

EVALUATION OF
THE STATE LAND EXCHANGE PROGRAM

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

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- 2) *economy and efficiency issues*, which assess whether the program is managed efficiently and cost effectively,
- 3) *program effectiveness issues*, which determine whether the program is achieving its objectives, and/or
- 4) *policy issues*, which concern the impact of current state policy and the costs and benefits of policy alternatives.

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OFFICE OF THE LEGISLATIVE AUDITOR
PROGRAM EVALUATION DIVISION
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PREFACE

In June 1982, the Legislative Audit Commission directed the Program Evaluation Division to conduct an evaluation of state land acquisition and disposal practices. Our major findings and recommendations for improvements are contained in our report published on March 14, 1983. Because the land exchange program was a topic of special interest to the Commission, we chose to issue this report separately.

Land exchange is a tool of land management which has always shown promise but its accomplishments have been somewhat disappointing. For many years, observers have noted the land exchange program's potential for addressing two of the state's persistent land issues: consolidation of holdings and acquisition of private lands that have a higher value for recreation, wildlife, and resource development than current state holdings. The program's relative inactivity since its inception in 1939 has been attributed by various observers to legal obstacles, management inefficiencies, a lack of will to use the program, and inconsistent state agency goals which both restrict the program's applicability and complicate its implementation.

This report confirms that these problems have existed. Our report identifies where the problems lie and suggests what the Legislature and program managers can do to correct them. Chapter I provides descriptive information on how and why land is exchanged in Minnesota. Chapter II evaluates the effectiveness of the program and identifies the numerous obstacles that restrict the program's applicability. Finally, Chapter III presents a detailed analysis of the exchange procedure itself and isolates certain inefficiencies and time delays.

We would like to thank employees of the Department of Natural Resources for their cooperation and assistance.

The land acquisition and disposal project was directed by Roger Brooks. This report was written by Lee Tischler.



James Nobles
Deputy Legislative Auditor
for Program Evaluation

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EXECUTIVE SUMMARY

The state's land exchange program, designed to help consolidate land holdings and improve the overall quality of state lands, has been used sparingly in recent years despite its potential to reduce costs and add value to state lands. In the past 10 years, only 68 exchanges of state-owned and managed land and 46 exchanges of tax-forfeited land have been completed. These exchanges resulted in a transfer of 14,300 acres of state land for a similar amount of private, federal, county, and municipal land.

This report addresses the following questions:

- Why is the land exchange program used so infrequently? Can its applicability be increased?
- What legal and practical obstacles limit the program?
- How are parcels identified for exchange? How adequate is the state's review mechanism for evaluating exchanges?
- How can the procedures for exchanging land be improved? Can processing time be shortened?

The land exchange program dates from 1939 when a constitutional amendment empowered the Governor, Attorney General, and State Auditor--constituting themselves as a Land Exchange Board--to make exchanges of state lands for private or federal lands. In 1979 these powers were extended to include the exchange of state land for county-managed tax-forfeited land and municipal land. As a practical matter, only natural resource land (some 94 percent of all state lands) can be exchanged without special legislation. The Department of Natural Resources (DNR) serves the Land Exchange Board in a staff capacity, bringing exchange proposals before the Board for its formal approval.

A. FINDINGS AND CONCLUSIONS

1. PROGRAM APPLICATION AND UTILIZATION

According to the 1939 law that created it, the land exchange program was established as a tool for 1) consolidating total land holdings, and 2) acquiring lands of greater value than current holdings. Although the original law was soon repealed, the potential usefulness of the program remains. Rising land values have made exchanges relatively attractive as an alternative to direct purchase of land. In addition, since state and federal funds for land acquisition are decreasing and since DNR is not currently able to use land sale receipts to purchase better land, land exchange is sometimes the only way to consolidate state lands and reach other resource management objectives.

While an original objective of the land exchange program, consolidation, it should be noted, is not a universal goal within DNR. On one side are state forest managers who have found that scattered parcels are more difficult and expensive to manage than contiguous parcels. DNR's Forestry Division estimates that a timber harvest in the central region of the state, where ownership is mixed, requires twice the preparation and management time as a similar harvest in the northeast region where large consolidated blocks of state land exist. However, minerals and wildlife managers more often seek a patchwork state ownership pattern to accommodate wildlife and to enhance the state's ability to develop mineral potential in areas currently undeveloped. The inconsistency of goals among DNR's divisions somewhat complicates DNR's overall strategy and limits the applicability of the land exchange program.

However, the exchange program can also be useful in acquiring lands with a higher resource potential than current state holdings. Through exchanges the state can dispose of land with agricultural or commercial value in return for land valuable for timber, wildlife, or recreation. In this way, the state can increase the natural resource value of its lands without the need to expend large sums of acquisition money.

Despite the potential usefulness of the program, few land exchanges have taken place over the past several years. We found that:

- Between 1977 and 1982, a period of accelerated acquisitions, DNR exchanged only 4,000 acres of land while purchasing 107,000 acres and selling 20,000.
- Between 1973 and 1982, 238 applications for exchanging state-owned and managed land were processed. Of these only 68--representing 6,200 acres valued at \$1.7 million--have been completed.
- DNR rarely initiates land exchange proposals. More often DNR reacts to exchange proposals made by others (usually private landowners).
- Between 1979 and 1982, 56 applications to exchange county managed tax forfeited land were processed. Of these, 46--representing some 8,100 acres valued at \$2.1 million--have been completed.

Other states, such as Michigan, have more active and successful land exchange programs. We believe that:

- Minnesota's exchange program has untapped potential as a tool of public land management and should be re-examined by DNR to determine how it may be improved and more successfully implemented.

2. PROBLEMS AND OBSTACLES

During our study we identified several specific problems that need to be addressed if the land exchange program is to be improved and made more flexible. We noted the following problems:

- DNR does not have a land consolidation plan or a list of exchangeable lands that field personnel can use in making decisions on what land to recommend and approve for exchange. Without such a plan or list, DNR can do little more than react to proposals made by others.
- DNR implements the requirement in state law for "substantially equal" value exchanges so as to lengthen the process and discourage use of the program. DNR can equalize parcel values in a proposed exchange by adjusting acreages or, in many instances, by using cash to make up for value differences. In practice, DNR has been unwilling to make cash payments to equalize exchanges. Instead, DNR prefers 1) to reprocess exchange proposals after adjusting acreages, hence adding to the time and cost of the exchange, or 2) to require the other party to waive the cash payment, hence discouraging further cooperation with the state.
- The state Constitution restricts exchanges of School Trust Lands. The Constitution does not currently permit the exchange of Trust Lands for county-managed tax forfeited lands or any other state-owned lands. This is a problem because Trust Lands and tax-forfeited lands are generally scattered and therefore frequent targets for consolidation. In addition, many Trust Lands are inside DNR management units in which they do not earn revenues. Allowing DNR to exchange Trust Lands for tax-forfeited lands or other state lands would greatly increase the potential applicability of the exchange program and benefit the Permanent School Trust Fund which could immediately begin to earn revenues from lands not currently generating revenues. It could also permit counties to consolidate tax-forfeited lands more efficiently and to lower management costs.
- Counties and townships often oppose exchanges that cross political boundaries because they may, as a result, suffer a loss of tax base or be forced to deliver costly services where none were required before. Only one exchange in the last ten years involved parcels in two different counties.
- Disagreements among private citizens can lead to the termination of an exchange, irrespective of the benefits of the proposal to the state or to the other party. DNR's reluctance to support controversial exchanges may give an effective veto power to persons motivated by personal factors rather than the objective merits of the exchange.

- The criterion used to decide when to collect an appraisal deposit fee is vague. State law currently requires an appraisal deposit fee from a private individual who initiates an exchange. But since DNR uniformly requires the other party to formally submit the application--even if DNR originates the proposal--it is sometimes unclear when a deposit fee should be collected and, as a result, it may be imposed arbitrarily.

In addition to these problems, we investigated the complaint that land exchanges require an inordinate amount of time for completion. A review of exchange transactions initiated between 1973 and 1982 reveals that:

- The median length of time to complete an exchange of DNR-managed land for private land was 633 days.
- DNR's Land Bureau has delayed initial processing of some proposals in an attempt to complete the processing of other exchange applications. As a result, a backlog has developed. If the number of applications continues to increase, the workload will exceed current staff capabilities.
- The longest delays occur when a land survey is necessary or when problems in the abstract must be corrected before the deeds are exchanged. Surveys in southeast Minnesota have averaged approximately two years to complete. To exchange deeds after Land Exchange Board approval has taken a median length of 115 days.
- According to statutes, both the land and timber must be separately appraised for all land exchanges. But, few staff members are trained to conduct both kinds of appraisals, and many exchanges involve land which contains a negligible amount of timber. This requirement further lengthens the exchange process.

Until recently, DNR's normal procedure required each exchange proposal to win the approval of every management division before being presented to the Land Exchange Board. In addition to being time consuming, the requirement has severely limited the applicability of the program. Because consolidation may be contrary to the management goals of some units within DNR (notably Wildlife and Minerals), exchange proposals are not easily approved. DNR's review procedures favored inaction because any division's opposition could veto such proposals.

DNR management divisions have also shown reluctance to allow their lands to be traded for land that would be managed by another division. No division wishes to lose land and, except when the overall benefit to the department is great, such exchanges have been rare. This same consideration may apply to DNR's regional districts as well.

Recognizing these shortcomings, DNR has recently established an internal appeals procedure for exchange proposals that fail because of opposition from only one division. In the future a greater proportion of this class of proposals may be approved. In addition, after our study began DNR issued a short manual including certain "procedural guidelines" for land exchanges which may help to standardize and accelerate the exchange process. These developments indicate an acknowledgement of past problems and a willingness to address them.

Nevertheless, as a result of the different needs of DNR's various divisions and the obstacles outlined above, the Land Exchange Program has not enjoyed a high priority within DNR. This lack of enthusiasm, in turn, helps explain DNR's reluctance to pursue land exchanges more aggressively. The lack of uniform support for the goals of the exchange program within DNR, coupled with a requirement for consensus on each proposal, has placed obvious limits on the program.

B. RECOMMENDATIONS

The Land Exchange Program can be made to work. An important prerequisite is a continued commitment by DNR to remove existing obstacles and to develop a method of decision making that is both efficient and flexible. The important role now played by division personnel must be retained, and it must be acknowledged that consolidation of land is not always a desirable goal. However, the department lacks agreed upon principles of land management that supercede the parochial perspectives of the traditional divisions within DNR and allow the department to arrive at broad-range solutions to Minnesota's land problems.

In the past, the only successful land exchanges were those that met the lowest common denominator: they were not offensive to any of the major divisions or to private parties. DNR needs to develop a more positive approach to land management problems, investing resources to develop broad principles of state land management and devising decision-making mechanisms that can be responsive to those principles.

In the meantime, we recommend the following:

- (1) The Legislature should review the need to amend the Minnesota Constitution to permit the exchange of School Trust land for other state land and for land owned by other governmental subdivisions. In addition, DNR should study the potential for other solutions, such as cooperative management agreements between the state and counties. Such agreements could permit the state to manage certain tax-forfeited lands in return for county management of certain school trust lands.

- (2) Based on its Land Suitability Project, DNR should develop a plan for exchanging land which identifies specific parcels for exchange. From such a plan, DNR should seek out and initiate exchanges which would benefit the state.
- (3) After developing an exchange plan, DNR should expand promotion of the land exchange program. A pilot project could be initiated in an area where consolidation is necessary to illustrate to field personnel and the local public the advantages of land exchange. Specific lands could be identified for exchange and DNR personnel could actively seek and promote exchanges. The project could monitor the costs of the exchanges and the savings through consolidation.
- (4) DNR should more frequently equalize exchanges by making supplementary cash payments rather than by readjusting parcel acreages. A state Land Revolving Fund, recommended in an earlier report by the Office of the Legislative Auditor, could provide some of the necessary monies.
- (5) DNR should inform the exchange party at the outset that the exchange will be judged not only on its merits but also on the public reaction toward the exchange.
- (6) DNR should expand its efforts to promote the availability of the land exchange program to consolidate holdings of tax-forfeited parcels. DNR should continue to work closely with counties during processing proposals.
- (7) An educational program should be developed for field personnel to familiarize them with the exchange process and to illustrate where exchanges can improve their management capabilities.
- (8) In order to learn how land exchanges work in other jurisdictions and to develop closer working relations with potential exchange partners, DNR should consider sponsoring a regional workshop on land exchanges and seek participation of other states, the federal government, and counties within Minnesota.

A better utilization of the land exchange program can only be realized if the processing procedure is accelerated. Exchanges take too long to complete. Some improvements can occur if DNR gives exchanges a higher priority during processing and if unpromising applications by private individuals are kept to a minimum.

We recommend the following:

- (9) If applications increase, staff should be added to the Land Bureau for processing and appraising. An additional two to three staff members may be needed to reduce the backlog of applications and to carry out the recommended streamlining.
- (10) Legislation should be considered to permit DNR greater latitude on when to conduct timber appraisals. When timber has minimal marketable value, no separate timber appraisal may be necessary. DNR should develop procedural guidelines for determining when timber appraisals are necessary.
- (11) When DNR develops a list of exchangeable lands, DNR review procedures should be shortened. Since the list itself will have been subjected to inter-divisional review, the exchange review could be limited to the management divisions that manage the lands.
- (12) Exchanges that require land surveys should be kept to a minimum. Costs beyond the normal administrative expenditures, such as survey costs, should be shared with the other exchange party.
- (13) In order to discourage frivolous exchange proposals, a \$50 to \$100 "application fee" deposit should be required when a proposal is submitted by a private party. This application fee should replace the current "appraisal fee" required later in the exchange procedure.

I. BACKGROUND OF LAND EXCHANGE PROGRAM

The land exchange program was established in 1939 as a mechanism to consolidate land holdings and to increase the state's total holdings of timber and water frontage. The program focuses on the exchange of lands managed by the Department of Natural Resources, which are 94 percent of all state lands. The opportunity to exchange other state lands is limited because most of these are already consolidated.

This chapter outlines what is involved in a land exchange, identifies the objectives that are accomplished, and reports on the state's recent experiences with the exchange program. A land exchange is not a simple procedure. The processing of a proposal must follow detailed constitutional and statutory provisions.

A. WHAT IS A LAND EXCHANGE?

To accomplish a land exchange, two parties must own land parcels that would benefit each other if they were traded. The benefit may be in consolidating their overall land holdings or in obtaining a land resource that each party desires. For example, the state may own land suitable for crop production and a private party may own forested land. Both might benefit if the parcels were exchanged. Before land is exchanged, the values of the two parcels must be determined through appraisals. Any differences in values between the parcels must be equalized in cash or in adjustments to the amount of land to be exchanged (Figure 1.1).

