



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Natural Resource Land

MARCH 2010

PROGRAM EVALUATION DIVISION
Centennial Building – Suite 140
658 Cedar Street – St. Paul, MN 55155
Telephone: 651-296-4708 • Fax: 651-296-4712
E-mail: auditor@state.mn.us • Web Site: <http://www.auditor.leg.state.mn.us>
Through Minnesota Relay: 1-800-627-3529 or 7-1-1

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Evaluation Staff

James Nobles, *Legislative Auditor*

Joel Alter
Emi Bennett
Valerie Bombach
Jody Hauer
Deborah Junod
David Kirchner
Carrie Meyerhoff
Judith Randall
Sarah Roberts
KJ Starr
Julie Trupke-Bastidas
Jo Vos
John Yunker

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

March 2010

Members of the Legislative Audit Commission:

About one-sixth of the land in Minnesota is natural resource land owned by the state and managed by either the Department of Natural Resources (DNR) or counties. This land—which includes forests, wildlife management areas, parks, and other lands—provides significant benefits for Minnesota in the form of recreation, preservation, and revenues. But state land ownership also raises concerns for some policymakers because of state costs and fiscal impacts on local governments.

As a result, the commission directed the Office of the Legislative Auditor to evaluate selected issues relating to state ownership of natural resource land, the use of conservation easements, and payments the state makes to local governments in lieu of property taxes. This report provides recommendations to both DNR and the Legislature.

Our evaluation was conducted by John Yunker (project manager), Carrie Meyerhoff, and Colbey Sullivan. DNR, numerous counties, and others cooperated with our evaluation, and we thank them for their assistance.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles". The signature is written in a cursive, flowing style.

James Nobles
Legislative Auditor

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Summary

The Department of Natural Resources (DNR) appears to lack adequate resources to manage and maintain its current land holdings.

Major Findings:

- While its long-range plans propose significant future acquisitions of land, the Department of Natural Resources (DNR) appears to lack adequate resources to manage and maintain its current land holdings. (pp. 38, 44)
- However, except for state parks and trails, DNR has not prepared a long-range budget analysis that compares its ongoing land management needs to its current or projected funding levels. (pp. 44-50)
- DNR has been working to manage its land assets, although progress has been limited sometimes due to factors beyond the agency's control. (pp. 13-16)
- More work is needed to address the inefficient checkerboard pattern of state forest land ownership in northern Minnesota. (p. 17)
- DNR lacks a comprehensive management program to protect the state's investment in conservation easements, but is developing one. (p. 28)
- An unclear statutory purpose and a lack of data make it difficult to determine the adequacy of payments in lieu of taxes (PILT) made to local governments with state natural resource land within their boundaries. (pp. 64-66)

- Nevertheless, we determined that PILT is generally more than adequate in replacing the property taxes lost by counties when DNR acquires nonhunting land. (p. 70)

Recommendations:

- As has been required for state parks and trails, the Legislature should require DNR to prepare a long-range budget analysis that compares annual budget needs for other DNR-managed lands with estimated funding. The analysis should also examine the impact of additional acquisitions. (pp. 50-51)
- The Legislature should review the analysis and, in particular, DNR's assumptions about the land management and other activities that are necessary for the operation of DNR land and facilities. (p. 51)
- DNR should continue to evaluate its current land holdings and conduct additional land evaluation projects with counties. (p. 17)
- DNR should implement a comprehensive conservation easement management plan that recognizes the need for baseline reports and periodic monitoring. (p. 31)
- The Legislature should review the appropriateness of the current distribution of PILT among various types of local governments. (p. 76)

Report Summary

About one-fourth of the land in Minnesota is owned by government agencies, and the vast majority of publicly owned land is natural resource land owned by the state or federal government. State land includes 5.6 million acres managed by DNR, or about 11 percent of the land in Minnesota. Among the lands managed by DNR are forests, wildlife management areas, parks, trails, aquatic management areas, scientific and natural areas, and water access sites. The state also owns 2.8 million acres of tax-forfeited land in trust for local governments. This land, which is primarily forest land, is managed by counties and accounts for about 6 percent of the land in Minnesota.

In addition to owning land, the state has purchased conservation easements on private land that limit development or land uses. DNR has over 1,100 conservation easements, including easements on trout streams, forests, native prairies, wetlands, and scenic vistas. The Board of Water and Soil Resources (BWSR) has purchased more than 5,100 easements on wetlands and farmland.

DNR's long-range plans propose significant growth in state-owned land, but DNR appears to lack adequate resources to manage and maintain its current land holdings.

A number of plans prepared by DNR or advisory groups recommend significant acquisitions of land and conservation easements. For example, an increase of 64 percent is recommended for wildlife management areas, while an increase of over 300 percent is recommended for aquatic management areas. The goals for most areas are high, except for state forests and other forest land

where an increase of 3 to 6 percent is proposed.

Despite these ambitious proposals, DNR does not appear to have adequate resources to manage and maintain its current land holdings. For example, there are deferred capital maintenance needs of over \$125 million for state parks, trails, and other recreational facilities; an \$8 million backlog of road and bridge needs for state forests; and an \$8.7 million backlog of activities needed to bring existing scientific and natural areas and native prairie bank properties into appropriate condition.

Except for parks and trails, DNR has not prepared a long-range budget analysis that compares its ongoing land management needs with current or projected funding levels.

The 2009 Legislature required DNR to prepare a 25-year budget analysis that compares park and trail needs with funding. The analysis highlighted the systems' deferred rehabilitation needs as well as a projected \$6 million per year shortfall in funding for operations and maintenance.

Analysis for other land holdings is needed for policymakers to understand the extent to which DNR lacks the resources to manage and maintain existing DNR land. For wildlife management areas, an even more basic analysis is needed since DNR lacks internal systemwide guidelines on the proper frequency for activities such as controlled burns, tree and woody biomass removal, and brushland management. This information would help the Legislature determine the extent to which the state should acquire additional natural resource land.

The Legislature needs more information from DNR comparing the costs of managing existing lands with current or projected funding levels.

Although DNR has made significant efforts in recent years, more work is needed to strategically adjust its land holdings and develop a comprehensive easement management program.

DNR has made efforts in recent years to manage its land assets, but more work is needed.

DNR has made efforts in recent years to reevaluate its land holdings, sell surplus or lower quality land, and exchange land with counties. The agency's progress has been limited, although sometimes by factors beyond its control.

But more work is needed because there is still an inefficient checkerboard pattern of state forest land ownership, particularly in northern Minnesota where both the state and counties manage public natural resource land. In addition, we think that more projects, like DNR's pilot project with Roseau County, are needed, particularly in those northern counties with significant percentages of state land. Among the actions that should be considered are the sale of surplus land, exchanges of land with counties, and the acquisition of land or easements to address access issues.

Action is also needed to address the longstanding concerns about school trust fund land in the Boundary Waters Canoe Area that does not earn much income. But addressing that problem will require cooperation from state and federal policymakers.

DNR lacks a comprehensive management program to protect the state's investment in conservation easements, but is developing one.

It is important for agencies responsible for managing conservation easements to document baseline property conditions when an easement is acquired and to periodically monitor the property for compliance with the easement. Without such information, a private property owner could alter the

conditions on the property and defeat the purpose of the easement.

BWSR already has policies or rules in place that address the need for baseline reports and periodic monitoring. But DNR lacks an agency-wide program for managing its conservation easements.

Some DNR divisions have incorporated monitoring into their programs. However, there has been a lack of consistency across the agency. A 2002 internal department workgroup found significant gaps in the agency's knowledge about the types of easements held by the agency and responsibilities for managing them. Due to a legislative grant and mandate, DNR is compiling an inventory of its conservation easements and developing management plans for the various types of conservation easements under its control.

The state's payments in lieu of taxes (PILT) have generally been a reliable and growing source of revenues for local governments with state land within their boundaries.

In recognition of the potential fiscal impacts of state-owned land, the state makes payments in lieu of taxes to counties, townships, and sometimes school districts. Since 1980, the state has made these payments for all DNR natural resource land, as well as county-administered tax-forfeited land. The payments have been made for each year starting in 1980, although some payments were delayed in the early 1980s. On a per-acre basis, the 2009 payments of \$21.9 million represent an increase of more than 30 percent over the 1980 payments adjusted for inflation. However, payments have not kept

While the overall adequacy of PILT is difficult to assess, PILT is more than adequate in replacing property taxes lost by counties when the state acquires non-hunting land.

pace with inflation in some counties with little acquired land.

An unclear statutory purpose and lack of data make it difficult to assess the adequacy of PILT provided by the state to local governments.

State law does not sufficiently define the purpose of PILT payments. As a result, it is difficult to use state law as a guide in assessing the adequacy of PILT.

Alternatively, we considered the various ways in which state land affects local government finances. For private land acquired by DNR, the main fiscal impact is reduced property tax revenue. Public ownership of land may also affect the costs of providing local government services, but these costs may either increase or decrease depending on the particular type of land involved, its prior use, and its subsequent use by the public. Negative fiscal impacts may be offset to some extent by a number of factors including: (1) increased state aids to counties, cities, and school districts; (2) the economic impact of visitors to state parks and other land; (3) increased values of property adjacent to public land; and (4) revenues generated from certain state lands and distributed to local governments.

