with public and private conservation partners.
- **Multi-party public/private partnerships can provide the strength, durability and flexibility needed to insure long-term program success.** In addition to facilitating negotiations, private, nonprofit organizations, as well as public agencies, should be funded to buy land or hold easements as appropriate.
- **Conservation easements are voluntary; generally less expensive than fee simple acquisition; can be individually crafted to the needs of each landowner, while also meeting public goals; can prevent the division and development of forest lands while maintaining private ownership and production and are well accepted in Minnesota and around the country.** As part of a comprehensive program to mitigate forest parcelization, continued use of working forest conservation easements should be supported to maintain private forest stewardship for numerous social and environmental benefits. Efficiencies and accountability can be enhanced through the use of standardized documents and protocols and sharing expertise among government agencies and nonprofit organizations.

- **Effectiveness of conservation easements as permanent land protection tools is linked to the stewardship of those easements. Lack of funding dedicated to, or specifically directed at, easement stewardship in Minnesota, has been a concern in Minnesota, particularly with respect to public agencies.** Easements should be developed and executed in a deliberate, coordinated and sustainable manner that ensures long-term management and enforcement. Funding for long-term easement management and monitoring is essential.
- **Protection by fee-title acquisition can be an effective means to inhibit parcelization of both an individual parcel, as well as the surrounding landscape if properly targeted and associated with a broad landscape initiative.** Acquisition in fee should be focused on sites adjacent to protected lands where protection is justified based upon the resource values of the site and where public management will protect and improve the condition of the forest. Recognizing the long-term commitment associated with Minnesota’s current investments in land merits consideration of the long-term management of acquired natural resources lands, potentially through the establishment of a dedicated fund.
- **Of the land exchange opportunities, those conducted between public and private land owners will be the most valuable in addressing the parcelization of forestland. Public-to-private land exchange can increase the size of a protected landscape complex, improve ownership recognition and direct development to areas primarily under private ownership.** Land consolidation should be promoted through enhancement of traditional and non-traditional land exchange mechanisms. Existing revolving fund programs should be expanded.
- **Legislation to expedite public land exchange has had little impact on land consolidation.** A review of current land asset planning and regional pilot projects should be conducted to determine whether identification of priorities has resulted in improved decision making or reduced assessment period for land exchange. Development of pilot projects to test expedited exchange of school trust lands and additional regional land asset management coordination could also be considered where appropriate.
- **Payments in lieu of taxes (PILT) on tax-forfeited lands support forestland retention and forest management capabilities of county land departments.** To support continued retention and management of roughly 2.8 million acres forestland, PILT payments should continue on state-owned, county-administered land.

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- ² McDonald et al. (2007). Estimating the effect of protected lands on the development and conservation of their surroundings. *Conservation Biology*. 21:6., 1526-1536.
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- ¹¹ This acreage includes the 51,163-acre forest legacy easement in Itasca and Koochiching counties.
- ¹² Allman, L. (2000). *Land Protection Options: A Handbook for Minnesota Landowners. Revised Second Edition*. Minneapolis, MN: The Nature Conservancy.
- ¹³ Minnesota Office of the Legislative Auditor. (2010). Evaluation Report: Natural Resource Land. St. Paul, MN.
- ¹⁴ Contacting *all* local units of government was beyond the scope of this study. Instead, counties and cities that were known to hold conservation easements or to be interested in holding easements along with other selected local units of government such as soil and water conservation districts and watershed districts were contacted. Most of these were in the greater metropolitan area.
- ¹⁵ School trust lands were granted by the United States to the State to be held in trust as a long term source of funding for schools (MN § 127A.31, see also §92.121)
- ¹⁶ **Class A** lands are state lands controlled or administered by the Department of Natural Resources. **Class B** lands have been acquired by the State through tax forfeiture, are administered by counties, and are held in trust in favor of taxing districts.
- ¹⁷ See Section 170(f)(3) of the Internal Revenue Code.
- ¹⁸ See sections 2031(c) and 2055(f) of the Internal Revenue Code.
- ¹⁹ Environmental Law Institute. (2006). *The Nature of Open Space Programs: Linking Land Protection and Biodiversity Conservation*. Washington, DC: Environmental Land Institute.
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³⁴ Hctor, T., Huntley Dube, E., & Beyeler, S. (2008). *Conservation Incentives and Programs for Protecting Critical Lands and Waters*. Century Commission for a Sustainable Florida.

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