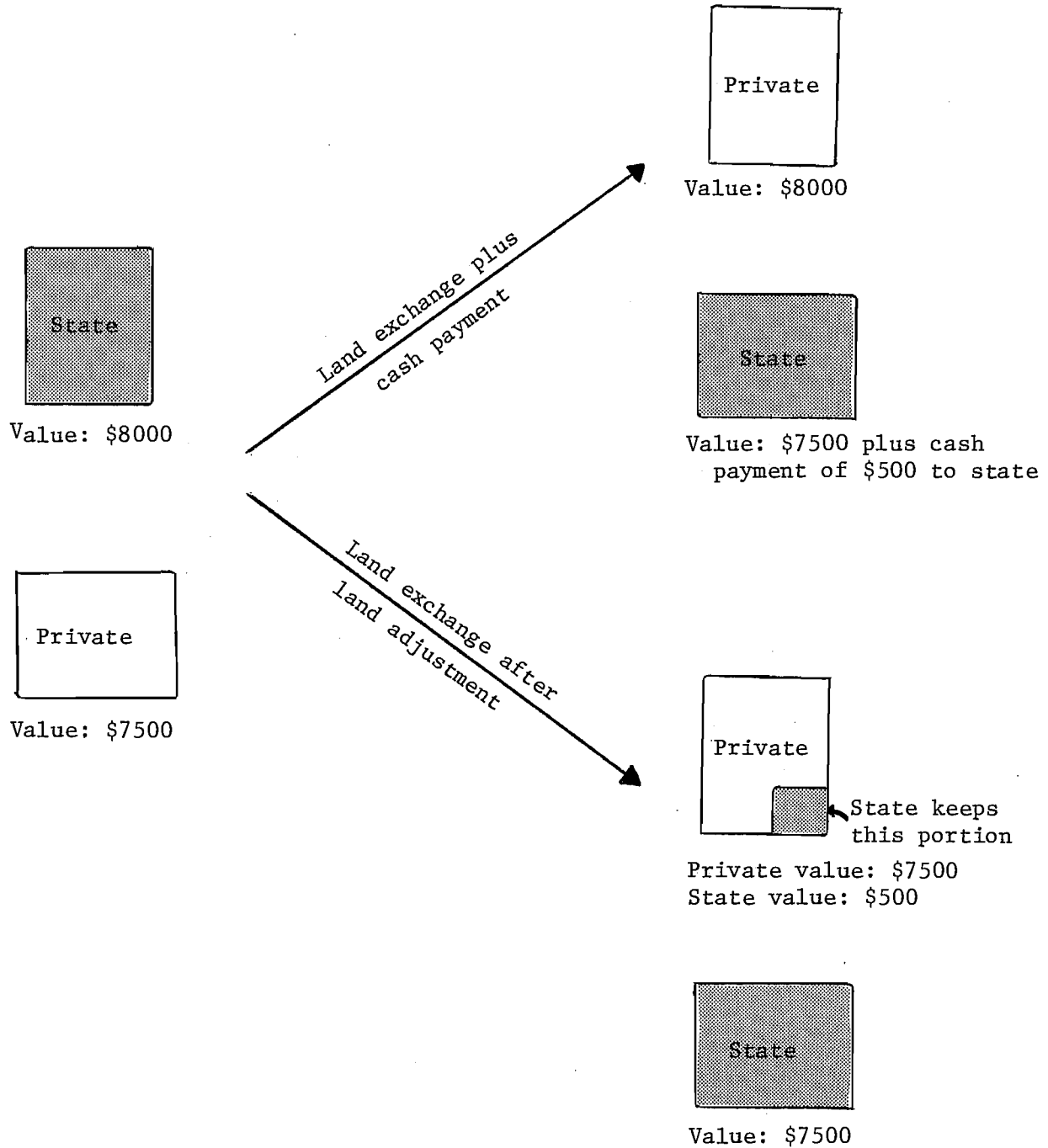
A land exchange accomplishes the same as the selling of one parcel and the purchase of another. But to sell land the state must offer the parcel at a public sale. Currently, DNR lacks incentives to sell land that has marginal resource potential since receipts cannot be used to purchase other lands. An exchange permits DNR to acquire land that has better resource potential--often without spending acquisition funds.

B. HOW IS LAND EXCHANGED?

Until the passage of the constitutional amendment on November 8, 1938, no land owned by the state could be exchanged. Article XI, Section 10 empowers the Governor, Attorney General, and State Auditor to make exchanges in such manner as the Legislature may provide. Subsequently named the Land Exchange Board, these officials have ultimate authority over all land exchanges. Each exchange must be approved unanimously by the board. However, the board does rely on DNR to evaluate exchange proposals. Public reaction toward a proposal can also be important.

FIGURE 1.1

DIAGRAM OF A LAND EXCHANGE AND METHODS
FOR EQUALIZING AN EXCHANGE



Originally, the state could exchange land only with a private party or the federal government. In 1979, legislation was passed that permitted the transfer of land between the state and other governmental subdivisions.¹ This change has permitted the state to take advantage of numerous opportunities to exchange land with counties and municipalities.

In 1941, the Legislature repealed the original law creating the program and enacted the statute which now governs most exchanges. (See Appendix for specific definitions and procedures in statutes.) The Legislature established two different exchange procedures: one for exchanging state-owned and managed land and the other for tax-forfeited land managed by the counties. Any land owned by the state and managed by DNR is available for exchange except land in state parks or land adjacent to public waters, also termed riparian land. These exempted lands can only be exchanged if expressly authorized by the Legislature or if the riparian land is exchanged for land on the same or other public waters in the vicinity.

Either the state or other party may propose an exchange. The exchange application is thoroughly reviewed by DNR to assure that the exchange is in the best interests of the state. Appraisals are conducted, titles are studied, and a public hearing is held before the exchange proposal reaches the Land Exchange Board. Any problems encountered during review can effectively terminate a proposal.

Conditions that must be met before an exchange can be made include the following:

- 1) The managing authority of the land must approve the exchange.
- 2) All mineral and water power rights must be reserved to the state.
- 3) The lands must be of at least "substantially equal" value.
- 4) A public hearing must be held.
- 5) The Attorney General must give his opinion on the title.
- 6) Conveyance must be by deed.
- 7) Lands received by the state must be subject to the same trust, if any, as the lands given.

Similar procedures and conditions apply for the exchange of county-managed tax-forfeited land, except the county rather than DNR has primary responsibility for preparing and reviewing applications. Nevertheless, DNR must approve the proposal, the Attorney General must approve the County Auditor's title opinion, and the Commissioner of Revenue must execute the deed.

¹Laws of Minn. (1979), Ch. 142, §1.

Not every land exchange is accomplished through normal procedures of initiation and processing. In certain cases, the Legislature has directed that exchanges be conducted to acquire and dispose of land. For example, the Commissioner of Natural Resources is required to sell or exchange any parcel acquired in the Richard J. Dorer State Forest after July 1, 1977 that "contains more than ten contiguous acres of tillable land adjacent to other tillable land or to a maintained public road or a farm homestead consisting of a residence and farm buildings abutting a maintained public road."² So far, only exchanges have been used to dispose of these tillable lands. In other parts of the state, five exchanges have been specifically authorized by the Legislature since 1973. These involved park land or shoreland that was otherwise exempted from exchange.

Many states have land exchange programs similar to Minnesota's. We examined the land exchange programs in Wisconsin and Michigan. In many respects, their programs parallel Minnesota's--a field review is conducted, lands are appraised, and a title opinion is rendered. However, while Minnesota requires a public hearing for every exchange, the other two states hold hearings only when the affected county requests them. In Wisconsin, a Natural Resources Board must approve the land for exchange and the Governor has final approval. In Michigan, the Natural Resources Commission has final approval.

Though the potential for exchange is less, Wisconsin exchanges about the same amount of land as Minnesota. Wisconsin has only about 50,000 acres outside designated management areas, while Minnesota has 1.5 million acres outside of such areas. Michigan owns 4.5 million acres of public land and has an active exchange program, principally involving tax-forfeited land. Unlike Minnesota, the state of Michigan rather than the counties, is responsible for exchanging tax-forfeited land.

C. OBJECTIVES OF LAND EXCHANGE

According to the 1939 law that created the program, the primary objectives of exchanging land are for "consolidating the holdings of landowners" and to "increase the state's total holdings of timber,³ and of water frontage desirable for public use and enjoyment."³ Although soon replaced, this law indicates the original purposes of the program and suggests the potential uses of the program today.

1. CONSOLIDATION OF LAND

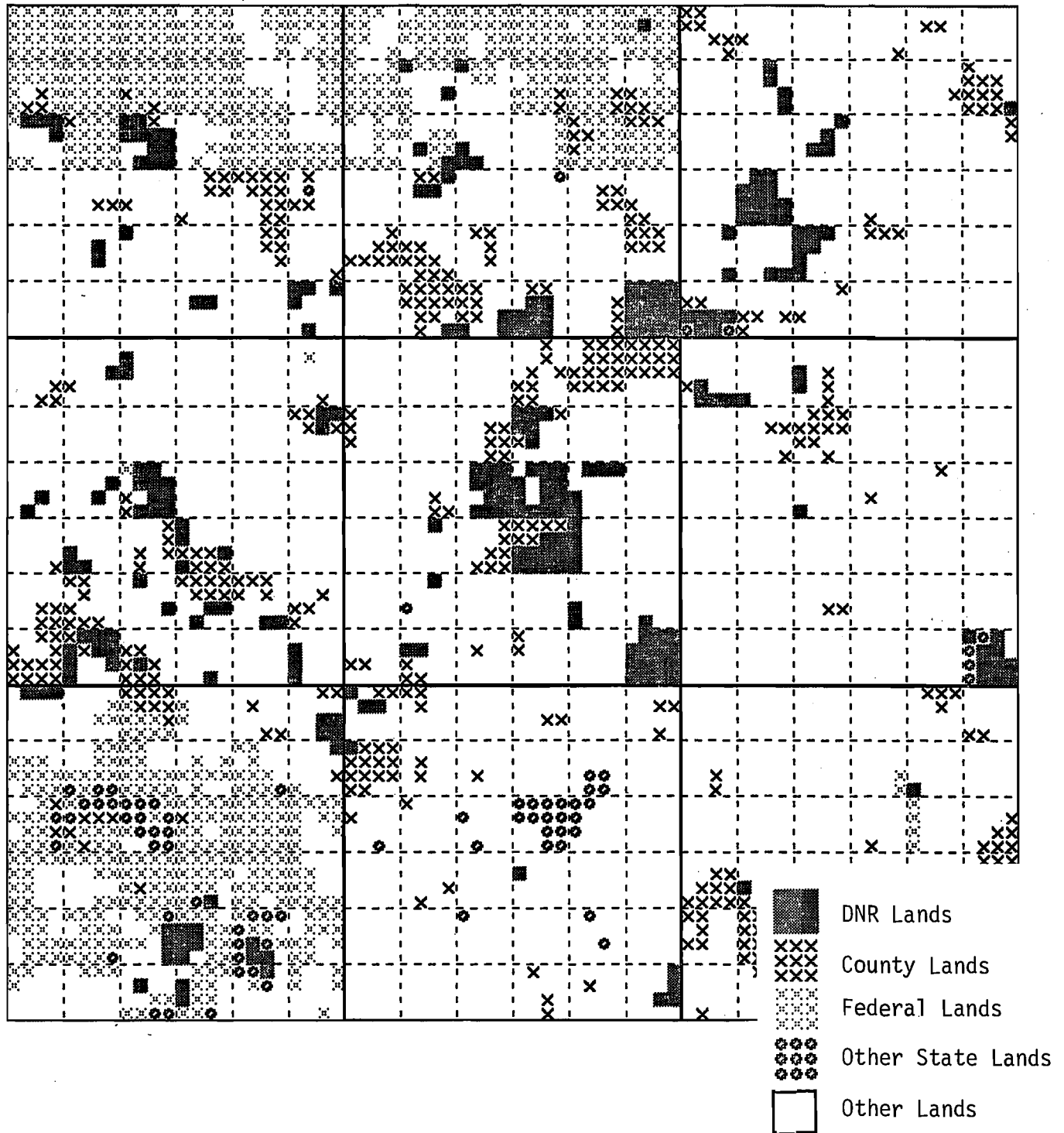
In some areas of the state, landownership is highly heterogeneous. Figure 1.2 illustrates the ownership pattern in nine townships of Itasca County. DNR-managed lands are dispersed throughout

²Laws of Minn. (1979), Ch. 248, §1.

³Laws of Minn. (1939), Ch. 382, §2.

FIGURE 1.2

LAND OWNERSHIP IN NINE TOWNSHIPS OF ITASCA COUNTY



Source: Minnesota Land Management Information Center.

with only a few consolidated holdings. County-managed tax-forfeited lands are also scattered. Consolidating these parcels could reduce their management costs and increase their potential for resource development.

Approximately 85 percent of DNR land, or 4.5 million acres, is managed for forestry purposes. Of this, 1.5 million acres are outside designated management units. Along with county-managed tax-forfeited lands, these are the lands most suitable for consolidation through exchanges.

The costs to manage scattered parcels are usually high. For example, state forestry areas in northeast Minnesota, where most state land is already consolidated, are more productive than in the central region where state land tends to be scattered. The Forestry Division estimates that preparing and supervising a timber harvest in the central region takes twice as much time for the same amount of cords as it does in the northeast. While such factors as access and timber types influence this estimate, consolidation is assumed by DNR to be a major component of the difference. Travel time to scattered parcels is longer and closer supervision is often necessary to ensure that the harvest does not extend to adjacent lands not in state ownership.

Despite these advantages, consolidation is not a universal goal within DNR. Minerals and wildlife objectives are sometimes better met through a scattered ownership pattern. Where exact mineral locations are not clearly defined, a random landownership pattern is preferred by DNR. Although the state retains the mineral rights when it sells or exchanges land, a private owner might prohibit the state from using the surface for exploration or mineral assessment. Unlike Minnesota, the state of Wisconsin requires that any conveyance is subject to a perpetual easement to enter and occupy lands and to remove minerals from the land.⁴

In addition, DNR's Wildlife Division prefers scattered holdings in areas where state land parcels are the only wildlife habitat sites available. Wildlife areas are a limited resource and their dispersal is necessary to assure suitable habitat throughout the state. These small, scattered parcels may be expensive to manage but their loss through consolidation may eliminate essential wildlife habitat.

Opposition to consolidation can also occur from the timber industry and sportsmen's interests. Timber buyers prefer mixed ownership because it promotes competition among governmental units. Consolidation might reduce this competition. Sportsmen may prefer scattered holdings to diversify hunting opportunities.

As a result of these different perspectives, DNR does not have a uniform or overall strategy toward land consolidation. Without such a uniform strategy, the applicability of the exchange program is limited.

⁴Wisc. Stat. §24.11 (1980).

2. RECEIPT OF BETTER RESOURCE LAND

While the aggregating of scattered parcels or the filling-in of management units is the typical result of exchanges, some exchanges are consummated solely because the land received has better resource potential. This might involve exchanging agricultural land for timber land or for wetlands suitable for wildlife. Over the past decade these types of exchanges have predominated over those whose sole aim is to consolidate state holdings.