We were not able to quantify these factors, however, because data are not available to measure the impact that state land has on local government service costs or on adjacent property values. In addition, it would be difficult to measure the economic impact of visitors and their indirect effect on local government finances.

PILT is generally more than adequate in replacing the property taxes lost by counties when DNR acquires nonhunting land.

Although a comprehensive examination of the fiscal impacts of state land was not possible, we were able to measure the adequacy of PILT in replacing property tax revenue lost when private land is sold to DNR. For all acquired lands except hunting lands, counties receive most of the PILT. Townships receive no more than 10 percent of the PILT, and often much less than 10 percent, even though the median township share of combined county and township taxes is close to 20 percent.

Our estimates suggest that, in about 90 percent or more of the counties, the PILT paid in 2009 on acquired state land exceeded the combined county and township property taxes on similar private land, and sometimes by a significant percentage. These results suggest that the PILT counties receive for most acquired land is generally greater than the property taxes they receive on comparable private land. Townships do not receive a fair share of the PILT, but whether they are adequately compensated is unclear.

PILT for acquired hunting lands is distributed to counties, townships, and school districts. It is unclear whether school districts should receive PILT since their revenues are largely unaffected by state land acquisitions due to state funding formulas and education aids. In some cases, land acquisition may increase school district tax rates, but overall revenues would be unaffected.

Introduction

State-owned natural resource land provides important benefits for Minnesota.

About one-fourth of the land in Minnesota is owned by a federal, state, or local government entity. Most of that land can be categorized as “natural resource land.” Natural resource land includes forests, wildlife management areas, parks and recreation areas, trails, water access sites, and various other lands maintained and used because of some aspect of its natural condition. A little less than half of the public natural resource land is owned by the state and managed by the Department of Natural Resources (DNR). Natural resource land in Minnesota also includes tax-forfeited land held in trust by the state for the benefit of the local taxing jurisdictions and managed by counties, as well as federally owned land.

In addition to land ownership, both DNR and the Board of Water and Soil Resources (BWSR) own conservation easements on land in Minnesota. These easements restrict the use of private property in order to protect certain natural resources or provide public access.

The merits of publicly owned natural resource lands are widely acknowledged. They provide areas for camping, hunting, fishing, biking, snowmobiling, and other forms of recreation. In addition, state forests provide commodities such as timber, gravel, and minerals for Minnesota industries. Some state lands preserve habitat for wildlife, while others preserve land that provides an environment for unique plants or animals.

However, increasing state ownership of natural resource land is a concern for some policymakers. They express concerns about the fiscal implications of expanding state land ownership, which increases the ongoing costs of state government by raising land management obligations and the payments in lieu of taxes (PILT) made to local governments. Some policymakers prefer private ownership of productive agricultural or forest land.

But state land ownership also increases state costs and may affect the property tax base of local governments.

Policymakers in northern Minnesota are particularly concerned because of the already high concentration of public land in the northern part of the state. Removing natural resource land from private ownership reduces the tax base of local governments. Proposals to cut or eliminate PILT received by these local governments are of great concern to policymakers in northern Minnesota where the majority of the payments are received.

This report examines a number of key issues relating to DNR’s ownership of land and its use of conservation easements. The issues include: (1) the size and nature of DNR’s land holdings; (2) the use of conservation easements by DNR and BWSR to achieve natural resource objectives; (3) the adequacy of existing resources for the development, management, and maintenance of existing land holdings; and (4) the appropriateness of the size of the PILT payments and their distribution to local governments. More specifically, the report addresses the following questions:

- **How has the amount of state-owned land managed by either DNR or the counties changed over the last two decades? How much natural resource land is owned by the federal government?**
- **Has DNR adequately examined its land holdings and identified surplus land to sell or exchange? Do all of DNR's land holdings continue to meet a public purpose? Are there opportunities to sell or exchange existing land and better meet conservation and other objectives?**
- **Do DNR and BWSR adequately monitor and enforce compliance on their conservation easements?**
- **Does DNR have adequate resources to develop and manage land it currently owns? If not, should DNR be expanding its land holdings when it cannot adequately manage the land? Has DNR provided the Legislature and Governor with sufficient information about the amount of resources needed to manage existing land holdings?**
- **Do state payments in lieu of taxes (PILT) adequately compensate local governments for the local fiscal impacts of state land ownership? How are the various types of local governments (counties, townships, and school districts) financially affected by state land ownership? Does the distribution of PILT mandated under law make sense?**

To address these questions, we conducted numerous interviews with DNR managers in St. Paul and each of DNR's four regional offices and with county officials across the state. Interviews were also conducted with representatives of the Board of Water and Soil Resources, the Lessard-Sams Outdoor Heritage Council, the Minnesota Department of Revenue, the Association of Minnesota Counties, the Minnesota Township Association, and a nonprofit conservation group that purchases land. In addition, we used data from DNR and various federal agencies to analyze public land ownership, and data from DNR, the Department of Revenue, and the House Research Department to analyze PILT. Finally, we reviewed a variety of studies and reports relevant to the issues examined in this evaluation.

This report addresses a limited set of issues regarding state natural resource land.

This report attempts to provide legislators and others with useful information on state land ownership and its financial implications. In some instances, however, it was difficult to answer the questions posed by legislators. For example, determining the appropriateness of the level of state payments in lieu of taxes is difficult since statutes provide little guidance on the purposes of the various types of PILT. In addition, little information is available on the costs of providing local government services to public lands. Our analysis provides a framework for considering the appropriateness of PILT, as well as some specific comparisons of PILT to estimated property tax payments for comparable land.

Furthermore, it is important to note that our evaluation addressed a limited set of questions about the state's natural resource land and easements. Specifically, we did not evaluate how well DNR has managed the many programs associated with

its land and easements. These programs, such as state parks, trails, water access sites, wildlife management areas, forests, scientific and natural areas, and mineral leasing, are complex, and an assessment of how well they are being managed would require separate and detailed evaluations.¹

¹ The Office of the Legislative Auditor has conducted the following evaluations of DNR programs or activities: State Timber Sales (1982), State Mineral Leasing (1982), State Land Acquisition and Disposal (1983), The State Land Exchange Program (1983), Fish Management (1986), Game and Fish Fund (1991), [School Trust Land](#) (1998), [State Park Management](#) (2000), and [State-Funded Trails for Motorized Recreation](#) (2003).

Public Land Ownership

About one-sixth of the land in Minnesota is natural resource land owned by the state.

About two-thirds of the state-owned land is administered by DNR, while the remainder is administered by counties.

Government's role as an owner of land is a complex, and often controversial, issue. While few policymakers or citizens question the value of public management of certain natural resource lands, there is considerable debate about how much land government should own and how it should be used.

In this chapter, we provide information on the amount of natural resource land owned by the state and federal governments in Minnesota. We also analyze the changes in the amount of natural resource land owned by the state over the last several decades. Finally, we examine the efforts undertaken by the Department of Natural Resources (DNR) to evaluate its land holdings. In particular, we examine DNR's progress in identifying opportunities to sell surplus or lower-quality natural resource land and exchange lands with counties and other owners of natural resource land. We do not express any opinions about how much natural resource land should be owned by the state. That is a policy choice for elected officials to make.

CURRENT PUBLIC LAND HOLDINGS

Roughly one-fourth of the 51 million acres of land in Minnesota is owned by government agencies.¹ The vast majority of publicly owned land is "natural resource land" owned by either the state or federal government.² State-owned land that is managed by DNR includes about 5.6 million acres, or about 11 percent of the land in Minnesota. In addition, the state of Minnesota—through the Department of Revenue—owns about 2.8 million acres of tax-forfeited natural resource land in trust for local governments. Most of that land is forested land and is managed by counties. The tax-forfeited land represents about 6 percent of all land in the state. The federal government also has significant land holdings in Minnesota, most of which are forests, parks, or other natural resource lands. Federally owned land accounts for about 7 percent of the land in Minnesota.

Most of the state's public natural resource land is located in northern Minnesota. DNR's Northeast Region, which includes nine counties, has close to two-thirds of the state, federal, and county tax-forfeited natural resource land in Minnesota.³

¹ Our numbers do not include privately owned land for which a public entity owns a conservation easement. In addition, the numbers only include land in which a public entity has all of the rights of ownership. They do not include lands for which DNR has mineral rights but not surface ownership. DNR manages the mineral rights on 12 million acres of land, including DNR-managed land for which the state owns the surface rights, tax-forfeited land, and land owned by others.

² "Natural resource land" includes, but is not limited to, forests, wildlife management areas, fish hatcheries and fish habitat areas, and public outdoor recreation areas such as parks, trails, and water access sites.

³ The Northeast Region includes Aitkin, Carlton, Cook, Crow Wing, Itasca, Koochiching, Lake, Pine, and St. Louis counties.

Most of the publicly owned natural resource land is in northern Minnesota.

The Northeast Region has 54 percent of the DNR land, 74 percent of the tax-forfeited land, and 78 percent of the federal land. The 23-county Northwest Region contains 37 percent of the DNR land, 25 percent of the tax-forfeited land, and 17 percent of the federal land. Less than 5 percent of the land in DNR's Central Region is publicly owned natural resource land, while the percentage in the South Region is only 2 percent.