D. LAND EXCHANGE ACTIVITY

Considering the extent of the state's land holdings and the potential benefits of exchanges, it is surprising how infrequently the land exchange program has been used. Between 1973 and 1982, approximately 6,200 acres of state land valued at \$1.7 million was exchanged for 6,600 acres of private, federal, or other land. In addition, approximately 8,100 acres of county-managed tax-forfeited land valued at \$2.1 million was exchanged for 8,200 acres.

The most common land exchange is a state/private exchange (Table 1.1). In the last ten years, applications for exchanging state land for private land far exceed the total number of all other exchange types. They are also the exchange type least often completed.

TABLE 1.1
TYPE AND NUMBER OF LAND EXCHANGE PROPOSALS
INITIATED BETWEEN 1973 AND 1982

	<u>Number of Appli- cations</u>	<u>Number Completed</u>	<u>Number Ongoing</u>	<u>Number Not Completed</u>
<u>State-owned and Managed</u>	<u>238</u>	<u>68</u>	<u>55</u>	<u>115</u>
for private land	225	62	50	113
for federal land	5	4	1	--
for other governmental unit land	8	2	4	2
<u>Tax-forfeited, County Managed</u>	<u>56</u>	<u>46</u>	<u>8</u>	<u>2</u>

Source: DNR, Land Bureau, Land Exchange Files, January 1983.

In contrast, state/federal land exchanges are relatively rare; only five have been initiated since 1973. Most federal land is already well consolidated. Exchanges with the federal government also tend to be more controversial than other types: the timber industry has opposed consolidation because it could decrease price competition. However, no state/federal exchanges have been prematurely terminated.

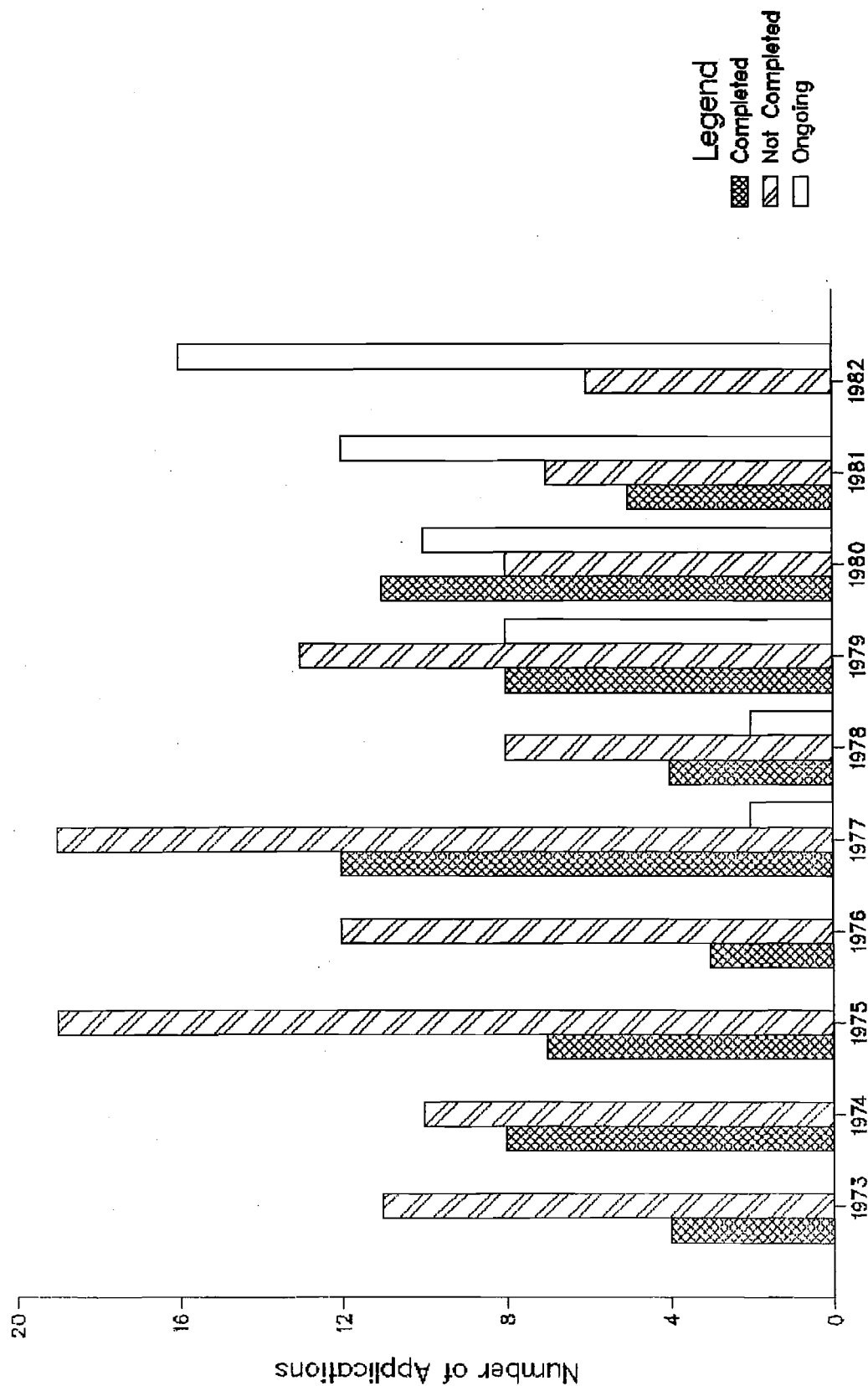
The exchange of state land for land of other governmental units, including county-managed tax-forfeited land, was not permitted prior to 1979 so the small number of applications is not surprising. There is potential for many more exchanges of this type because tax-forfeited lands tend to be extremely scattered.

The county has the major role in processing exchanges of tax-forfeited lands. Counties or townships reject many applications before they reach DNR, but once submitted to DNR, we found that the state nearly always grants its approval. Table 1.1 includes only those exchanges that are approved by the counties and submitted to DNR.

The land exchange program has grown since 1973 but the completion rate has not. There were 15 applications for state/private exchanges in 1973 and a peak of 33 in 1977. Figure 1.3 reports the results of exchange applications initiated in each year since 1973. For example, of those initiated in 1977, 12 were ultimately completed, 19 were terminated, and 2 are still ongoing.

The success of the land exchange program is determined by the effectiveness of seeking exchange applications and the efficiency in the processing of applications. The following chapters analyze how the program is promoted, what obstacles affect the program, and what steps are necessary to complete exchanges.

FIGURE 1.3
STATUS OF APPLICATIONS INITIATED TO EXCHANGE
STATE-OWNED AND MANAGED LAND FOR PRIVATE LAND



Source: DNR, Land Bureau, Land Exchange Files, January 1983.

II. EVALUATION OF PROGRAM ACCOMPLISHMENTS

Only 4,000 acres of state-owned and managed land have been exchanged in the last six fiscal years. During this same period DNR has sold 20,000 acres and purchased 107,000 acres (Figure 2.1). In contrast, Michigan has averaged 37 exchanges per year and exchanged 45,000 acres and 558 lots of state land. During the same period, Wisconsin has averaged 11 exchanges per year involving 2,500 acres of state land.

As a tool of land management, land exchange may be underutilized in Minnesota. In our view, this may be because it is easier to buy and sell land than to exchange it, and DNR has not actively promoted the program. The 1970s was a decade of accelerated acquisitions when the Legislature made available large sums of money for land purchases. As acquisition money has decreased and land values have risen, emphasis on land exchanges has begun to revive. There are signs within DNR of renewed interest in the program as a useful tool of land management--one that permits DNR to acquire key land parcels irrespective of the availability of acquisition dollars.

This chapter focuses on the application of the program, obstacles that affect the program, and alternatives to the existing program. Although opportunities to expand the use of the program are available, specific problems must be addressed to increase overall effectiveness.

A. APPLICATION OF THE PROGRAM

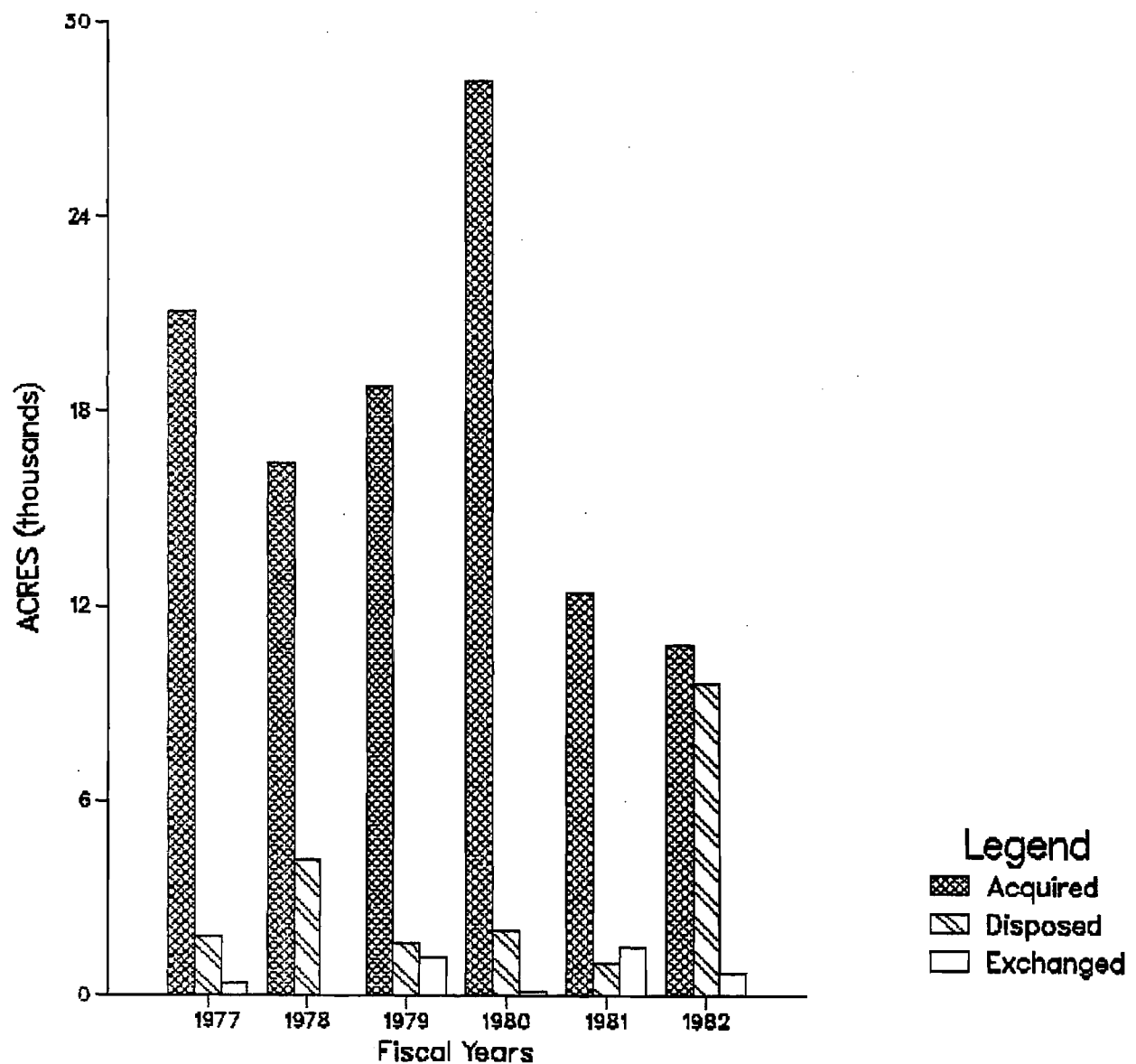
This section identifies where most exchange activity is currently occurring, explains how specific parcels are identified for exchange, and identifies the initiators of exchanges.

1. LOCATION OF EXCHANGES IN STATE

Most state land is located in northern Minnesota (Figure 2.2). There are five counties in which the state owns more than 20 percent of the land. In another ten counties, the state owns between 10 and 20 percent of the land. The largest number of exchange proposals has originated in Lake of the Woods, Roseau, St. Louis, Itasca, and Aitkin counties. Some 40 percent of all proposals over the past ten years have been from these counties.

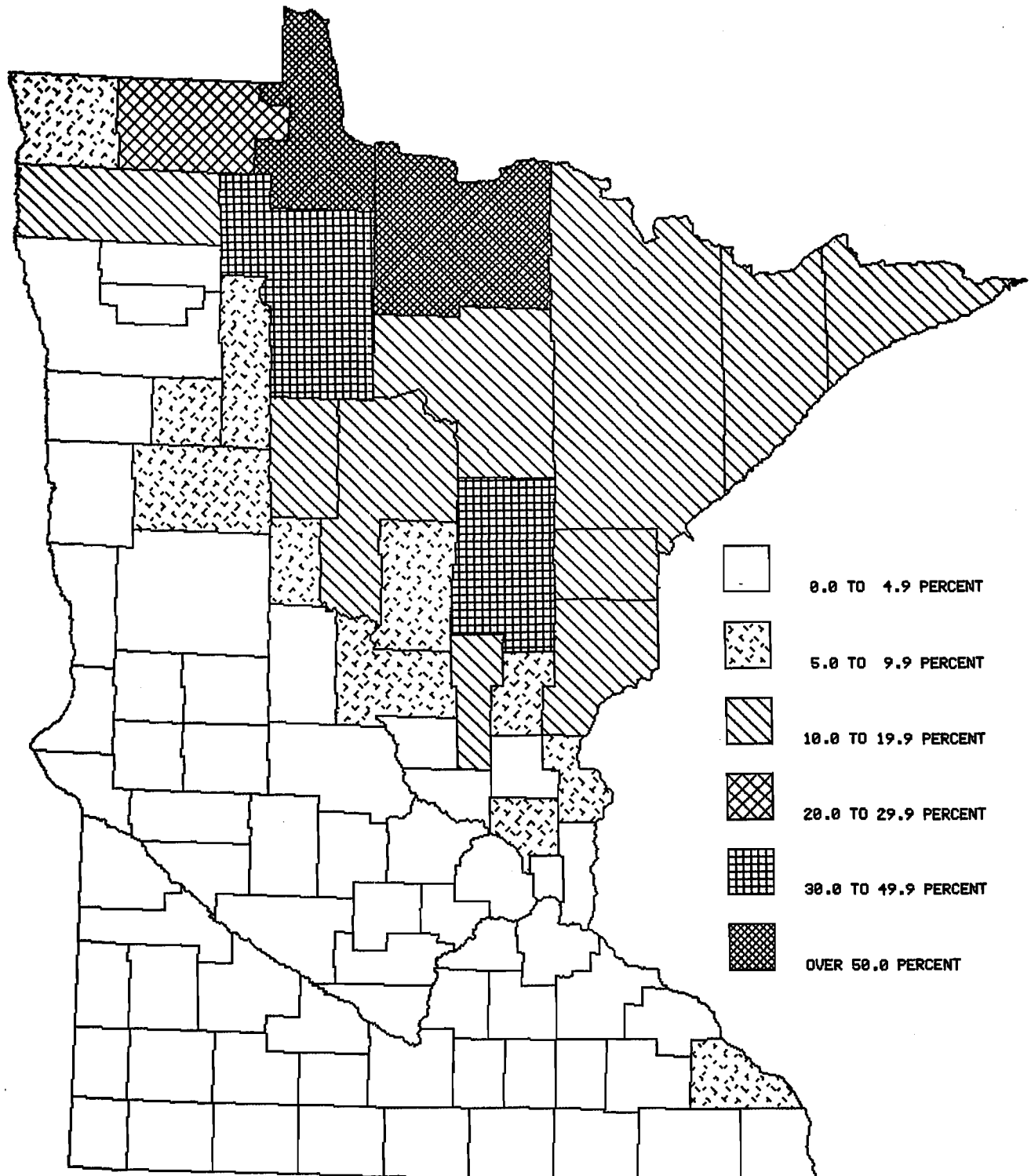
While the state does own a considerable amount of land in each of these counties, other factors affect the number of exchange applications. First, the state must own land that private individuals desire. While consolidation of land parcels is an objective of many land exchanges, often individuals attempt to obtain land from the state that has better agricultural potential. The state benefits from such exchanges because it usually receives a greater amount of wildlife or forest land. This exchange of different land types is prevalent in the forest-agricultural transition areas and in agricultural-wildlife areas in western Minnesota.

FIGURE 2.1
ACRES OF STATE-OWNED AND MANAGED LAND
ACQUIRED, DISPOSED, AND EXCHANGED, F.Y. 1977-82



Source: DNR, Land Bureau, Land Acquisition, Disposal, Exchange Files.

FIGURE 2.2
STATE LAND AS A PERCENT OF ALL LAND IN THE COUNTY
1978



Source: Minnesota Land Management Information Center.

Another factor that determines the number of proposals is public awareness of the program. We suspect that the public is largely unaware of the land exchange program. But in counties where exchanges are more frequent, the publicity that surrounds a public hearing for a land exchange generates greater public awareness. After a notice for a public hearing, for example, the number of inquiries about land exchanges increases. DNR has prepared a brochure that explains the exchange process and expanded distribution would increase public awareness.

The active promotion of exchanges by DNR field personnel is also a factor. As suggested by Figure 2.3, some DNR regions are more active in seeking exchanges. Regions may also differ in the level of initial field review which "filters out" applications before they reach the Land Bureau. For instance, the central region estimates that 75 percent of the applications are rejected during initial field review. These "filtered out" applications are not included in Figure 2.3.

A disadvantage in increasing public awareness of the land exchange program is that DNR staff will receive a larger number of proposals, many of which may be unrealistic. Unless staff are added or assignments shifted, processing of exchange applications could be slowed. Nevertheless, an expanded effort to publicize the land exchange program throughout the state, particularly in areas where scattered lands are common, would lead to a better utilization of the program and would permit DNR to meet more of its land acquisition goals.

We recommend that:

- DNR should expand promotion of the land exchange program. Perhaps a pilot project could be initiated in an area where consolidation is necessary to identify and demonstrate the advantages of land exchange. Specific lands could be identified for exchange and DNR personnel could actively seek and promote exchanges.

2. DETERMINATION OF PARCELS TO EXCHANGE

At present, DNR field personnel determine which lands to exchange on a case-by-case basis. This is necessary because:

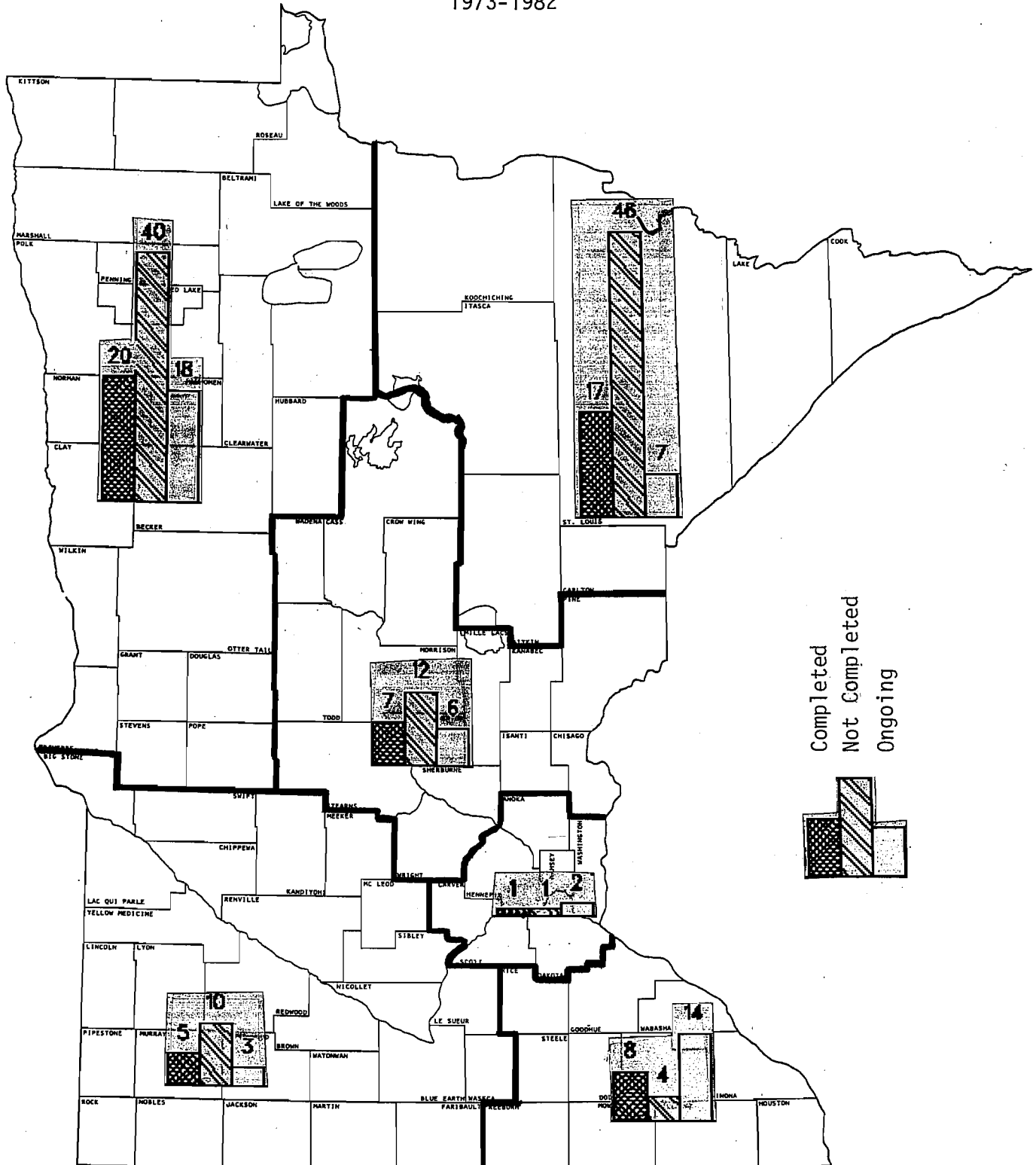
- DNR lacks a land consolidation plan and a list of exchangeable lands that field personnel can use in making decisions on what land to recommend for exchange.

As a result, DNR can make only limited use of the exchange program. More frequently, DNR reacts to proposals made by others instead of initiating its own proposals.

In the late 1960s, DNR initiated a Land Classification Program to identify whether state parcels should be retained or disposed by sale or exchange. This program developed a list of lands to be exchanged but it was controversial and not accepted by some counties and divisions in DNR. Nevertheless, the results of the effort can provide some indication of where most lands suitable for exchange are situated (Figure 2.4).

FIGURE 2.3

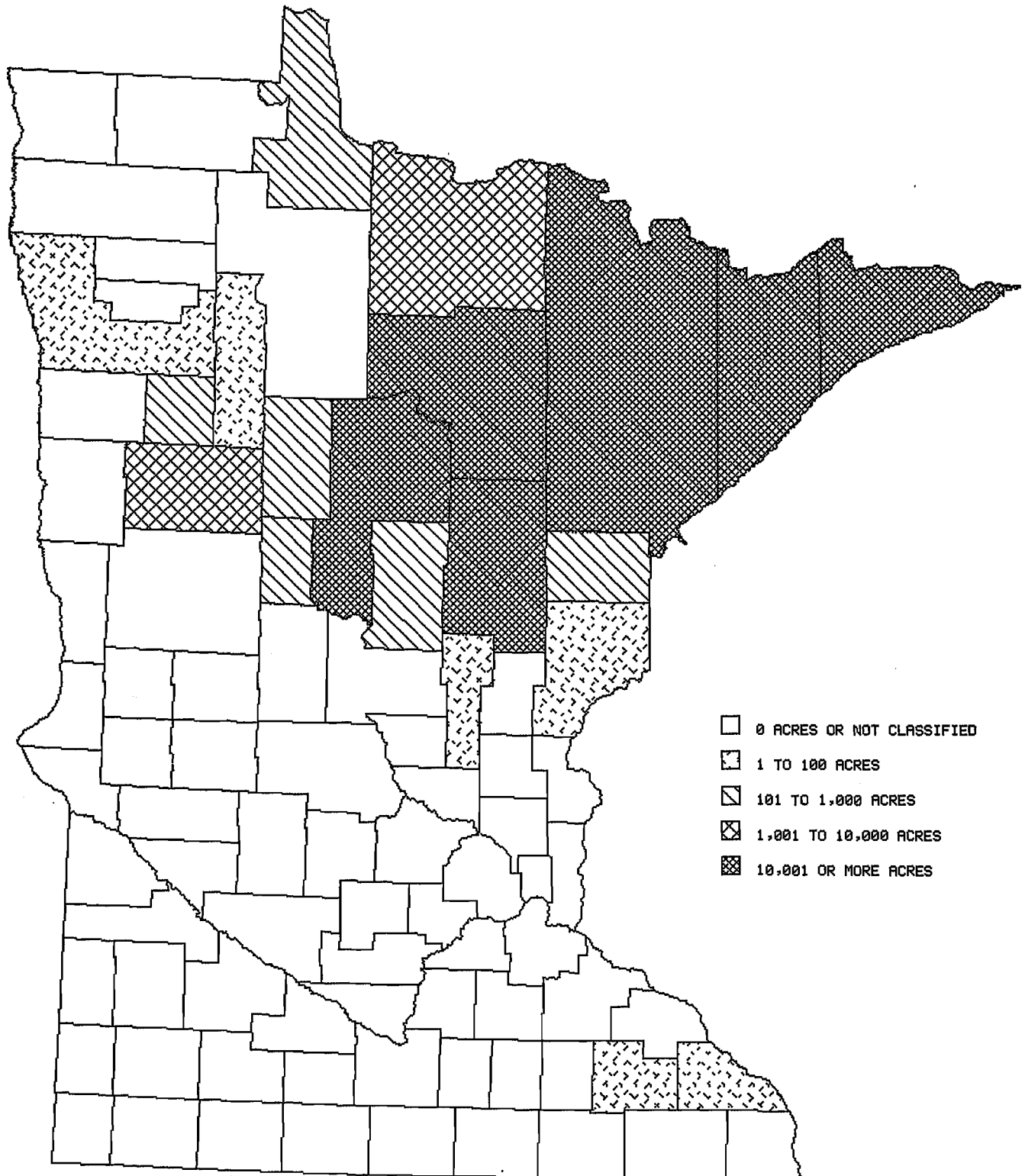
STATUS OF EXCHANGES OF STATE-OWNED AND MANAGED LAND FOR PRIVATE LAND
BY DNR ADMINISTRATIVE REGION
1973-1982



Source: DNR, Land Bureau, Land Exchange Files, January 1983.

FIGURE 2.4

DNR ACREAGE CLASSIFIED "DISPOSE BY EXCHANGE"
FROM LAND CLASSIFICATION STUDY^a



Source: DNR, Land Bureau, Land Ownership/Classification System, July 1982.

^aClassification records are sometimes incomplete or are under dispute by local governments. Data provide only an approximate indication where lands classified for exchange are located.

A current study by DNR, the Land Suitability Project, may provide the information necessary to develop a list of exchangeable lands. This list could be used by field personnel, who could proceed to publicize the program and seek appropriate exchanges.

Before DNR succeeds in developing a list of exchangeable lands, a major issue must be resolved. Should lands be exchanged only for like lands--forest land for forest land or wildlife land for wildlife land--or should the listed lands be available for any management division to trade? In the past, each division has resisted exchanges that would decrease its land holdings. For example, the Forestry Division is currently resisting an exchange of state forest land for shoreland on Lake Superior that is prime recreational real estate.

The ad hoc review of exchange proposals by each DNR division--a time consuming process--could be shortened or eliminated if DNR develops a list of exchangeable lands. Instead, the review would focus on the lands to be received by the state.

We think that the single most important prerequisite for improving the exchange program is the development of a comprehensive statewide exchange plan that identifies the lands for exchange. We believe that the most appropriate vehicle for accomplishing this is the Land Suitability Project. Therefore,

- DNR should expedite its Land Suitability Project and develop criteria to classify lands for exchange.

We acknowledge that this task will be formidable. Many of the problems now encountered in identifying and reviewing lands to be exchanged will have to be resolved in the Land Suitability Project. Parallel issues--including the disagreements among DNR divisions--contributed to the failure of the Land Classification Study.

3. INITIATORS OF EXCHANGES

It is often difficult to determine who actually initiates most exchanges. A casual reference about the possibility of exchanging land by a DNR field person to a private landowner may initiate a proposal or an individual may contact a DNR representative and work with him in preparing a proposal. The evidence suggests that more applications for land exchanges come from private individuals.

- In general, DNR personnel are reluctant to initiate land exchanges because they lack guidance on which lands should be exchanged and they lack confidence in the administrative procedure for exchanging land.

DNR has sought exchanges involving a specific project such as a wildlife area, a water access site, or a trail. Forestry has also been active in fulfilling its requirement to dispose of tillable land in the Richard J. Dorer State Forest by proposing numerous exchanges.

During acquisition of land for wildlife management areas, the Wildlife Division of DNR sometimes acquires land extraneous to its needs. The Wildlife Division attempts to trade land outside the boundaries of a management area for land within the management area. In addition, the Wildlife Division has been active in exchanging state wildlife land for private land that has better wildlife potential. A 1,000 acre parcel in Kittson County was acquired for this reason in 1980. This exchange was the largest exchange between the state and a private individual over the last decade.

An exchange of wildlife lands is not without complications. In most cases, federal aid through the Pittman-Robertson Program contributed to the initial purchase. Before these lands can be exchanged, the federal government must review the appraisals and assure that the land to be received is of equal wildlife value. This lengthens the exchange process.

Water access sites have been acquired through the land exchange program. The opportunities for such exchanges are limited but in recent years more have been accomplished. These exchanges usually combine the exchange with a purchase of a larger parcel. For example, a lakeshore resident, perhaps a resort owner, may be willing to sell his land for a public access but may desire to remain on or near the lake. If the state has a small parcel suitable for a homesite, the state can exchange it for a portion of the private land and purchase the remainder. We feel that DNR should explore further applications of this exchange/purchase mechanism because acquisition dollars are saved.