As Table 1.1 indicates, the percentage of public natural resource land in each county varies significantly. In Cook and Lake counties in the northeastern corner of the state, over 80 percent of the total land is publicly owned.⁴ In seven other northern counties, the percentage of publicly owned natural resource land is close to or above 50 percent.⁵ In contrast, 57 of the state's 87 counties—or close to two-thirds—have less than 5 percent public natural resource land ownership.

Table 1.1: Percentage of County Land Owned as Federal or State Natural Resource Land

Percentage of Acreage	Number of Counties
Less than 5 percent	57
5 percent to 25 percent	16
25 percent to 50 percent	6
50 percent to 60 percent	5
60 percent to 70 percent	0
70 percent to 80 percent	1
80 percent or more	2

NOTE: Public land includes federal- and state-owned land. Partial interests of state-owned land are counted as full interests.

SOURCES: Office of the Legislative Auditor, analysis of data from the Minnesota Department of Natural Resources and various federal agencies.

DNR Land

Use

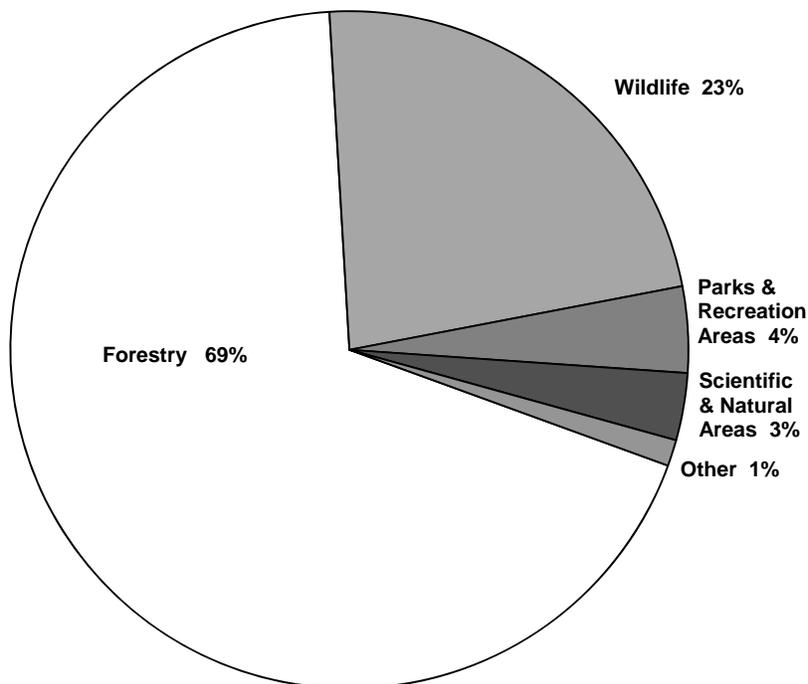
The state-owned land administered by DNR is of particular interest in this report. As Figure 1.1 shows, most of the land administered by DNR is in state forests and wildlife management areas. About 69 percent of the DNR land consists of state forests and other forest lands. Close to 23 percent of DNR land holdings are

⁴ The percentage of public land ownership is high in Cook and Lake counties primarily due to very large federal land holdings.

⁵ These counties include Koochiching, St. Louis, Itasca, and Aitkin in DNR's Northeast Region and Lake of the Woods, Cass, and Beltrami in DNR's Northwest Region.

Figure 1.1: Use of DNR Land, 2009

Most land administered by DNR is forest land.



SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources.

wildlife management areas or wildlife-related lands.⁶ Another 4 percent of the land is in state parks and recreation areas, while 3 percent of the land is in scientific and natural areas. DNR also administers land for trails and waterways, public water access sites, fisheries and aquatic management areas, and other natural resource purposes. These other uses account for only about 1 percent of DNR’s land holdings.

A number of these land holdings have multiple purposes. For example, state forests and other forest land provide sustainable timber for Minnesota’s wood products industry, preserve forests for the future, and provide recreational opportunities for hunters and others. Wildlife management areas protect lands that have a high potential for wildlife production and offer opportunities for hunting, fishing, and trapping. State parks not only preserve and protect Minnesota’s natural features but also provide camping, hiking, and other recreation activities. Table 1.2 provides a description of the public purposes of various types of DNR land holdings, as defined in state law.

⁶ The figure for wildlife lands includes about 82,000 acres of land leased from the federal government and referred to as Land Utilization Project (LUP) lands.

Table 1.2: Minnesota's Natural Resource Land

Public Use	Purpose
State Forests ^a	To provide for multiple uses, including sustained timber and other production, outdoor recreation, and environmental purposes
Wildlife Management Areas	To protect lands and waters that have a high potential for wildlife production and to develop and manage the lands and waters for the production of wildlife for public hunting, fishing, trapping, and other compatible recreational uses
Aquatic Management Areas	To protect, develop, and manage lakes, rivers, streams, and adjacent wetlands that are critical for fish and other aquatic life, water quality, biological value, and fishing and other compatible recreational uses
Wilderness Areas	To preserve in a natural wild and undeveloped condition, areas which offer outstanding opportunities for solitude and primitive types of outdoor recreation
State Parks ^a	To preserve, protect, and perpetuate Minnesota's natural features and provide for their use, enjoyment, and understanding without impairment for the enjoyment and recreation of future generations
State Trails ^a	To provide recreational travel routes
State Recreation Areas	To provide a broad selection of outdoor recreation opportunities for a large number of people in a natural setting
Water Access Sites	To provide public access to rivers and lakes which are suitable for outdoor water recreation
Wild and Scenic Rivers	To protect and maintain the natural characteristics of rivers and streams that possess outstanding scenic, scientific, historical, or recreational value
Scientific and Natural Areas	To protect and perpetuate in an undisturbed state those natural features which possess exceptional scientific or educational value

^a The area encompassed by state forests and parks, and the endpoints of state trails, are designated by the Legislature. The Department of Natural Resources acquires land to fulfill the statutory direction. Not all state natural resource land falls within an area designated by the Legislature. For example, some forestry land exists outside of legislatively defined state forests.

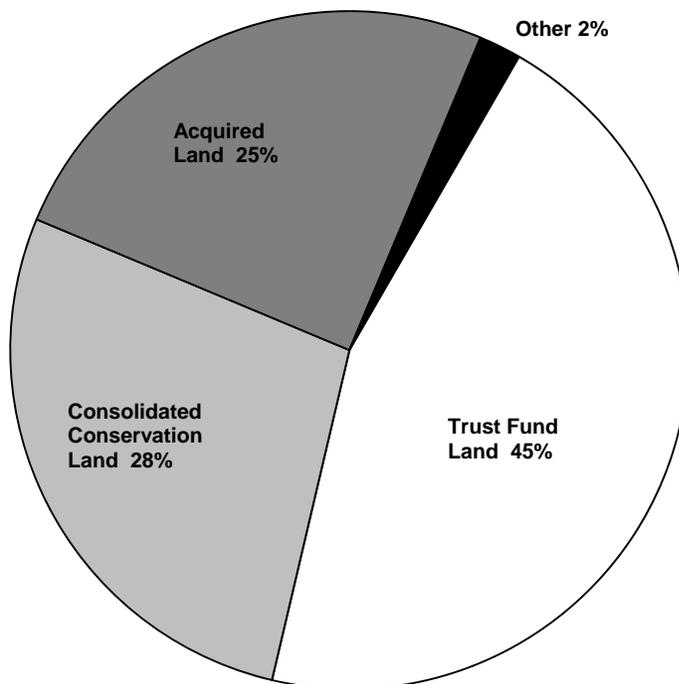
SOURCES: Office of the Legislative Auditor, and *Minnesota Statutes* 2009, 86A.05, 89.002, and 89A.02.

Type

Most of the land administered by DNR was acquired years ago from either the federal government or certain counties. As Figure 1.2 illustrates, about 45 percent of DNR lands are Permanent School Trust Fund lands originally obtained from the federal government in the 19th century. While a majority of the trust fund lands granted to the state were sold, about 2.5 million acres remain in state hands. About 95 percent of the trust fund land is forest land, with wildlife areas and scientific and natural areas accounting for the remainder. The net proceeds

DNR-administered land provides recreation opportunities, protects natural resources, and supplies timber and minerals for Minnesota industries.

Figure 1.2: DNR Land by Land Type, 2009



Almost three-fourths of DNR land is either school trust land acquired in the 19th century or “Con-Con” land acquired in the 1920s and 1930s.

SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources.

from timber sales on trust fund lands are used to support Minnesota’s K-12 education system.

Another 28 percent of the state lands managed by DNR are Consolidated Conservation (Con-Con) lands, which are located in seven northern Minnesota counties. In the late 1920s and early 1930s, the state acquired 1.9 million acres in return for the state assuming certain county debts. In an attempt to make these lands usable for agriculture, the counties had issued drainage bonds. The failure of the improvements to make these lands suitable for agriculture, as well as the Great Depression, caused the counties to default on the bonds and placed several of them in danger of bankruptcy. The state acquired the title to Con-Con lands in exchange for assuming the debts incurred by the counties. Currently, the state owns about 1.55 million acres of Con-Con lands.

About three-fifths of the Con-Con land is forest land, while one-third consists of wildlife management areas or other wildlife-related land. Scientific and natural areas and state parks and recreation areas account for the rest of the Con-Con lands. Half of the income from Con-Con lands is distributed to local governments.⁷

⁷ *Minnesota Statutes* 2009, 84A.51, subds. 3 and 4.