The application of the exchange program to move state trails so that they do not bisect private property is limited. This is because railroad grades are used for many trails and to realign the trails would require reconstructing the grade elsewhere. Since construction costs are paid entirely by DNR, the benefit of an exchange is minimal.

Even though an exchange of trail land can be costly, some exchanges are made. Where a trail creates a hardship for a landowner or if DNR anticipates significant problems with trespass or vandalism, exchanges are proposed. For example, the Trails and Waterways Unit of DNR is proposing an exchange with a mink farmer along the Root River Trail because his operations would be severely affected from the trail activity through his ranch. Such exchanges should be kept to a minimum unless the private individual pays a share of the construction costs.

The Forestry Division manages the largest amount of land and has the greatest potential for initiating exchanges. Forestry has been particularly active in pursuing exchanges in the Richard J. Dorer State Forest. Legislation requiring exchanges has accelerated the use of exchanges even where not required by law. In other areas of the state, forestry personnel are not as anxious to consolidate holdings through exchange. The field personnel may lack knowledge of the program or are dissuaded from initiating exchanges because of the time it will take to complete. In addition, since Forestry now allows similar management of lands outside the state forest as for those lands within, the incentive to consolidate has been reduced.

To expand the application of the land exchange program by DNR field personnel we recommend the following:

- An educational program should be developed for field personnel to familiarize them with the exchange process and to illustrate where exchanges can improve their management capabilities.

Placing a higher priority on land exchanges in the field will accelerate the program. Until DNR determines the specific lands to be exchanged, field personnel must be encouraged to evaluate their current land holdings and to explore opportunities that will improve their land resources and their management.

- The processing of exchange applications should improve to restore the confidence of the field personnel in land exchanges as a tool for land managers.

The reluctance of field personnel to use the land exchange program must be eliminated or reduced. This can only be accomplished through improvements in processing exchanges (See Chapter III).

B. OBSTACLES TO LAND EXCHANGES

Some exchanges cannot be completed or are delayed because of legal or administrative obstacles. Some legal safeguards are essential to prevent land fraud or to protect a land resource. Other provisions, however, might be removed or adapted to permit better utilization of the exchange program. This section will detail the various obstacles that affect land exchanges.

1. SCHOOL TRUST LAND

Since 1973, almost half of the land the state has exchanged has been School Trust land (Table 2.1). When an exchange involves School Trust land, special problems are encountered. Under the Minnesota Constitution, trust land cannot be transferred directly to a local governmental unit nor can it be exchanged for other state land. The Constitution says that School trust land can only be exchanged for private or federal land.¹ This provision limits the flexibility of the state in managing its lands.

Nevertheless, a Minnesota Supreme Court ruling in 1914 declared condemnation of School Trust lands the legal equivalent to a public auction sale, making it possible for DNR to condemn School Trust land, compensate the Permanent School Fund, and then exchange the land.²

¹Constitution of the State of Minnesota, Article XI, Section 10.

²In re Condemnation of Lands in St. Louis County, Independent School District of Virginia v. State, 1914, 124 Minn. 271, 144 N.W. 960.

TABLE 2.1
TYPE OF STATE LAND EXCHANGED FOR PRIVATE
OR FEDERAL LAND
1973-1982

	<u>Acres</u>	<u>Number of Exchanges^a</u>
School Trust	2,902	30
Acquired	2,294	29
Consolidated Conservation	<u>787</u>	8
TOTAL	5,983	

Source: DNR, Land Bureau, Land Exchange Files, January 1983.

^aSome exchanges involve more than one land type.

Two issues surround the exchange of School Trust land. First, when the state exchanges trust land, the land received by the state assumes trust fund status. When the land received by the state is within a management unit it may no longer produce income for the Permanent School Fund because timber and mineral production may be restricted.

We found that in the past DNR has routinely exchanged School Trust land outside a management unit, which was earning income for the trust fund, for private land within a management unit where no income could be earned. As recently as May 1982, trust land was transferred into a wildlife management area. This particular exchange was completed despite concerns expressed by the Land Bureau. Now DNR is more cautious about such exchanges where income for the trust fund would be eliminated. In DNR's procedural guidelines for land exchanges, these types of exchanges are now discouraged.

To accomplish an exchange that puts School Trust land into a management unit and eliminates income for the trust fund, DNR requires an acceptable plan to compensate the trust fund. The usual method of compensation is condemnation. But we determined that no School Trust land has yet been condemned before its transfer into a management unit.

Although DNR has not condemned trust land before an exchange, it has condemned trust land once inside management units. A certain proportion of acquisition funds can be used to condemn School Trust land. Nevertheless, acquisition of land has higher priority than condemnation, particularly since acquisition funds are decreasing. Therefore, the rate of condemnation is slow.

Most condemnation has been within wildlife management areas where 99,464 acres of School Trust land have been condemned.³ Only 1,800 acres of the 12,160 acres of School Trust land in state parks has been condemned. Acquisition of private in-holdings has higher priority over condemnation because the opportunity to purchase land from a willing seller must not be lost when the possibility exists that incompatible land uses may be eliminated in the park.

The second issue surrounding School Trust land involves the impossibility of transferring such land within the state or to other governmental subdivisions without condemnation. While DNR has condemned trust land in management units to satisfy the Permanent School Fund, it has not condemned trust land to effectuate a transfer of land within the department or between DNR and other governmental subdivisions. Although condemnation can be used to transfer land, it has practical limitations. Condemnation proceedings are time-consuming and expensive. We believe DNR will seldom attempt land transfers if it must first compensate the trust fund. Funds for condemnation of School Trust lands are limited; most acquisition monies are for purchasing lands for specific management purposes.

Numerous opportunities for land transfers between the state and counties exist that would consolidate land holdings and improve land management. But we found that some counties have been frustrated in their attempts to consolidate county-managed land because of DNR's inability to transfer School Trust land. School Trust parcels tend to be more scattered than acquired parcels so they are often the focus of consolidation efforts by the counties.

If DNR were permitted under the Constitution to transfer School Trust land without limitations, more School Trust lands could be removed from non-income producing management units and more land exchanges would be made with counties and municipalities. Problems could surface, however, when transferring state trust land from management units. Suitable acquired land that would earn income for the trust fund may not be available for exchange even though much of the School Trust land in management units is not prime and would require a lesser amount of acquired land to equalize land values. In addition, private appraisers could be used to allay any concerns over conflicts in interest when land is transferred within DNR. Appraisals could also be certified by an independent department.

Some of the problems outlined above might be alleviated by a state/county cooperative management program that would give the state responsibility for managing certain county lands in return for county management of certain state lands--especially School Trust lands. Such a scheme might lower management costs for each party, especially for parcels that are now adjacent to lands managed by the other party.

³DNR, Office of Planning, School Trust Land Management Report, March 1983.

In any case, potential solutions to these problems are not mutually exclusive. Because Minnesota is a state with large amounts of School Trust lands and tax-forfeited lands, both of which tend to be scattered, many alternative courses of action need to be explored.

We recommend that:

- The Legislature should review the need to amend the Minnesota Constitution to permit the transfer of School Trust land for other state land and for land owned by other governmental subdivisions. In addition, DNR should study the potential for other solutions, such as cooperative management agreements between the state and counties.

2. OTHER LAND CONSIDERATIONS

Other limitations can restrict the exchange of state land. Lands acquired through purchase or gift often have limitations imposed by state and federal laws pertaining to acquisition or by the terms of the gift. According to Minnesota statutes, most lands in state parks, state forests, game preserves, and other areas designated by law cannot be exchanged unless the received lands are incorporated into the same management area.

When an exchange involves the trade of lands across political or administrative boundaries, additional problems occur. Counties and townships may lose state in-lieu-of-tax or other state aid, or they may lose private lands and, therefore, tax base. Only one exchange in the last ten years crossed county boundaries. Likewise, a DNR district may oppose the loss of land under its jurisdiction. While such exchanges are not prohibited, these are practical obstacles that limit the program's applicability.

Some lands are restricted from exchange by statutes because of the presence of a valuable resource.⁴ The law prohibits the sale--not the exchange--of commercial peat lands, but DNR rarely exchanges commercial peat land anyway. Tax-forfeited land managed by the counties that have commercial peat cannot be exchanged by law. Statutory restrictions on exchanging land bordering water have previously been discussed--the land received must also border the same or nearby waters.

Lands in areas of mineral potential can be exchanged but DNR attempts to obtain similar lands in the exchange. DNR will not exchange lands if the land received by the state through exchange has mineral reservations that permit another party to use the surface without compensation for damages to the surface or that permit repurchase of the surface estate. We feel that DNR should continue to follow these guidelines to maintain the land and its resources.

⁴See Minn. Stat. §§94.461, 94.342, 94.343, and 94.344.

3. EQUAL VALUE EXCHANGES

Statutes restrict land exchanges to lands of "substantially equal value." When slight value differences exist between parcels, statutes permit resolution of differences.

If state land is of greater value and not School Trust land, the private party may pay the difference in cash. Since 1973, only three exchanges have been completed where the other exchange party has paid cash. The total amount received by the state for all three exchanges was a miniscule \$62. School Trust lands can be sold only at a public auction and, therefore, an individual cannot "purchase" a portion of the School Trust parcel.

If state land is of less value, DNR can pay the difference from available acquisition appropriations or DNR can seek a waiver from the other party. In the last ten years, DNR has not paid the difference but instead has obtained waivers. Thirty-three waivers have been obtained saving a total of \$72,110.

The term "substantially equal" is vague and difficult to quantify. What was substantially equal ten years ago may not be substantially equal now. As the value of land increases, differences in land values may be accentuated. Where two or three acres of private land may have made a slight difference in total land value ten years ago, today two or three acres may make a \$2,000-\$3,000 difference. A private individual may be unwilling to grant a waiver for this large amount. Under these conditions, DNR has generally reduced the size of the parcel it has offered in exchange, thus equalizing the proposed trade, and initiated the review process again. However, we think the procedure is cumbersome and adds significant time to the process. In addition, if a private individual is aware that only the individual and not the state is expected to pay any land value difference, the individual may be deterred from initiating an exchange.

Both Wisconsin and Michigan permit unequal value exchanges. In fact, approximately 60 percent of Wisconsin's exchanges include cash. Michigan has regularly used private cash payments to purchase additional lands.

If DNR would pay the difference rather than seek waivers, time and money could be saved. Nevertheless, some problems could surface. It would be advantageous for the private party to seek the highest possible appraisal for his property. Negotiations might become a major factor in the exchange process. In addition, few exchanges might be completed because DNR may not wish to expend dollars for some exchanges. Despite the potential difficulties, we recommend:

- DNR should more frequently equalize exchanges by making supplementary cash payments rather than by readjusting

parcel acreages. A State Land Revolving Fund, recommended in an earlier report by the Office of the Legislative Auditor,⁵ could provide some of the necessary monies.

Maintaining the substantially equal policy itself has advantages, particularly for exchanges in which the private party must pay to equalize the difference. Public controversy is more likely when an individual can combine a trade of land and cash to obtain a larger piece of property. A recent controversial exchange that failed to be initially approved by the Land Exchange Board because of public opposition included a cash payment. Although the cash payment was not the sole reason for opposition, an independent appraiser did have to reappraise the parcels to assure the accuracy of the value difference.

There have been many exchanges that failed even though raw land values were substantially equal. In some cases, the value of the timber on the state land exceeded the value on private land. Perhaps, rather than adjust the acreages in the exchange, the private party should be permitted to pay the timber value difference. But again, the Constitution would restrict such payments for School Trust land.

In cases where the state land has substantially less value, we discovered fewer problems. The state already accomplishes such exchanges by combining the exchange with a purchase. A small parcel is partitioned out of the private parcel and exchanged and the remainder is purchased by the state. Of course, DNR must have a specific management need for the entire parcel and acquisition funds must be available.

Before any changes are made to the "substantially equal value" requirement, careful consideration must be given to potential effects. Greater flexibility in the application of the exchange program could present opportunities for abuse or might create an increase in public reaction toward exchanges.

4. POLITICAL CONSIDERATIONS

Land exchanges are not always completed even when they would benefit both the state and the other exchange party. DNR is responsive to county and public attitudes toward an exchange. If DNR feels that completion of an exchange might influence its other activities, especially acquisition, the exchange is usually terminated.

In some cases, exchanges that benefit both exchange parties can have negative impact on a third party--a county or adjacent landowner. Counties may have to expand public services and landowners may lose immediate access to resources. Their concerns are

⁵A State Land Revolving Fund would be financed by the receipts from land sales that currently are deposited in the General Fund. See Office of the Legislative Auditor, Evaluation of State Land Acquisition and Disposal Report, March 1983, for more information.

determined during reviews and the public hearing. Unfortunately, not every concern is valid. Some landowners may oppose an exchange because of their animosity toward an individual. With sufficient public opposition, any exchange can be killed. This is unfair to an individual who has invested time and money in an exchange proposal.

Under current processing procedures, we determined that the individual has no alternative but to accept DNR's decision. DNR may attempt to modify the proposal and hold additional public hearings to gauge public opposition or it may terminate the proposal. In addition, the Land Exchange Board prefers not to deal with controversial exchanges. We feel:

- DNR should inform the exchange party at the outset that the exchange will be judged not only on its merits but also on the public reaction toward the exchange.

5. CONCLUSION

Some obstacles and restrictions are essential in the land exchange program to protect resources associated with the land. But other obstacles should be eliminated or reduced. The major obstacle that should be removed is the restriction of transferring School Trust land between the state and other governmental subdivisions.

The organization of DNR into diverse resource management units creates another problem. While each management division strives to protect its resource--timber, minerals, or wildlife--the land itself may be overlooked as a resource. The Land Bureau, as a service bureau, is responsible for buying, selling, and exchanging land, not managing land. Therefore, decisions for land transactions may fail to consider the location of land as it affects travel costs and future land values. Some parcels will appreciate in value more than other parcels. In our view, this should be considered in exchange proposals. Where the state has an opportunity to obtain prime real estate that offers excellent development potential, perhaps to the detriment of a different resource, land considerations might take precedence over the resource.

The next chapter details the procedure for processing land exchanges. The modifications proposed so far focus on accelerating the program through improved land planning, promotion, and removal of obstacles that restrict exchanges. To achieve an acceleration in the program, however, a corresponding acceleration is necessary in the processing of exchanges. Each step and the problems encountered are discussed.

III. ANALYSIS OF ADMINISTRATIVE PROCESS

The land exchange process is lengthy. Each exchange requires a thorough review of the characteristics of the land parcels and their monetary value. Unfortunately, the review process involves numerous steps that can normally take from one to two years.

- The most common complaint about the land exchange program is the length of time to complete an exchange.

Since 1973, only two exchanges have been completed within a year; the median length of time to complete an exchange for private land is 633 days. Exchanges with the federal government take even longer. A large number of exchanges are still considered "ongoing", even though they have been on file for over two years.