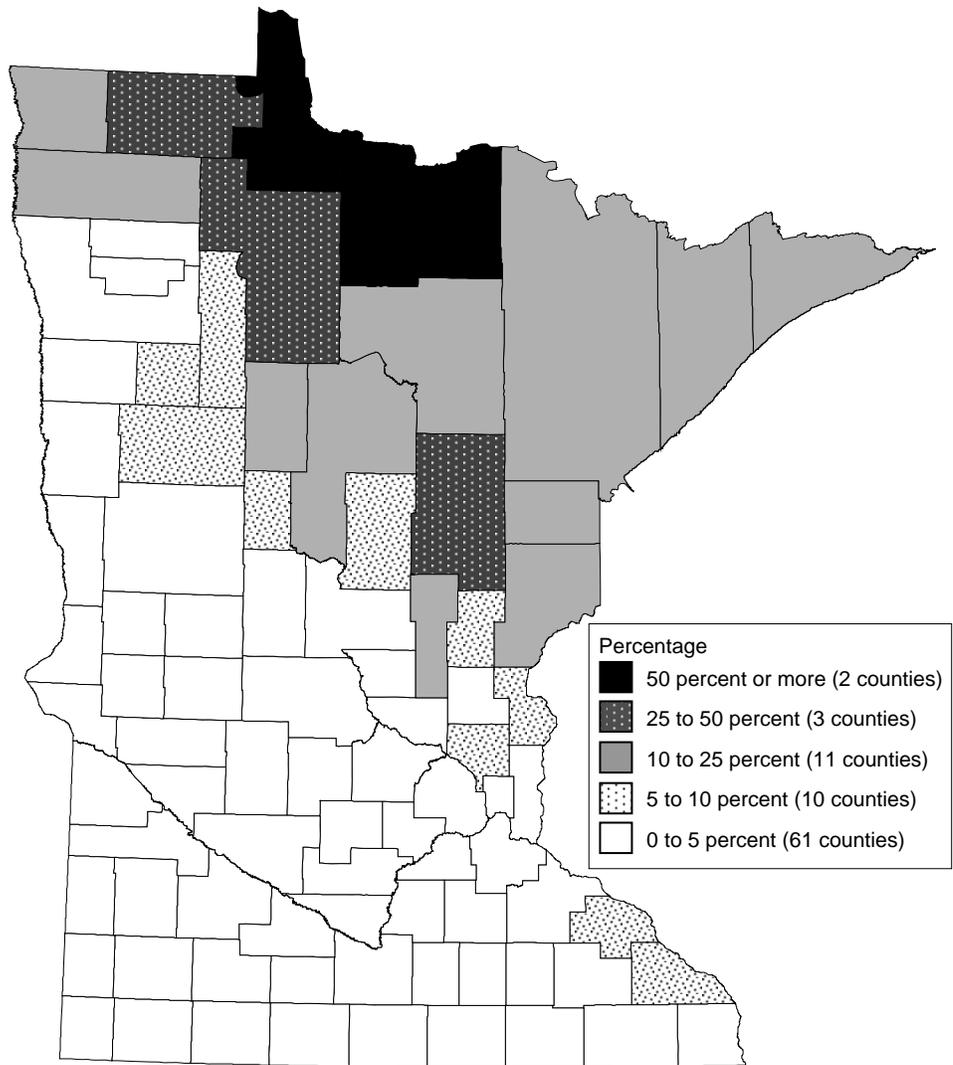
Only about 25 percent of the land administered by DNR is considered “acquired” land. These lands were acquired through purchase, county board action, condemnation, or gifts. About 44 percent of the acquired land is wildlife lands, while 35 percent is forests and 15 percent is in state parks or recreation areas.

Location

As Figure 1.3 shows, land administered by DNR is concentrated in northern Minnesota. In fact, over 50 percent of the land in two counties (Lake of the Woods and Koochiching) is DNR-administered land. In Koochiching County

Figure 1.3: DNR Land as a Percentage of Land in a County, 2009

In a number of northern counties, DNR land ranges from 10 percent to more than 50 percent of the total land in the county.



SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources.

alone, DNR administers about 1.1 million acres of state-owned land, or nearly one-fifth of all the land under DNR's control. In two other northern counties (Beltrami and Aitkin), about one-third of the land in the county is state-owned. DNR-administered land accounts for less than 5 percent of the land in 61 of Minnesota's 87 counties.

Trends in Ownership

The amount of state-owned land under DNR's control changes over time due to acquisitions, sales, and exchanges. While available trend data have some limitations, they indicate that:

- **The amount of state-owned land administered by DNR has grown by about 5 percent over the last two decades.**

The total amount of DNR land has grown modestly over the last 20 years.

DNR land holdings have increased from about 5.37 million acres at the end of 1989 to about 5.61 million acres in the fall of 2009. Data limitations prevent us from precisely tracking the source of the increase. However, the data suggest that more than half of the growth in state-owned acreage came from wildlife management areas or other wildlife-related lands. Other areas contributing to the growth include state trails and waterways, state parks and recreation areas, and scientific and natural areas. DNR's ownership of forest land, which accounts for over two-thirds of the agency's land holdings, has not changed much over the last two decades. As a result, despite strong growth in some areas, the overall growth in DNR's land holdings has been relatively modest.

Trends in ownership are influenced by the statutorily required procedures for establishment or expansion of particular types of land holdings. For example, the Legislature sets the boundaries of state parks and state forests by law. DNR is allowed to purchase land within the established boundaries but must get legislative approval to acquire land outside these boundaries. The Legislature also sets the origination and destination points of state trails, although not their precise routes or boundaries.

For scientific and natural areas and wetlands used for wildlife development, DNR must receive the approval of the county board for the county in which land purchases or leases are proposed.⁸ If the county board disapproves the acquisition in a timely manner and states its reasons for disapproval, the landowner or DNR may appeal the decision to the district court having jurisdiction where the land is located. The requirement for county board approval of wetland wildlife management areas has been in effect for many years, while the requirement for scientific and natural areas was enacted into law in 2004. DNR has also agreed by policy to seek county board approval of purchases or leases of wildlife lands that do not involve wetlands.

In addition, legislative funding for acquisition plays a strong role in determining ownership trends. Acquisition funding comes from a variety of sources including bonding, General Fund and other fund appropriations, and the net proceeds of the sales of surplus lands. The available acquisition funding has allowed DNR to

⁸ *Minnesota Statutes* 2009, 97A.145, subd. 2; and 84.033, subd. 3.

The amount of state-owned tax-forfeited natural resource land has not changed much over the last two decades.

expand its land holdings a modest amount over the last two decades. With the passage of a constitutional amendment in November 2008, additional funding will be available to supplement traditional sources of funding for acquisition, development, and management of DNR lands.⁹ These funds will be available over a 25-year period, which began July 1, 2009, and ends June 30, 2034.

Tax-Forfeited Natural Resource Land

As mentioned earlier, the state of Minnesota also owns about 2.8 million acres of tax-forfeited natural resource land, which is held in trust for local governments. Much of this land is forest land, although it also includes some shoreline along rivers and lakes. Many of these lands came into the state's possession during the 1930s when about 8 million acres of tax-forfeited land had accumulated. Much of that land was sold many years ago. The amount of tax-forfeited natural resource land has changed very little over the last two decades, growing only from 2.80 million acres to 2.81 million acres.

Counties are responsible for managing these natural resource lands. A number of counties with larger amounts of tax-forfeited natural resource land have land departments with the specific responsibility for managing these lands. In some other counties, the responsibility rests with another department, while a few counties have DNR manage their forest lands. In 13 of Minnesota's 87 counties, tax-forfeited natural resource land accounts for 5 percent or more of the county's total land. This percentage ranges from 5 percent in Pine County to 22 percent in Hubbard and St. Louis counties.

Local governments keep the revenues they generate from these lands. The distribution of net proceeds from the sale or rental of tax-forfeited land, or from the sale of products produced from the land, is spelled out in state law.¹⁰ Some of the proceeds may be used for forest and park development, with the remainder apportioned between the county, school district, and township in which the land is situated. Most of the proceeds from tax-forfeited land typically come from timber sales.

County sales of tax-forfeited land are governed by state law, which restricts certain types of sales. For example, sales of land with a waterfront of over 150 feet require special legislation. Sales of land with waterfront of 150 or fewer feet may be sold with the approval of the commissioner of DNR. Other types of tax-forfeited land that require special legislation before they can be sold include land within the boundary of a state park, peat land, and mining land.

FINDINGS

DNR has come under increasing pressure in recent years to evaluate its land holdings. For example, there has been increasing pressure to sell natural resource lands. Legislation passed in 2003 and 2005 required state agencies to sell certain

⁹ *Minnesota Constitution*, art. XI, sec. 15.

¹⁰ *Minnesota Statutes* 2009, 282.08.

DNR has come under increasing pressure to both reduce its land holdings and acquire additional land.

amounts of state property and directed the proceeds to the state's General Fund.¹¹ If the proceeds were less than the specified amounts (\$5.5 million in the 2003 law and \$6.44 million in the 2005 law), the governor was required to allocate budget cuts for state agencies to cover the deficiency.¹² In addition, a number of counties have passed resolutions calling for no net gain in public land ownership in their counties. A few legislators also expressed concerns that DNR owns land that could be used by private individuals for agricultural purposes.

There have also been some longstanding concerns about state land ownership. For example, a checkerboard pattern of public forest land ownership exists in northern Minnesota. DNR, county, and other land managers would benefit from increased operational efficiencies if they could consolidate their land holdings. Also, there has been increasing legislative pressure on DNR to improve the returns for schools from trust fund land. Because some trust fund land is in the Boundary Waters Canoe Area and cannot produce income, sales of this land to the federal government or exchanges for income-producing land have long been suggested. But there has been little action at the federal level and some disagreements among state policymakers about how to proceed.

While there are pressures to sell or exchange land, DNR also faces pressures from the public and policymakers to acquire additional lands and to make existing lands more productive. The pressures include, but are not limited to, desires for expanded and improved habitat for ducks, increased shoreland protection, greater recreational opportunities, and greater protection for threatened or endangered species. In addition, ownership of private industrial forest lands is becoming increasingly fragmented as large timber companies sell land to others who prefer to develop certain lands. Fragmented ownership has caused increasing concerns about whether state, county, and federal agencies—as well as private land holders—will continue to have access to their own properties. Private timber companies may have allowed access without any formal agreement, but some new owners are not allowing access across the land for adjacent property owners. The fragmentation of ownership may also prevent the public from using the lands previously owned by private timber companies for hunting or other recreational purposes. This trend puts pressure on DNR to acquire either land or easements to address access issues.

In response to these concerns and in recognition of the need for more scrutiny:

- **DNR has made significant efforts in recent years to reevaluate its land holdings.**

¹¹ *Laws of Minnesota* First Special Session 2003, chapter 1, art. 1, sec. 31; and *Laws of Minnesota* 2005, chapter 156, art. 2, sec. 45. Prior to these laws, the net proceeds from DNR sales of acquired land would have been deposited in a land acquisition account and used for future DNR acquisitions of land for the outdoor recreation system established under *Minnesota Statutes* 2009, 86A.04. The system includes state parks and recreation areas, state trails, scientific and natural areas, state wilderness areas, state forests, wildlife management areas, aquatic management areas, water access sites, and certain other lands.

¹² Under current law, the deadline for achieving \$6.44 million in land sales is June 30, 2011. See *Laws of Minnesota* 2009, chapter 37, art. 1, sec. 59.

DNR has made efforts to strategically evaluate its existing land holdings and make changes.

For example, in response to the legislative directives to sell land, DNR regional managers have annually identified surplus parcels of property to be considered for sale and forwarded those recommendations to the management team in St. Paul. Over a four-year period covering fiscal years 2006 through 2009, regional managers have identified 133 parcels of acquired land for possible sale.¹³ After further review by senior management, DNR has put many of these parcels up for sale to the public. Some parcels have yet to be offered for sale, but will be offered in 2010.

Largely in response to concerns raised by counties, the commissioner's office directed each of DNR's regions to conduct a pilot study with a county to identify potential land sales, acquisitions, and exchanges. DNR's Northwest Region is currently conducting a pilot study with Roseau County, which has the seventh highest number of acres of DNR-administered land among the state's 87 counties.

Between March and December of 2009, DNR's Division of Forestry completed land asset management plans for each of the three regions of the state that manage state-owned forests. These plans recommend and prioritize lands for acquisition, sale, and exchange. The guidelines used to develop the plans were designed to recommend acquisition of lands that provide access to DNR forest land or that are landlocked within a large contiguous block of DNR land. The guidelines also recommend disposal of DNR forest lands that are scattered, not close to other DNR forest land, and do not provide needed future access to state land. The plans recommend disposal of such lands by exchange, sale, or transfer within DNR depending on the facts pertaining to each parcel of land.

DNR has also implemented changes in an attempt to become more strategic in its acquisitions. It has used biennial acquisition plans to set priorities for land acquisition. In addition, DNR has sometimes required that newly acquired parcels be part of a larger existing state land holding in order to reduce or limit the number of scattered lands under agency management.

Although DNR has made efforts to be more strategic and proactive in land ownership decisions:

- **Progress in implementing strategic changes in DNR's land ownership has been mixed.**

For example, sales of DNR properties have contributed only about \$3.0 million out of the \$11.4 million in revenues raised for purposes of meeting the 2003 and 2005 legislative requirements to sell land. For the 2003 requirement of \$5.5 million, DNR sales contributed about \$0.8 million of the \$7.5 million in

¹³ In addition, some parcels of school trust fund land were identified for possible sale.

However, DNR has made uneven progress in changing its land holdings.

revenues.¹⁴ As of early February 2010, DNR had sold 522 acres of land and provided revenues of \$2.2 million toward the 2005 requirement of \$6.4 million.¹⁵

Sales data suggest that the 2003 and 2005 legislative requirements did not result in a change in overall sales of DNR land, at least through end of calendar year 2008. The number of acres of DNR land sold during calendar years 2004 through 2008 were approximately the same as the amount of land sold during the previous five years. However, it appears that DNR significantly increased the number of parcels identified for possible sale during the last fiscal year. Of the 133 parcels identified for possible sale by DNR regional managers, more than 70 percent of them (95 of the 133 parcels) were not identified until fiscal year 2009. Currently, DNR has 14 parcels totaling 356 acres up for sale with minimum bids totaling \$8.4 million. The parcels include a parcel listed as \$2.8 million and another parcel at \$3.0 million. If either of these parcels is sold, the net proceeds would eliminate much or all of the remaining balance that needs to be contributed by state agencies toward the 2005 requirement.¹⁶

Currently, only one DNR region is conducting a pilot project with a county. While the pilot project with Roseau County seems to be making some progress, the process takes time and staff resources and the results of the pilot project have not yet been realized. Several other counties—particularly those in northern Minnesota with significant amounts of state land—would seem to be good candidates for a pilot project. There are at least six other counties with more acres of DNR land than Roseau County. Several of these counties expressed an interest to us in having a pilot project or at least more intense reevaluation by DNR of its land holdings.

Finally, while DNR has continued to discuss and make some land exchanges with counties and other parties, several counties in northeastern Minnesota told us that they had not heard from DNR about possible exchanges and were not certain if DNR was actively considering exchanges in their counties. In addition, the checkerboard pattern of public forest land ownership in northern Minnesota continues to be a concern for efficient management of forest lands. The recently completed DNR forestry land asset management plan for northeastern Minnesota may provide a useful roadmap for future exchange discussions. Nonetheless, some of the counties in that region did not appear to be aware of DNR's intentions for future exchanges when we talked to them in the fall of 2009.

However, it is important to note that:

¹⁴ The bulk of the sales for the 2003 legislation came from human services, corrections, and public safety buildings that were no longer being used. Over 80 percent of the revenues raised from DNR sales in fiscal years 2004 and 2005 came from the sale of facilities, including four forestry offices and an enforcement garage.

¹⁵ As of June 30, 2009, state agency sales of land had contributed about \$3.8 million toward the \$6.4 million requirement. DNR's sales revenues were also about \$2.2 million as of that date.

¹⁶ The 2009 Legislature modified the 2005 requirement by preventing the net proceeds from future sales of land from the state's outdoor recreation system from being directed to the General Fund. (See *Laws of Minnesota* 2009, chapter 37, art. 1, sec. 25.) However, the 14 properties mentioned above are not affected by that change. These properties were no longer in the outdoor recreation system as of the effective date of the 2009 law change.

Market conditions, federal restrictions, and other factors have limited DNR's progress in implementing land ownership changes.

- **A number of factors have limited DNR's progress in making more significant changes in land ownership.**

Sales of DNR land for the purpose of fulfilling the 2003 and 2005 legislative directives have been limited due to a number of factors. First, significant portions of the 5.6 million acres under DNR's administration could not be considered. For example, proceeds from sales of school trust fund land could not be diverted to the General Fund because the Minnesota Constitution requires that the net proceeds from those land sales go to the Permanent School Trust Fund.¹⁷ In addition, it would have been politically difficult to sell Con-Con lands for this purpose since half their income goes to local governments. Many of the remaining 1.55 million acres serve a public purpose such as recreation, timber production, or preservation of unique species. As a result, it was difficult for DNR to find large amounts of land to sell that no longer served a conservation purpose.

Second, the land that DNR identified as surplus property was sometimes not attractive to purchasers. Some of the land offered for sale by DNR lacked adequate access, zoning needed for development, or good potential for income generation. For some of the same reasons DNR found the land to be expendable, potential buyers were also not interested in owning the property.

Third, the once-hot real estate market has cooled off in the last several years. Some DNR properties with development potential have not sold due to lower buyer demand under current market conditions.

Finally, federal regulations prevent sales of some properties that DNR has identified as marginal. For example, properties that DNR's Wildlife Section acquired with federal funds cannot be sold even if DNR would repay the federal government or use the proceeds to buy more valuable land for conservation or hunting purposes. DNR has some land in the Twin Cities area that cannot easily be used for hunting because of nearby residential development and could be sold for a relatively high per-acre price. DNR would like to use the proceeds to purchase rural land that would cost less per acre and provide a better hunting experience. Even though a sale and subsequent purchase would result in more public natural resource land, federal regulations prevent DNR from pursuing such a strategy unless DNR can demonstrate that the lands are no longer serving their original purpose or that the land has passed out of DNR's control. This type of federal restriction also affects some other types of DNR land that was purchased in part with federal funds.