The time to process exchanges appears to be shorter in Michigan and Wisconsin, although their data have not been independently confirmed. Wisconsin officials estimate that an exchange averages six months. Michigan officials report that most exchanges take six to eight months but that some stretch out to two years.

The length of time to process an exchange in Minnesota affects the program in the following ways:

- (1) Field personnel of DNR are hesitant to seek exchanges because they are aware that an exchange will take much of their time.
- (2) The other exchange party may become frustrated with the process and may discourage others from utilizing the program.
- (3) An application backlog will develop if new applications surpass completions.

Because length of time is a primary issue in the program it is necessary to determine why land exchanges take so long. This chapter reviews the steps in the process. Each step is analyzed to determine how much time is required and why delays may occur. While the chapter concentrates on the exchange of state-owned and managed land, the exchange of tax-forfeited land managed by the counties is also outlined.

After our study began, DNR issued a short manual including certain "procedural guidelines" for land exchanges,¹ which may help to standardize and accelerate the exchange process. Among other things, the manual establishes time limits for each step in the exchange process. In this chapter, these time objectives are compared

¹DNR, "Commissioner's Procedural Guidelines for Land Exchanges, Land Title Transfers, and Other Duties Relating to the Land Exchange Board," February 24, 1983.

with past time performances to determine where changes in the process may be needed. The effort by DNR to develop guidelines and issue a manual indicates an acknowledgement of past problems and a willingness to address them.

A. PROCEDURE FOR EXCHANGING STATE-OWNED AND MANAGED LAND

Although the Land Exchange Board has ultimate authority over a land exchange, DNR "filters out" proposals that are not in the best interests of the state. We found that once a proposal reaches the Land Exchange Board it is seldom rejected.

The DNR Land Bureau coordinates the exchange process, screens exchange proposals, and keeps records for each proposal. Program divisions of DNR, such as Forestry and Minerals, evaluate each proposal to assess the potential effect on their resource objectives. The Attorney General's Office must review abstracts and titles to assure ownership and marketability of the offered parcel. Figure 3.1 outlines the steps in the exchange process and identifies the responsible party for completing each step.

Exchanges vary in how quickly they move from step to step in the process. Through each step of the exchange transaction, the opportunity exists for delays. The most serious delays occur when 1) problems arise with the abstract, 2) the appraisals are not equal, 3) the testimony at the public hearing opposes the exchange, or 4) the exchange requires a land survey. Each delay can add to the cost of the exchange.

Since 1973, exchanges that were completed for private land took 1 to 1.5 years for 37 percent of the cases; 1.5 to 2 years for 20 percent; and 2 to 3 years for 25 percent (Table 3.1). The exchanges that were terminated and, therefore, "not completed" took much less time. There were only four completed exchanges for federal land, but these exchanges took a long time. Likewise, only a few parcels have been transferred for other governmental subdivision land.

Exchanges that were "not completed" were terminated within one year in 77 percent of the cases. Exchange applications can be terminated for a number of reasons, but the most common reason is DNR's judgement that the exchange is "not beneficial to the state" (Table 3.2). Time spent on unsuccessful exchanges slows processing of other applications and diverts time from other responsibilities of DNR personnel. We think DNR has been effective in terminating poor proposals early in the review procedure. A few proposals, however, have passed DNR review that should have been terminated, particularly those involving lakeshore, minerals, and management units. For example, three proposals were in the appraisal phase when it was determined that the presence of minerals precluded the exchange of state land.

FIGURE 3.1

PROCEDURE FOR EXCHANGING STATE-OWNED AND MANAGED LAND

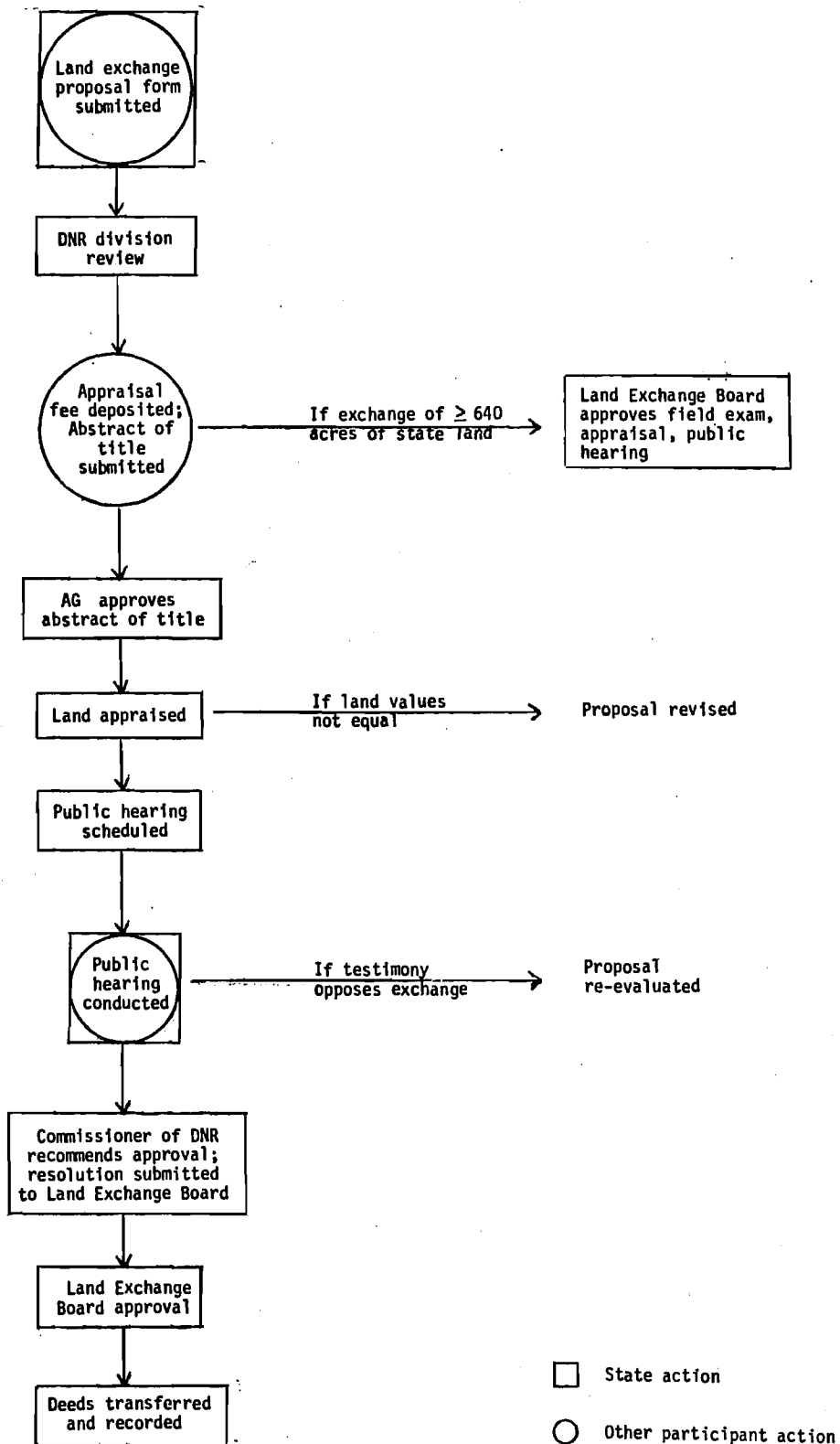


TABLE 3.1
LENGTH OF TIME TO COMPLETE/TERMINATE A LAND EXCHANGE PROPOSAL
INITIATED BETWEEN 1973 AND 1982

Exchange Type	Total Number of Cases	Number of Cases Completed/Terminated in:					
		0-.5 Years	.5-1 Years	1-1.5 Years	1.5-2 Years	Over 3 Years	
State-Owned and Managed Land For:							
<u>Private Land</u>							
Completed Exchanges	56 ^a	--	2	21	11	14	8
Not Successful Exchanges	113	57	30	8	8	6	4
<u>Federal Land</u>							
Completed Exchanges	4	--	--	--	1	--	3
Not Successful Exchanges	0	--	--	--	--	--	--
<u>Other Governmental Subdivision Land</u>							
Completed Land Transfers	2	--	--	1	1	--	--
Not Successful Land Transfers	2	1	--	1	--	--	--

Source: DNR, Land Bureau, Land Exchange Files, January 1983.

^aSix exchanges are not included because of missing data.

TABLE 3.2

REASON FOR TERMINATION AND STATUS OF EXCHANGE WHEN TERMINATED^a FOR EXCHANGES OF STATE-OWNED
AND MANAGED LAND FOR PRIVATE LAND INITIATED BETWEEN 1973 AND 1982

	No Benefit to State	Land Values Differ	State Land has Lakeshore	State Land has Minerals	State		County Opposes	Owner Terminates	Outside Parties Oppose	Miscellaneous	Total
					Land	Land Part of Management Unit					
DNR Division Review	29	9	8	10	3	3	8	4	1	9	81
Abstract Submitted	3	1	-	1	-	-	-	2	-	1	8
Appraisal	2	8	1	3	1	1	2	7	-	3	27
Public Hearing	-	-	-	-	-	-	-	-	-	1	1
Land Exchange Board	-	-	-	-	-	-	-	1	3	-	4
Total	34	18	9	14	4	4	10	14	4	14	121

Source: Department of Natural Resources, Land Bureau, Land Exchange Files, January 1983.

^aThe number of reasons exceed the number of unsuccessful exchanges because often more than one reason terminates an exchange.

A number of exchanges remain ongoing for a long period before eventually being terminated. This often reflects DNR's efforts to complete an exchange. An exchange that is initially rejected is often revised before being completely terminated. After a proposal is revised, it must be reprocessed.

Lengthy processing times can create a situation where applications are received at a faster rate than they can be processed. As of December 1982, there were 50 ongoing proposals for private land and 12 additional proposals involving the other exchange types (Table 3.3). Until last year, fewer exchanges were completed or terminated in a year than the number of applications submitted. This led to an increasing backlog of exchange proposals. We believe that if exchange applications should increase, the Land Bureau will have to accelerate processing to ensure that the number of exchange proposals on file does not reach an unmanageable size.

We believe that:

- If applications increase, staff should be added to the Land Bureau for processing and appraising. An additional two to three staff members may be needed to reduce the backlog of applications and to carry out the recommended streamlining.

Recordkeeping and keeping up-to-date on a proposal can be made more difficult when a proposal lingers on file. While no evidence exists that DNR has "lost" a proposal, sometimes proposals remain dormant. If the exchange program expands, this could accentuate the problem. We feel that:

- To increase administrative efficiency, DNR should attempt to resolve the status of exchange proposals in a reasonable length of time.

What is a reasonable length of time to complete or terminate an exchange? In the following sections, each step in the exchange process will be discussed. From an analysis of who and what is involved in each step, time lengths can be better appreciated and defined.

1. EXCHANGE PROPOSAL SUBMITTED

Formal processing of an exchange begins when a proposal is submitted. Prior to submittal, though, DNR regional personnel may spend considerable time with an individual in preparing a suitable proposal. Exchange proposals involving paper or mining companies have taken two to three years before an application is submitted. Regional review of each proposal is also conducted. This reduces the number of applications that are ultimately processed by the Land Bureau.

The length of time from receipt of application to initiation of DNR review varies considerably (Table 3.4). While legitimate reasons can and do delay the processing of a proposal in the initial step, we found that:

TABLE 3.3
PROCESSING RATES FOR APPLICATIONS TO EXCHANGE STATE-OWNED
AND MANAGED LAND FOR PRIVATE LAND
1977-1982

	<u>Number of Applications Carried-Over from Previous Year</u>	<u>Number of New Applications</u>	<u>Number of Exchanges Completed</u>	<u>Number of Exchanges Terminated</u>
1977	17	33	3	19
1978	28	14	2	5
1979	35	29	8	15
1980	41	29	8	13
1981	49	24	10	11
1982	52	22	12	12
1983	50	--	--	--

Source: DNR, Land Bureau, Land Exchange Files, January 1983.

TABLE 3.4
LENGTH OF TIME TO COMPLETE STEPS FOR EXCHANGING STATE-OWNED AND MANAGED LAND
1973-1982

	Total Number of Cases ^a	Number of Cases Completed In:					Median (days)
		0-30 Days	31-60 Days	61-90 Days	91-120 Days	Over 120 Days	
Exchange Application to DNR Review	86	31	19	17	9	10	50 days
DNR Review to Request for Abstract	80	12	38	13	5	12	53 days
Abstract Received to Title Opinion	76	33	25	11	3	4	37 days
Appraisal	74	13	17	13	10	21	77 days
Last Administrative Step to Public Hearing	75	3	26	16	11	19	76 days
Land Exchange Board to Exchange of Deeds	62	--	6	17	10	29	115 days

Source: DNR, Land Bureau, Land Exchange Files, January 1983.

^aNumber of cases include available data for completed and ongoing exchanges. Any delays due to surveys were not included in data.

- DNR's Land Bureau has delayed the initial processing of some exchange proposals. Staff tend to focus their activities on existing proposals rather than adding new proposals to the process.

Some improvements have been made in recent years and additional emphasis on this initial phase will resolve most problems.

The Land Bureau lacks direct authority for rejecting an application. Review of exchange proposals is the responsibility of DNR's resource management divisions. Nevertheless, when an exchange application is submitted that would violate statutes if completed or that is obviously inequitable, the Land Bureau has terminated processing. Termination, however, comes after the involved DNR unit is contacted. The Land Bureau should continue to use its discretionary authority to reduce the number of proposals that the management divisions must review.

We think the Land Bureau should attempt to proceed to division review as soon as practical rather than delay processing. New DNR procedural guidelines recommend that this first step should take 14 days. Considering that this has been accomplished for only 10 percent of the cases analyzed, the Land Bureau must alter its procedures.

2. DNR DIVISION REVIEW

A proposal information packet, which details land characteristics and location, is sent by the Land Bureau to assistant commissioners, division directors, bureau chiefs, and regional administrators for their evaluation. The regional administrator distributes the information to regional supervisors and field staff. Department review evaluates the advantages/disadvantages of an exchange for resource management.

Most exchanges are terminated in this step. An effective mechanism is in place to evaluate proposals, but the following problems have occurred in the past.

- (1) Failure of a division to report within a specified time led to a continuation in processing because the Land Bureau interpreted a lack of response as "no comment." Unfortunately, this was not always the case. The DNR has dealt with this problem by establishing a policy requiring a division response before proceeding and by establishing a Planning and Environmental Review Team to resolve disagreements within DNR.
- (2) Divisions have different perceptions about the management and resource capabilities of land which can lead to a lack of agreement on whether an exchange proposal should proceed.

The Planning and Environmental Review Team includes the division directors and evaluates a proposal on its "benefit to the state." Some concern has been expressed that parochial interests of

various divisions delay the exchange process. This is understandable considering that evaluations are based on a particular resource represented by each discipline in DNR. It is often necessary for a responsible person or group to determine the overall benefit to the state. The Commissioner of DNR has the ultimate decision on whether to proceed with an exchange.