Land exchanges have also been limited in part due to the complicated and exacting standards set by law. The Minnesota Constitution requires that all land exchanges must be unanimously approved by the Land Exchange Board and, until recently, state law required all land exchanges to meet some demanding requirements.¹⁸ A 2008 law streamlined these requirements for exchanges

¹⁷ *Minnesota Constitution*, art. XI, sec. 8.

¹⁸ The Land Exchange Board consists of the governor, attorney general, and the state auditor. See *Minnesota Constitution*, art. XI, sec. 10. Guidelines and procedures for land exchanges are spelled out in DNR Operational Order No. 89, which was issued in December 1988.

between DNR and counties or other government subdivisions of the state.¹⁹ However, the new law does not apply to school trust fund land. As a result, exchanges of trust fund land with counties have been slow to occur. In fact, some county officials told us that exchanges of land involving trust fund land are so difficult that they consider them to be a “lost cause.”

There certainly are challenges and roadblocks that affect DNR’s ability to make changes in its land holdings. Nevertheless, we think that:

- **There is still significant work that DNR needs to do to alter its land holdings.**

More work is required to implement needed changes in DNR land holdings.

As mentioned earlier, there is still a checkerboard pattern of public forest land ownership in northern Minnesota. Completely eliminating the checkerboard pattern of public forest land ownership may not be appropriate since some isolated parcels may have unique ecological features or have mineral generation potential. However, much can be done to improve the efficiency with which DNR, counties, and other landowners manage their forest lands by exchanging and selling lands to consolidate their land holdings.

There are also significant concerns about future access to public land due to the increasing fragmentation of private ownership in northern Minnesota. And in the Boundary Waters Canoe Area, there are school trust fund lands that are not able to earn income due to federal restrictions.

RECOMMENDATION

DNR should continue to evaluate its land holdings and sell, exchange, and acquire property in order to more efficiently and effectively achieve its land management goals.

There is also a need for a more thorough review of DNR land ownership in selected counties. While DNR is conducting one pilot project, we think that additional projects would be of value.

RECOMMENDATION

DNR should conduct land evaluation projects with additional counties similar to the pilot project with Roseau County.

¹⁹ *Minnesota Statutes* 2009, 94.3495. This provision expedites land exchanges by allowing the use of market analyses from a qualified real estate broker instead of appraisals, as well as the use of title insurance. In addition, land exchanges are allowed without requiring payments from the parties to equalize the values of the properties being exchanged as long as the lands are of “substantially equal value,” as defined in *Minnesota Statutes* 2009, 94.343, subd. 3(b). “Substantially equal value” means that the values of the lands being exchanged are within 10 percent of each other, provided that the lands are both over 100 acres. For smaller land exchanges, the values of the lands must not differ by more than 20 percent.

In particular, we think that DNR should focus on counties with significant DNR land holdings such as Koochiching, Lake of the Woods, St. Louis, and Aitkin.

While the 2003 and 2005 legislation may have provided some disincentive for DNR to sell land, the 2009 law change may provide a greater incentive for DNR to sell land that is less valuable for conservation purposes and purchase land with higher conservation value. The 2009 law would allow DNR to use the net proceeds of land sales for future land acquisitions rather than directing the proceeds to the General Fund. As a result, there may be greater support for the strategic land asset management approach being piloted in Roseau County.

Some legislators have also suggested that DNR should sell those lands currently leased to farmers and put the lands into private hands. We think that DNR should review those lands for possible sales, but it is possible that some of the lands should continue to remain DNR's property. Some parcels owned by DNR have a combination of forest land and agricultural land. The agricultural portions are sometimes isolated and irregular in shape and difficult to access except from other state land. It may also be costly to survey the boundaries of the agricultural portion of the land. As a result, it may make sense for DNR to continue to lease the agricultural portions of land rather than sell them, since a private landowner would have great difficulty integrating the land into an existing farming operation. However, each parcel would need to be considered on its own merits.

There are also reasons to have agricultural lands in wildlife management areas. The agricultural lands support wildlife habitat by supplying food for wintering wildlife and providing recreational opportunities for hunters. Nevertheless, DNR is currently conducting a comprehensive review of wildlife agricultural lands to more clearly identify their purposes, reduce future farming operations on state lands, and allow for restoration of those lands to appropriate habitats.

DNR's recently completed forestry plans will help guide future forest land exchanges, sales, and purchases, but the plans need to be discussed with counties and other affected parties.

DNR's new forest land asset management plans may be of significant help in addressing the checkerboard pattern of land ownership and planning future land exchanges, sales, and purchases. The plans recommend exchanges involving over 320,000 acres of state land and about 210,000 acres of land owned by others. The plans, however, were developed based on internal guidelines and need to be reviewed and discussed with counties, federal agencies, and affected parties.

Since many of the proposed exchanges may involve school trust land, it is important for DNR to quickly develop a sense for how the 2008 reform of exchange procedures for acquired land are working and whether they should be applied to trust fund land.

RECOMMENDATION

DNR should report back to the 2011 Legislature on the implementation of changes in the land exchange process for acquired land and the advisability of applying similar changes to the exchange process for school trust fund land.

In assessing the advisability of applying the changes to trust fund land, it will be important to recognize that the state constitution imposes a special responsibility on the state to ensure that the Permanent School Fund receives the market price for trust fund land. However, it is also important to recognize that the failure to consolidate state holdings reduces the efficiency of land management activities and thus adversely impacts the Permanent School Fund. In developing recommendations for the 2011 Legislature, DNR should work with the affected parties, including counties and the Permanent School Fund Advisory Committee.²⁰

²⁰ The Permanent School Fund Advisory Committee was established by the Legislature to advise DNR on the management of trust fund land and to recommend statutory changes. The committee is charged with the goal of maximizing the long-term economic return to the Permanent School Trust Fund, while maintaining sound natural resource conservation and management principles. The committee includes ten legislators, the commissioner of education, two school superintendents, six individuals with certain expertise specified by law, and one nonvoting member. See [Minnesota Statutes](#) 2009, 127A.30.

Conservation Easements

A conservation easement is a voluntary contract between a landowner and a unit of government or nonprofit conservation organization. By entering into a conservation easement, the landowner agrees to extinguish some or all of the land's development potential in order to protect natural resources. For example, by signing an easement a landowner may relinquish the right to grow row crops, erect structures, or subdivide the property.

The Board of Water and Soil Resources (BWSR) and the Department of Natural Resources (DNR) acquire and manage conservation easements on private lands. BWSR oversees more than 5,100 easements through the Reinvest in Minnesota (RIM) Reserve program. DNR manages approximately 1,150 conservation easements under the jurisdiction of multiple programs and agency divisions. Both entities are actively acquiring additional conservation easements.

In this chapter, we briefly describe conservation easements and the state's conservation easement programs. We also examine issues related to DNR's conservation easement acquisition and oversight.¹

BACKGROUND

Conservation easements allow the state to preserve or manage natural resources without owning land outright.

Unless otherwise provided, under state law a conservation easement restricts any landowner's use of the land in perpetuity.² A conservation easement is a legal encumbrance recorded with the deed that "runs with the land." Its terms are binding on the current owner of the real property and any subsequent owners.

Through conservation easements, the state may be able to preserve or manage natural resources without owning the land. The land remains in private ownership and the landowner retains responsibility for upkeep and paying all applicable real estate taxes and assessments.

Because the state does not own the property outright, conservation easements may be a cost-effective tool for the protection of natural resources. In some cases, purchasing large land holdings might prove cost-prohibitive for the state, while easements on the land might be more affordable. However, the state does

¹ DNR also acquires more conventional easements. For example, DNR may purchase an easement so staff can cross a landowner's property to access state land. We examined DNR's conservation easements only.

² *Minnesota Statutes* 2009, 84C.02. Enacted in 1985, *Minnesota Statutes*, chapter 84C, authorizes conservation easements in general. The language is nearly identical to the uniform conservation easement act recommended by the National Conference of Commissioners of Uniform State Laws of the American Bar Association in 1982. The Legislature established each BWSR and DNR conservation easement program in other chapters. Prior to 1985, DNR acquired similar interests in real property via "conservation restrictions," as authorized by *Minnesota Statutes* 2009, 84.64 and 84.65.

assume ongoing management responsibilities and costs associated with conservation easement ownership.

The Legislature has directed both BWSR and DNR to acquire conservation easements for specific purposes. Table 2.1 lists and briefly describes the conservation easement programs administered by BWSR or DNR. As shown in the table, DNR is no longer acquiring conservation easements under two of its six programs.

Table 2.1: Conservation Easement Programs

Program	Agency	Primary Focus	Established	Duration	Number of Easements ^a	Acquiring New
Reinvest in Minnesota Reserve ^b	BWSR	Wetlands, farmland	1986	Term or perpetual	5,100	Yes
Aquatic Management Area	DNR	Trout streams	1992 ^c	Perpetual	813	Yes
Wild and Scenic River	DNR	Scenic vistas	1990	Perpetual	134	No
Native Prairie Bank	DNR	Native prairie	1987	Term or perpetual	90	Yes
Water Bank	DNR	Wetlands	1976	Term or perpetual	43	No
Forest Legacy	DNR	Working forest	2000 ^d	Perpetual	26	Yes
Metro Greenways ^e	DNR	Open space	1998	Perpetual	16	Yes

^a Easement numbers for DNR programs are tentative until the agency's conservation easement project is complete.

^b Includes Permanent Wetland Preserve easements as well as RIM easements paired with federal conservation programs to form the Conservation Reserve Enhancement Programs or the Reinvest in Minnesota-Wetland Reserve Program Partnership.

^c While the Legislature established the AMA program in 1992, the program includes easements DNR acquired under a predecessor "Fish Management Area" program.

^d To date, DNR has acquired all forestry easements under the federal Forest Legacy program. A pending forestry easement funded by the 2009 Legislature will be the state's first easement acquired under the new Minnesota Forests for the Future Program, which is not listed in Table 2.1. The federal Forest Legacy program began with the 1990 federal Farm Bill, but Minnesota did not participate until 2000. Minnesota Forests for the Future and Forest Legacy, as used in this report, refer to working forest easement programs administered by DNR's Division of Forestry.

^e DNR's Metro Greenways program is focused entirely on the Twin Cities metropolitan area and is not included in the discussion in this chapter due to the narrow regional focus.

SOURCE: Office of the Legislative Auditor, compiled from various sources.

With very limited exceptions, BWSR acquires easements exclusively and does not own land outright. DNR real estate staff report that DNR divisions have employed conservation easements in recent years to acquire a significant portion of the new acreage managed by the agency for natural resource purposes.

Easement Acquisition

As a real estate transaction, easement acquisitions typically involve negotiations between the state and the private landowner. Agency staff—or, in the case of BWSR, local government staff—meet and negotiate with willing landowners. Staff attorneys from the Attorney General's Office (AGO) assist BWSR and

DNR with the legal and real estate transaction aspects of conservation easement acquisition.

In this section, we examine the two main aspects of these negotiations—easement terms and price. We also discuss the extent to which acquisition negotiations are open to public input and review.

Easement Terms

The terms of a valid conservation easement are legally binding and determine the type and extent of the restrictions placed upon the landowner. The landowner typically retains all rights not expressly extinguished in the easement contract.

When it established the state's easement programs, the Legislature did not specify the form and substance of easement documents. Instead, the Legislature established program objectives and provided varying levels of direction regarding easement eligibility and terms. The Legislature implicitly delegated easement development, drafting, and negotiations to BWSR or DNR, in consultation with AGO. In general, BWSR or DNR is responsible for the resource protection aspects of the easement.

For expediency and consistency, both BWSR and DNR use template easement contracts for their programs. These templates contain the basic form and terms of each individual conservation easement program.³ As shown by the establishment dates in Table 2.1, conservation easements are a relatively new tool used by the state to protect natural resource land. AGO reports that little or no case law exists to guide the state's construction of conservation easement contracts. Instead, the agencies and AGO have developed and continue to refine the template documents using evolving best practices.

Although templates serve as a starting point for landowner negotiations, DNR staff exercise professional judgment and may negotiate unique conservation easement terms with landowners or their legal representatives. DNR policy requires management-level review and approval of the easement before the agency proceeds with the acquisition. AGO reviews the document for legal form and execution, paying specific attention to any unique terms developed by DNR staff.

Acquisition Price

When BWSR or DNR acquires a conservation easement, the state typically pays the landowner as compensation for voluntarily relinquishing the negotiated

DNR and BWSR are responsible for developing the terms of easement acquisitions, as long as they are consistent with state law.

³ In addition to general RIM easement terms required by statute, BWSR has established additional mandatory terms through the public rulemaking process. DNR has not created rules that set out mandatory terms for any of its easement programs.

Most DNR and BWSR easement programs use formulas to determine the price offered by the state to private landowners.

rights.⁴ The Legislature authorized two methods for determining the amount BWSR and DNR may offer—formula or appraisal.

Formula Method

Most active BWSR and DNR easement programs use formulas to determine the state's maximum offer price.⁵ A formula allows DNR or BWSR to quickly determine the state's offer. The formulas are based on factors such as the size of the easement area and the average value of similar property.

The Legislature codified formulas for DNR's Aquatic Management Area (AMA) and Native Prairie Bank (NPB) conservation easement programs in statute.⁶ DNR staff told us that formulas increase the acquisition success rate and avoid the cost, time, and potential frustration of the appraisal process.

The Legislature delegated authority to BWSR to set and revise its own formulas so long as BWSR considers market factors including average township property values. BWSR correspondingly establishes RIM Reserve payment rates annually.

Appraisal Method

DNR's Minnesota Forests for the Future (MFF) program uses a property appraisal process to determine the value of the conservation easement. Through this program, the Division of Forestry targets industrial forestlands that may soon be sold, subdivided, or converted to other uses. DNR typically hires a certified, prescreened private contractor to appraise MFF easements.⁷ The appraisal process estimates the hypothetical values of the forested property before and after the restrictions imposed by the conservation easement. DNR considers the difference between the two to be the value of the easement, or the amount the state would pay the landowner as compensation for the permanent loss of certain specified rights, such as the right to clear and subdivide a parcel of forestland.

⁴ A landowner may donate all or a portion of the conservation easement's value to the state. The landowner may be indirectly compensated through the federal and state income tax codes if the transaction qualifies as a charitable donation. In some cases, DNR has required a county to donate a conservation easement to the state before DNR will approve the county's proposed sale of certain tax-forfeited land.

⁵ This discussion excludes DNR's Metro Greenways program because it is targeted exclusively to the Twin Cities metropolitan area. DNR's Central Region appraises the value of these easements. Also, DNR has the option of using either an appraisal or a formula for Aquatic Management Area trout stream easement acquisitions. The landowner must consent to DNR's use of the formula instead of an appraisal.

⁶ AMA offers equal the sum of \$5 per linear foot of stream plus the estimated market value of the riparian acreage in the easement corridor, where estimated market value is derived from the annual estimate of the city or township's farm and timberland values collected by the Department of Revenue. See *Minnesota Statutes* 2009, 84.0272, subd. 2. Permanent NPB offers equal 65 percent of the permanent marginal agricultural land payment established by BWSR. See *Minnesota Statutes* 2009, 84.96, subd. 5.

⁷ By law, the landowner also may appraise the value of the conservation easement. DNR must consider the landowner's appraisal alongside the state's appraisal. If DNR purchases the easement, the state must reimburse the landowner for the cost of his or her appraisal. This applies to all DNR acquisitions. *Minnesota Statutes* 2009, 84.0274, subd. 5(e).

When appraisals are used to establish the price, the appraisal is not publicly available until the final purchase agreement is signed.

Once the appraisal is complete, DNR may make a corresponding offer to the landowner. By law, DNR's offer may not stray far from the appraised value. Since 1989, DNR generally may offer no more than appraised value plus 10 percent.⁸ DNR may offer more than appraised value—and even more than 110 percent of appraised value—only if the agency previously acquired interests in land at less than appraised value (i.e., donations and partial donations, or “bargain sales”).⁹ The agency can apply this balance towards an acquisition. DNR policy requires division-management approval of any offer that exceeds appraised value and commissioner approval of any offer that exceeds appraised value plus 10 percent.

Transparency

Some people are concerned that DNR's easement acquisition process does not provide for sufficient transparency or opportunity for public oversight. DNR managers reported that in general, and per the state's Data Practices Act, the price and terms of a pending easement acquisition are not available for public review until the state and landowner have reached a final agreement.

Price

By law, the estimated or appraised value of a conservation easement is not public until DNR and the landowner enter into an agreement to purchase and sell the easement.¹⁰ The Division of Lands and Minerals, based on the advice of the Department of Administration, interprets this language as prohibiting DNR from disclosing the appraised value or the contents of the appraisal(s) until DNR or the landowner signs the final, binding purchase agreement.¹¹ However, DNR's written offer to the landowner is public information.

As noted in the previous section, DNR's offer price generally cannot exceed the appraised value of the conservation easement by more than 10 percent. Assuming the underlying appraisal is sound, the law should reduce the risk of DNR “overpaying” for a conservation easement before the public is able to review the property appraisal.

⁸ *Minnesota Statutes* 2009, 94.0272. This applies to any DNR acquisition of an interest in land. According to Division of Lands and Minerals management, DNR includes any acquisition funds contributed by outside sources when complying with this law. For example, if a property's appraised value is \$1 million, in general DNR may offer the landowner no more than \$1.1 million (i.e., 110 percent of appraised value). If a third party contributes \$200,000 to the acquisition, in general DNR would offer no more than \$900,000, or 110 percent of appraised value minus the third-party contribution. The outside contribution effectively lowers the state's acquisition cost.

⁹ Before 1989, the Legislature authorized DNR to spend no more than appraised value.

¹⁰ *Minnesota Statutes* 2009, 13.44, subd. 3. Appraisals completed for DNR are confidential data on individuals or protected nonpublic data. Appraisals completed for landowners are private data on individuals or nonpublic data. The Legislature created a limited exception to this rule by requiring DNR to share the state's certified appraised value of the property or easement with the landowner before DNR can make an offer. *Minnesota Statutes* 2009, 84.0274, subd. 5(d).

¹¹ After the purchase agreement is final, DNR may continue to withhold any portion of the appraisal that the Division of Lands and Minerals has determined to be a trade secret and protected as such in perpetuity under the Data Practices Act.