In most cases, DNR review can be completed and the next step can be initiated within two months. DNR procedural guidelines recommend a time-frame of 60 days; the current median is 53 days. Although the length of time appears long, many actors are involved in the review process. In our view, DNR is cautious on processing exchange proposals because they do not wish to permit inequitable or politically volatile exchanges to reach the Land Exchange Board nor do they wish to terminate a proposal without good cause. If DNR succeeds in developing a list of exchangeable lands, review time could be significantly shortened.

3. EXCHANGE PARTY SUBMITS ABSTRACT

If an exchange proposal survives DNR review, the Land Bureau requests the abstract from the other party and an appraisal deposit fee if the proposal is not initiated by the state. To bring an abstract up-to-date entails some expense for the landowner. In addition, some landowners hire an attorney to facilitate their dealings with the state. Therefore, land exchanges are not without costs to the private individual.

Required by legislation in 1957, the appraisal deposit fee ranges from \$25 to \$100, depending upon the area of land involved.² The fee is collected only when the offer to exchange land is made by the private landowner and is reimbursed if the exchange is not terminated by the owner. No specific purpose for the fee is stated in the statutes, but it is apparent that the fee does not finance the appraisal costs. Rather, it may serve as a commitment by the exchange party to complete the process.

Only fourteen exchanges initiated in the last ten years have been terminated by a landowner. The more common excuses for termination have been disagreement over land values, decision to sell land instead, and death. Most terminations came prior to receipt of the appraisal fee or no appraisal fee was required. Landowners who have spent a considerable time to prepare an exchange proposal appear unlikely to back out of the transaction, unless some significant development has changed their view towards the exchange. In that case, the relatively small amount of \$25 to \$100 may not be a deterrent to termination.

We think raising the appraisal fee does not seem appropriate, in part because some uncertainty can exist over who initiates a proposal. An appraisal fee is not required when the state encourages a private landowner to submit an exchange application. Currently, the Land Bureau contacts the individual and/or the DNR regional

²Minn. Stat. §94.348 (1982).

office to determine if the private party or the state originated the proposal. Sometimes, the private party may prepare the proposal at the urging of DNR personnel or with the help of DNR personnel, making it unclear whether a proposal is private, state, or joint. The procedures for collecting appraisal deposit fees are not well-defined.

We feel that DNR should be more aggressive in preparing applications rather than relying entirely on the private individual. Although the submittal of an application by a private individual is a form of commitment to exchange land, some exchanges may not provide significant benefits to the individual to warrant his time and money to prepare an application and to pay a deposit fee.

If the land exchange program receives a larger number of applications in the future, the potential for "drop-outs" may increase. To prevent the processing of non-serious applications the state could require an "application fee" deposit when a proposal is submitted by a private individual. An application fee of \$50 to \$100 would assure greater consideration by an individual before an application. In our view, this is preferable to an appraisal deposit fee because it is collected prior to DNR spending time reviewing a proposal.

Landowners have slowed the exchange process by failing to submit abstracts promptly. The time lost, however, has not been extreme because in practice appraisals are usually begun prior to receiving the abstract and appraisal fee deposit. Appraisals, in most cases, take longer than the title opinion which cannot be initiated until the abstract is received.

4. LAND SURVEYS

Surveys are necessary where an irregular land parcel is cut out of a larger parcel and exchanged. A legal description of the property requires that a survey establish property monuments. Surveys add significantly to the cost of an exchange. Of the exchange proposals initiated since 1973, 31 have required surveys; half of these are in the Richard J. Dorer State Forest (Table 3.5). Survey costs are paid entirely by the state through the budget for the DNR Bureau of Engineering. Survey costs do vary but are substantially larger for exchanges in the Richard J. Dorer State Forest where costs have ranged from almost \$10,000 to over \$20,000. The lack of section markers and topography make surveying difficult in southeastern Minnesota. Other exchanges in the state have had much lower survey costs, ranging from less than \$2,000 to about \$6,000.

While all exchanges in the Richard J. Dorer State Forest involving surveys have been completed or are ongoing, five exchanges outside the forest have been surveyed and the exchange was eventually terminated. We think surveys should be conducted only when there is a strong likelihood that an exchange will be completed. To compensate the state for conducting a survey that benefits both the state and the private party, we conclude that:

- Current procedures should be modified to require the other exchange party to pay a proportion of all survey costs, even in those cases where the survey is done by the state.

TABLE 3.5
SUMMARY OF SURVEYS CONDUCTED FOR LAND EXCHANGES
1973-1982

	Number of Exchange Proposals	Number Surveyed	Number Surveyed But Exchange Not Successful
<u>Outside</u> Richard J. Dorer State Forest	213	15	5
<u>Inside</u> Richard J. Dorer State Forest	25	16	0

Source: DNR, Files from Bureau of Engineering and Land Bureau.

The department's new procedural guidelines already require that any private contract survey work be paid for by the other landowner if he or she initiated the exchange.

This policy change would influence exchanges in the Richard J. Dorer State Forest where surveys are normal. It would be difficult for the Forestry Division to comply with legislation that requires disposal of tillable land over ten acres. Potential exchange parties may be dissuaded from an exchange because of costs. To resolve the problem of forced disposal without a willing exchange party, legislation that requires the sale/exchange of certain acquired parcels in the Richard J. Dorer State Forest could be altered to permit flexibility in their disposition. Although DNR can apply to the Legislative Commission on Minnesota Resources for exemption where the sale/exchange would destroy "recreational, historic, or scientific values," it has never done so. An exemption based on economic considerations is not expressly permitted. However, where exchanges are costly, DNR might retain the land and attempt to lease the tillable portion. Also, if a "State Land Revolving Fund" was established, more disposals might be accomplished through sale.³ Nevertheless, a survey would still be necessary to cut out the tillable parcel.

Some exchanges have been made in the Richard J. Dorer State Forest that were not required by legislation. Two ongoing proposals have been questioned by DNR staff because the large survey costs diminish the overall benefit to the state. Other personnel feel the benefits of the exchanges exceed the costs, particularly since acquisition funds may be insufficient to permit purchase. When

³A State Land Revolving Fund would be financed by the receipts from land sales that currently are deposited into the General Fund. This fund could be used to purchase land. See Office of the Legislative Auditor, Evaluation of State Land Acquisition and Disposal Report, March 1983, for more information.

land is purchased, the dollars come from acquisition funds. But when land is received through exchange, the dollars come from the General Fund, which pays such administrative costs as surveys, and from the exchange of equal value land. In some cases, acquisition through exchange may be much more costly than outright purchase. We feel that:

- DNR should consider all costs involved in a land exchange in the Richard J. Dorer State Forest before acquisition through exchange.

Surveys for exchanges take long because most are in the Richard J. Dorer State Forest where the effort to reestablish monuments is difficult and lengthy. Typical surveys in this area have taken about 1,800 man-hours. Surveying for exchanges are also, generally, lower priority than for purchases. The survey section has a backlog of work assignments and are limited by seasonal conditions. Therefore, surveys in the Richard J. Dorer State Forest end up taking approximately two years to complete. Other surveys are generally completed in less than nine months.

DNR's procedural guidelines recommend a time-frame of nine months to complete a survey. Any surveys which cannot be completed within nine months would be contracted out and paid by the party requesting an exchange. This will have most impact on Forestry and will provide an additional incentive not to acquire tillable land subject to disposal.

5. APPRAISALS

Appraisals are usually begun immediately after DNR review. DNR Regional Land Specialists prepare most appraisals for land exchanges in addition to their other responsibilities involving acquiring, disposing, and leasing land. The same person appraises both exchange parcels.

According to statutes, all appraisals for land exchanges must include timber appraisals, even though timber may sometimes be a miniscule part of the total appraisal. We found the number of personnel trained to conduct land and timber appraisals is small; most acquisition staff appraisors lack the necessary training to value timber. It is also difficult to find private appraisors who can value land and timber. This could pose a problem if the exchange program continues to expand. We conclude:

- DNR should be allowed greater latitude on when to conduct timber appraisals. But, DNR should develop procedural guidelines for determining when timber appraisals are necessary. In most cases, timber appraisals will be still necessary.

The quality of appraisals has seldom been challenged by private individuals. But the federal government has expressed concern over documentation of appraisals for exchanges involving federal land or state land acquired through federal aid. Federal

review of appraisals has led to reappraisals or a questioning of appraisal procedures. Appraisors are also under some pressure to equalize appraisals for parcels, since statutes require the exchanged land to be of "substantially equal value." Doubts about the accuracy of some appraisals could be allayed through improved documentation. We recommend:

- The Land Bureau should prepare a handbook for appraisors which clearly defines appraisal procedures and the degree of documentation that must accompany appraisals for land exchanges. In addition, the Land Bureau should establish a program to check land appraisals and conduct limited reappraisals to ensure accuracy.

The time required to complete an appraisal for a land exchange is longer than that for purchasing land. While an appraisal for a land purchase takes one month, an appraisal for a land exchange takes twice as long. Land exchange appraisals require more time because the Regional Land Specialist has diverse responsibilities and must appraise two parcels. The median length of time to complete appraisals is 77 days. DNR procedural guidelines recommend two months but acknowledge that appraisals can take longer.

6. TITLE OPINION

After receiving the abstract from the other exchange party, the Land Bureau forwards it to the Attorney General's Office for an opinion. The opinion identifies problems that must be resolved before an exchange can be completed. The problems identified may delay further processing or may just add additional time after the Land Exchange Board approval.

A title opinion normally takes one month. Since length of time in the table is measured from receipt of abstract at the Land Bureau, any delays by the Land Bureau in forwarding it will exaggerate the length of time. DNR procedural guidelines recommend one month to render a title opinion.

7. PUBLIC HEARING

A public hearing is held after DNR review, appraisals, and title opinion support the exchange proposal. A public hearing can provide input from other interested parties on the effect of the exchange.

Most exchanges are non-controversial, so few, if any, public participants attend. The Land Bureau has a policy of conducting public hearings in St. Paul if no objections have been voiced; otherwise public hearings are held near the site of the proposal. It is estimated that 75 percent of the public hearings are in St. Paul. Determination of where to conduct hearings is made after consultation with DNR field personnel and county board recommendations.

Even the public hearings held near the exchange sites seldom witness significant opposition. Only three exchange proposals

since 1973 were terminated as a result of opposition at public hearings. Some proposals, however, have been modified or evaluated further before proceeding to the Land Exchange Board. The Land Bureau will confer with division directors and regional administrators to resolve problems. Any unresolved problems are referred to the Planning and Environmental Review Team for a determination on whether to proceed with the exchange despite public opposition.

To prepare for a public hearing, the Land Bureau must seek a waiver if there is a dollar difference in the appraisals in favor of the exchange party, resolve severe problems in the title, comply with any federal aid requirements, post a notice in the county auditor's office, and publish a notice in a legal county newspaper. The time to accomplish these tasks varies but is seldom done within one month, as is recommended in DNR procedural guidelines. The public hearing process by itself is not time-consuming, but the time involved in resolving problems leading up to the hearing is difficult to predict.

8. LAND EXCHANGE BOARD

Few proposals that reach the Land Exchange Board are ultimately rejected. Only four proposals initiated in the last ten years were not completed--three because of public opposition and one because of the landowner's death. This reflects DNR's cautiousness in processing proposals.

The Land Exchange Board does not conduct a thorough review of each proposal but relies on DNR's recommendation. In addition, DNR is not required to submit a proposal to the board. Seldom are controversial exchanges brought before the board. In fact, the Land Exchange Board is in a poor position to act on controversial exchanges because they lack knowledge of the exchange and are sometimes under outside pressures to reject an exchange.

The Land Exchange Board meets quarterly so all exchange proposals that have passed the previous steps are presented for review. This can delay the processing of some exchanges for almost three months. Unanimous approval of each land exchange is required.

9. EXCHANGE OF DEEDS

The exchange of deeds is accomplished through the efforts of the Attorney General's Office. Problems identified through reviewing the title must be resolved before completing the exchange. The owner must complete mortgage or contract for deed payments, pay property taxes, and correct any title defects.

Since these problems are the responsibility of the exchange party, the Attorney General's Office can do little to shorten time lengths. The median time is 115 days. DNR procedural guidelines recommend 60 days but acknowledge that problems can cause delays. It appears that problems are the norm for this step, so the exchange of deeds will seldom be accomplished in two months.

10. CONCLUSION

Why does it take Wisconsin and Michigan less time to process an exchange than Minnesota? Part of the reason is the differences in procedures. In Wisconsin, exchanges of state land worth less than \$20,000 require only field review, with no central office involvement. If Minnesota had a similar provision, about 75 percent of the completed exchanges would not have required review in St. Paul. The Minerals Division does not have regional offices throughout the state, so it might have to retain current review authority.

Wisconsin and Michigan also permit unequal value exchanges. Since these states do not have to readjust acreages after the appraisal determines the parcels unequal in value, they can proceed with the processing. In addition, public hearings are not conducted for every exchange.

Other aspects that differ are the order of the procedural steps and the length of time to complete them. Wisconsin's procedural guidelines are much shorter than Minnesota's. Wisconsin may place a higher priority on the exchange program and the staffing may be adequate to maintain faster processing rates. In addition, Wisconsin and Michigan both have less tax-forfeited land and less School Trust land--categories which in Minnesota are troublesome and difficult to exchange.

There appears to be a lack of knowledge among most states about how other states exchange lands. While statutes do limit the application of other procedures, perhaps certain changes can be made that would improve the land exchange program. A sharing of information between states would be one avenue to improvement. We feel that:

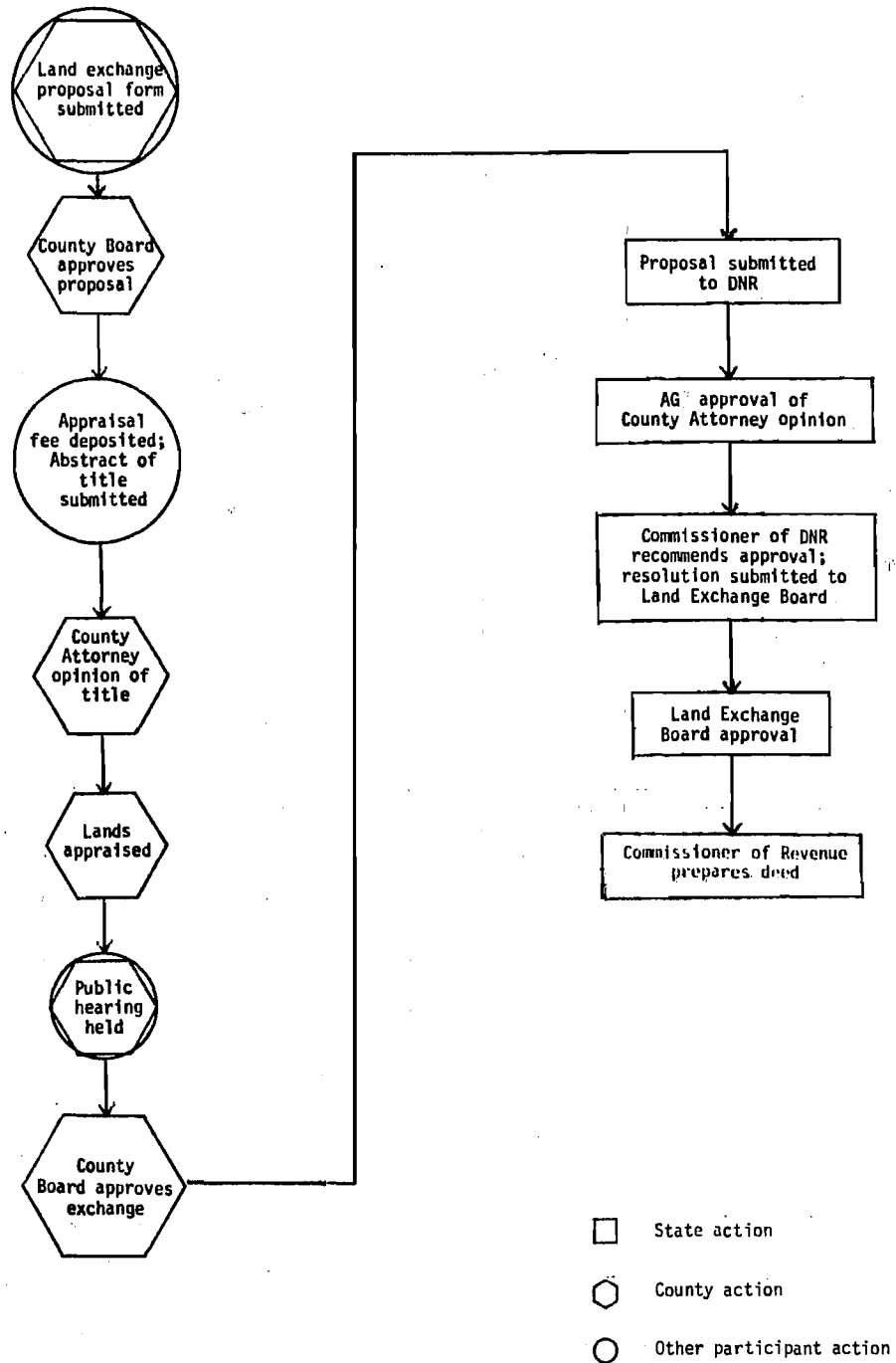
- DNR should consider sponsoring a symposium on land exchanges and seek the participation of other states, the federal government, and counties within Minnesota.

B. PROCEDURE FOR EXCHANGING TAX-FORFEITED LAND MANAGED BY THE COUNTIES

The procedure for exchanging tax-forfeited land managed by the counties is similar to state-owned and managed land except that the county has primary responsibilities for completing each step rather than DNR (Figure 3.2). DNR responsibilities are to provide guidance to the counties in preparing the necessary exchange documents, coordinate steps at the state level, and evaluate the appraisals. The Attorney General's Office also has fewer responsibilities; the Attorney General's Office must only approve the county attorney's opinion. The Commissioner of Revenue prepares the deed.

FIGURE 3.2

PROCEDURE FOR EXCHANGING TAX-FORFEITED LAND
MANAGED BY THE COUNTIES



Our analysis of the procedure is from receipt of a proposal at DNR to the sending of the state deed to the county auditor. For proposals submitted between 1978 and 1982, approximately two-thirds have been completed within six months. We determined that some exchanges take longer because of the large amount of land involved, problems with deeds, or a failure by the county to supply necessary documents. Most exchanges involving the federal government take longer.

A review of appraisals is done by the area DNR forester usually before the application is submitted to DNR. This procedure is preferred because appraisal review after submittal may slow the process. In one case, appraisal approval came after Land Exchange Board approval.

Most tax-forfeited land exchanges involve cash payments to equalize the exchange or a waiver of the difference by the private individual. For example, Lake County paid \$19,360 to the federal government in one exchange, although the payment was for improvement to the land. More frequently the other exchange party was forced to pay the difference.

Once county exchange proposals reach DNR they are virtually assured of being completed (Table 3.6). The reason for the two unsuccessful exchanges is that the private party applying for the exchange shared ownership with the state on the parcel and wanted to partition the parcel. The Attorney General's Office determined that partition proceedings, not an exchange, should be used.

TABLE 3.6
RESULTS OF COUNTY-MANAGED TAX-FORFEITED LAND
EXCHANGES INITIATED BETWEEN 1978 AND 1982

<u>Year</u>	<u>Number Initiated</u>	<u>Number Completed</u>	<u>Average Time to Complete (Days from Application at DNR to Deed Sent)</u>	<u>Number Not Yet Completed</u>	<u>Number Closed Without Completion</u>
1982	11	2	80 days	7	2
1981	7	6	224 days	1	-
1980	6	6	245 days	-	-
1979	6	6	130 days	-	-
1978	<u>11</u>	<u>11</u>	<u>188 days</u>	<u>2</u>	<u>2</u>
TOTAL	41	31	188 days	8	2

Source: Department of Natural Resources, Land Bureau, Land Exchange Files, January 1983.

Some counties are more active than others in the exchange program. In the last five years, only ten counties have submitted exchange proposals. Cass County submitted nine, Itasca County had eight, and Crow Wing County had seven. The opportunity for tax-forfeited land exchanges is primarily in the north-central and north-east parts of Minnesota where most tax-forfeited land is located. Other counties that manage tax-forfeited land, however, have not sought land exchanges. We recommend:

- DNR should expand its efforts to promote the availability of the land exchange program to consolidate holdings of tax-forfeited parcels. DNR should continue to work closely with counties during processing proposals.

C. CONCLUSION

Exchanging land is a lengthy process. Each exchange is evaluated through DNR review, appraisals, a title opinion, and a public hearing. Any of these steps can terminate a proposal before reaching the Land Exchange Board.

At the outset of an exchange, the private party may be misled concerning the time required to complete an exchange. A brochure, which is given as information to applicants, states that an exchange can be completed in six to eight months if no complications arise. Otherwise an exchange can take a year or more. Most field personnel do point out that the longer period is normal. Nevertheless, we think:

- Private individuals should be given a more accurate representation of the average length of time required to complete an exchange. In contacts made during the process, DNR should update individuals on how much longer the exchange should take.

While the median length of time to complete an exchange of state-owned and managed land for private land has been 633 days, DNR procedural guidelines have an objective of one year. These guidelines for exchanges will likely improve the process. In addition, the Land Bureau is anticipating expanded use of word processing and data recovery systems which would improve the "tracking" of proposals through exchange steps and assist in the analysis of the program.

Further expansion of the land exchange program is limited by the time problem, but the process is necessarily lengthy. In our view, DNR procedural guidelines provide a good target. We think the real need is for a greater commitment to the program by DNR and the Legislature--more staff, a greater attention to processing applications quickly, and better program promotion.

APPENDIX

STATUTES THAT OUTLINE LAND EXCHANGE PROCEDURES

After the passage of the Constitutional amendment in 1938, the 1941 Legislature modified the original law by creating three classes of land exchanges. The current statutes define these classes as the following:

Minnesota Statutes 1980, Section 94.342

CLASSES OF LAND

Subdivision 1. Class A. All land owned by the state and controlled or administered by the commissioner or by any division or agency of the department of natural resources shall be known as Class A land for the purposes of Sections 94.341 to 94.347. Class A land shall include school, swamp, internal improvement, and other land granted to the state by acts of congress, state forest land, tax-forfeited land held by the state free from any trust in favor of taxing districts, and other land acquired by the state in any manner and controlled or administered as aforesaid; but this enumeration shall not be deemed exclusive.

Subd. 2. Class B. All land heretofore or hereafter acquired by the state through tax-forfeiture, held subject to a trust in favor of taxing districts, and under the control of county authorities for classification, appraisal, and sale shall be known as Class B land for the purposes of Sections 94.341 to 94.347.

Subd. 3. Class C. No land specifically designated by law as a state park shall be given in exchange hereunder unless expressly authorized by the legislature. No land bordering on or adjacent to any meandered or other public waters and withdrawn from sale by law shall be given in exchange unless expressly authorized by the legislature or unless through the same exchange the state acquires land on the same or other public waters in the same general vicinity affording at least equal opportunity for access to the waters and other riparian use by the public; provided, that any exchange with the United States or any agency thereof may be made free from this limitation upon condition that the state land given in exchange bordering on public waters shall be subject to reservations by the state for public travel along the shores as provided by Minnesota Statutes 1945, Section 92.45, and that there shall be reserved by the state such additional rights of public use upon suitable portions of such state land as the commissioner of natural resources, with the approval of the land exchange board, may deem necessary or desirable for camping, hunting, fishing, access to the water, and other public uses.

Procedures for exchanging Class A and Class B lands were established also in 1941. Class C land is handled as Class A land, except where specific conditions explicitly stated in the statutes limit their exchange. The following outline summarizes the major conditions for exchanges in Minnesota Statutes 1980, Section 94.343, Class A land and Section 94.344 Class B land.

CLASS A LAND EXCHANGE

Subdivision 1. Unless otherwise provided, Class A lands may, with the unanimous approval of the board, be exchanged for lands of the United States or privately owned lands.

Subdivision 2. Class A lands devoted to a specific public use may be exchanged provided the authority in charge approves, the exchange will not curtail the project, and the state ownership is consolidated and not reduced.

Subdivision 3. Class A lands shall be exchanged for lands of at least substantially equal value.

Subdivision 4. All mineral and water power rights and such other rights and easements are reserved to the state in lands conveyed in exchange.

Subdivision 5. Class A lands may be exchanged for land of greater value provided the other party waives payment of the difference or the state pays the difference from an available appropriation for acquisition of such land.

Subdivision 6. Class A lands may be exchanged for land of less value provided the state land is not limited by the constitution to public sale (trust fund lands are limited to public sale) and the other party pays the difference.

Subdivision 7. A public hearing shall be held before final approval of an exchange.

Subdivision 8. The Commissioner of Natural Resources with the approval of the board, may submit a proposal for an exchange of Class A lands to any landowner. Any landowner may submit an application for exchange.

Subdivision 9. The Attorney General shall give his opinion in writing that the title to the land to be conveyed to the state is good and marketable. An abstract of title may be required.

Subdivision 10. Conveyance of Class A lands shall be by deed. Deed received by state shall be recorded in the county where the land is situated.

Subdivision 11. Lands received in exchange for Class A lands are subject to the same trust and fund as the land given.

Subdivision 12. The Commissioner of Natural Resources shall notify the County Auditor to withdraw tax-forfeited Class A lands from sale. The lands shall be withdrawn from sale until the proposed exchange has been consummated or rejected.

CLASS B LAND EXCHANGE

Subdivision 1. Unless otherwise provided, Class B lands may, by resolution of the county board of the county in which the land is situated and with the unanimous approval of the land exchange board, be exchanged for lands of the United States or privately owned lands.

Subdivision 2. Class B lands not subject to exchange are those lands not classified for sale and classified lands lying within a restricted zone or district.

Subdivision 3. Class B lands shall be exchanged for lands of at least substantially equal value.

Subdivision 4. The same rights and easements as may be required by law in case of sale of tax-forfeited land and such other rights and easements, as the county board, with the approval of the Commissioner of Natural Resources and the land exchange board, shall direct, shall be reserved to the state in Class B lands conveyed in exchange. Land may be received in exchange subject to any mineral and other reservations.

Subdivision 5. Class B lands may be exchanged for land of greater value provided the other party waives payment of the difference.

Subdivision 6. Class B lands may be exchanged for lands of less value provided the other party pays the difference.

Subdivision 7. The county board shall hold a public hearing before final approval of an exchange.

Subdivision 8. The County Auditor may submit a proposal for an exchange of Class B lands to any landowner. Any landowner may file with the County Auditor a proposal for exchange.

Subdivision 9. The County Attorney shall give his opinion on the title to the land to be conveyed and his opinion shall be approved by the Attorney General.

Subdivision 10. After approval by the county board, the proposed exchange must be submitted to the Commissioner of Natural Resources for approval by the Commissioner and the Land Exchange Board. The Commissioner of Revenue shall execute the deed in the name of the state.

Subdivision 11. Land received in the exchange is subject to the same trusts in favor of the same taxing districts and to all provisions of law relating to tax-forfeited land in the governmental subdivision where located.

Until 1979, exchanges were limited to lands of the United States and privately owned lands. The Legislature then added legislation permitting the transfer of title involving the state and governmental subdivisions of the state. The same general procedures are followed as for federal and private lands but "land subject to the public sale requirements of Minnesota Constitution, Article XI, Section 8, shall be condemned prior to any title transfer. The condemnation award must be paid and the time to appeal from the award must have expired prior to any title transfer."¹

¹Minn. Stat. §94.349 (1980).

STUDIES OF THE PROGRAM EVALUATION DIVISION

Final reports and staff papers from the following studies can be obtained from the Program Evaluation Division, 122 Veterans Service Building, Saint Paul, Minnesota 55155, 612/296-8315.

1977

1. Regulation and Control of Human Service Facilities
2. Minnesota Housing Finance Agency
3. Federal Aids Coordination

1978

4. Unemployment Compensation
5. State Board of Investment: Investment Performance
6. Department of Revenue: Assessment/Sales Ratio Studies
7. Department of Personnel

1979

8. State-sponsored Chemical Dependency Programs
9. Minnesota's Agricultural Commodities Promotion Councils
10. Liquor Control
11. Department of Public Service
12. Department of Economic Security, Preliminary Report
13. Nursing Home Rates
14. Department of Personnel, Follow-up Study

1980

15. Board of Electricity
16. Twin Cities Metropolitan Transit Commission
17. Information Services Bureau
18. Department of Economic Security
19. Statewide Bicycle Registration Program
20. State Arts Board: Individual Artists Grants Program

1981

21. Department of Human Rights
22. Hospital Regulation
23. Department of Public Welfare's Regulation of Residential Facilities for the Mentally Ill
24. State Designer Selection Board
25. Corporate Income Tax Processing
26. Computer Support for Tax Processing

- 27. State-sponsored Chemical Dependency Programs, Follow-up Study
- 28. Construction Cost Overrun at the Minnesota Correctional Facility - Oak Park Heights
- 29. Individual Income Tax Processing and Auditing
- 30. State Office Space Management and Leasing

1982

- 31. Procurement Set-Asides
- 32. State Timber Sales
- 33. Department of Education Information System
- 34. State Purchasing
- 35. Fire Safety in Residential Facilities for Disabled Persons
- 36. State Mineral Leasing

1983

- 37. Direct Property Tax Relief Programs
- 38. Post-Secondary Vocational Education at Minnesota's Area Vocational-Technical Institutes
- 39. Community Residential Programs for the Mentally Retarded
- 40. State Land Acquisition and Disposal
- 41. The State Land Exchange Program

In Progress

- 42. County Managed Tax-Forfeited Lands
- 43. Administration of Minnesota's Medical Assistance Program
- 44. Special Education
- 45. Minnesota Braille and Sightsaving School and Minnesota School for the Deaf
- 46. Vocational Rehabilitation
- 47. State Block Grants to Counties