Terms

While state law makes clear that the Legislature intended to shield the appraisal from public view until the parties enter into an agreement, the law is effectively silent on whether the public has a right to review easement terms before DNR commits to purchasing an easement. Division of Lands and Minerals management told us they would cite attorney-client privilege provisions of the Data Practices Act in order to withhold a draft easement document from the Legislature or the general public until the easement is final and the state and landowner have agreed to it in writing.¹²

As a result, there may be little or no opportunity for public review of the easement before DNR commits the state to acquiring it. There are circumstances under which public review can occur. Specifically, if DNR cannot encumber sufficient funds to acquire the easement, the agency will request that the landowner sign an option-to-purchase agreement. This agreement typically commits the landowner to sell the property or conservation easement only if the agency encumbers the money by a specified date.¹³ In this case, the signed option-to-purchase agreement triggers public availability of the easement contract and provides an opportunity for public review of the conservation easement before the state acquires it.

Easement Management

When the state acquires a conservation easement, BWSR or DNR assumes an obligation to ensure that the associated public benefits are realized and sustained over the life of the contract. Easement management requires agency commitment and can be costly and staff-intensive.

In 2007, the Legislature directed DNR to identify minimum standards for conservation easements acquired with public dollars.¹⁴ According to DNR, these standards should include a comprehensive management program consisting of the eight elements in Table 2.2. For example, a comprehensive management program should include baseline property reports that document a property's features at the time an easement is acquired, regular contact with property owners, and regular monitoring for property owners' compliance with easement terms.¹⁵

Effective easement management requires baseline reports at the time of acquisition and ongoing monitoring to ensure compliance.

¹² Except for the Office of the Legislative Auditor, the Legislature has no explicit statutory authority to review government data classified as "not public" under the Data Practices Act.

¹³ If DNR cannot encumber sufficient money to purchase the property or easement, it must pay the landowner a \$500 penalty.

¹⁴ *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 161.

¹⁵ Minnesota Department of Natural Resources, *Minimum Standards for Conservation Easements Acquired with Public Money in Minnesota* (St. Paul, 2008), 7. Prior to creating these standards, DNR developed standards for state forest legacy easements funded by the Environment and Natural Resources Trust Fund. The standards were created for the Legislative-Citizen Commission on Minnesota Resources pursuant to *Laws of Minnesota* 2007, chapter 30, sec. 2, subd. 4(a). See Legislative-Citizen Commission on Minnesota Resources, *Minimum Standards and Guidelines for State Forest Legacy Easements in Minnesota* (St. Paul, October 2007).

Table 2.2: Standards for Conservation Easement Management

1. Form the basis for future monitoring efforts by documenting the land's relevant features at the time of easement acquisition
2. Maintain regular contact with current and any future owners of the property
3. Regularly monitor the property for easement violations
4. Maintain detailed records for each property
5. Uniformly and fully address suspected easement violations
6. Consistently address any subsequent easement amendments without diminishing the protected conservation values
7. Maintain a publicly available and up-to-date list of all conservation easements
8. Demonstrate sufficient, sustainable financial and staff resources for perpetual easement management at the time of acquisition

SOURCE: Office of the Legislative Auditor, abridged version of standards published in: Department of Natural Resources, *Minimum Standards for Conservation Easements Acquired with Public Money in Minnesota* (St. Paul, 2008), 7-8.

BWSR has a comprehensive easement management program.

BWSR has formal agency rules and policies governing many aspects of the management of RIM easements. Components include property monitoring as well as easement enforcement, alteration, and termination.

DNR's approach to easement management is in transition. In 2008, DNR received a \$520,000 appropriation for a multi-year project to enhance its conservation easement management program.¹⁶ According to the project work plan, when the project is complete in 2011, the agency will have created an inventory of its easements, developed conservation easement monitoring plans based on the elements listed in Table 2.2, and proposed arrangements for funding ongoing easement management needs.¹⁷

In addition, project documents indicate that staff are coordinating the easement work with DNR's broader Land Records Management Project to take advantage of the technologies that the larger project will offer, such as work flow management and electronic document management.¹⁸ DNR indicated that integrating the easement computer application with the Land Records Management Project will result in an easement management product with enhancements and at lower cost than would be possible if the easement

¹⁶ *Laws of Minnesota* 2008, chapter 367, sec. 2, subd. 5(h). BWSR also received an appropriation to improve its conservation easement programs. BWSR is using its \$180,000 appropriation to update and enhance its existing electronic RIM Reserve database and expand public access to RIM easement locations and related information through its web site. See *Laws of Minnesota* 2008, chapter 367, sec. 2, subd. 5(g).

¹⁷ Minnesota Department of Natural Resources, status report submitted to the Legislative-Citizen Commission on Minnesota Resources, *Trust Fund 2008 Work Program*, December 15, 2009, 1 and 10.

¹⁸ According to DNR, the Land Records Management Project will have better reporting capabilities and management functions than the circa-1980s land records system it will replace. DNR, *Trust Fund 2008 Work Program*, 13.

application were developed as a stand-alone system.¹⁹ As planned, the system will track monitoring activity on easements and generate letters and reports about violations.

ISSUES

We found three issues with DNR's conservation easements that warrant further attention: 1) easement management, 2) transfer notification provisions in future easement contracts, and 3) documentation of third-party roles and responsibilities.

Easement Management

As we described above, we found that:

- **DNR does not have a comprehensive management program to safeguard the public's investment in conservation easements on private natural resource lands, but is developing one.**

Several factors may have contributed to the fact that DNR does not already have a comprehensive program in place. First, different divisions within DNR are responsible for monitoring the agency's various easement programs, as shown in Table 2.3. The individual divisions have taken different approaches to easement management, with some adopting more comprehensive approaches than others. Second, DNR has not had a centralized database that includes information on all of its easements. According to the department, individual divisions maintained databases, spreadsheets, or paper records of easement information. But the central land records system did not contain complete information on all easements, particularly older easements. Third, best practices have undoubtedly

With assistance from a legislative grant, DNR is developing a comprehensive easement management program.

Table 2.3: DNR Easement Programs

Easement Program	DNR Division
Aquatic Management Areas	Fish and Wildlife
Wild and Scenic Rivers	Waters ^a
Native Prairie Bank	Ecological Resources
Water Bank	Fish and Wildlife ^b
Forest Legacy	Forestry

^a The Division of Parks and Trails is responsible for management of the state's Wild and Scenic Rivers easements but contracts with the Division of Waters to monitor the properties subject to an easement.

^b The Division of Waters is responsible for management of the state's Water Bank easements but contracts with the Division of Fish and Wildlife to monitor the properties subject to an easement.

SOURCE: Office of the Legislative Auditor.

¹⁹ DNR, *Trust Fund 2008 Work Program*, 13-14.

evolved since the Legislature authorized DNR to acquire Water Bank easements more than 30 years ago. Changes to best practices may partly explain why the department has not developed a consistent approach to easement management.

We described above the efforts that DNR is currently making to develop a comprehensive easement management program. When complete, and if funding is provided to implement the plans, the program promises to address the easement management concerns that we have. We recognize this and the progress that DNR has made over the past 18 months. However, we discuss our concerns in part because Phase II of the project—initiating the easement monitoring program—is not predicted to start until 2011. We do not want interest in or funding to resolve these issues to wane under a mistaken belief that they have already been addressed.

Awareness of Conservation Easements

In 2002, a group of DNR conservation easement professionals found that the lack of a comprehensive centralized inventory—when combined with poor institutional memory and communication between divisions—led to mistakes by DNR field staff.²⁰ In one documented instance, a DNR employee provided technical assistance to a landowner constructing a road in a riparian area that, unknown to the staffer, was subject to a Wild and Scenic River conservation easement held by DNR and managed by a different division. The easement prohibited any such development.²¹ DNR staff estimate the agency spent approximately \$40,000 over 10 years to rectify this one violation.

Nearly five years passed between completion of the working group’s report and DNR’s 2007 application to the Legislative-Citizen Commission on Minnesota Resources for funding to enhance its easement management program. A DNR manager told us the agency pursued this funding when it was informally directed to do so by certain legislators.

DNR is in the process of compiling an inventory and department-wide database of its conservation easements.

As described previously, part of DNR’s current easement management project is development of an inventory database. With the funds, DNR hired temporary staff to, among other things, identify all of the agency’s conservation easements and create a department-wide database. According to project documents, the inventory will include information for each easement, such as easement type, location, acreage, and administrator. In its most recent status report, DNR reported that staff had inventoried the easements in the Northeast and Northwest regions and were working in the Central Region.²²

Attention to Conservation Easement Management

In the absence of a department-wide conservation easement management policy, each DNR division has taken its own approach to conservation easement

²⁰ Minnesota Department of Natural Resources, *Conservation Easements: A Report from DNR Working Group with Recommendations for Future Action* (St. Paul, December 10, 2002), 8.

²¹ *State v. John C. Dow, Findings of Fact, Conclusions of Law and Order for Judgment*, Court File No. C9-00-1101 (Minn. Tenth Judicial District Court, filed December 6, 2001).

²² DNR, *Trust Fund 2008 Work Program*, 3.

management. DNR reported in 2002 and again in 2009 that the attention DNR divisions pay to conservation easement monitoring has varied.²³

Available evidence suggests that all DNR divisions perform some form of easement oversight, but only DNR's Division of Forestry has a thorough easement management program. The Division's current draft easement management program for Forest Legacy and MFF easements requires written monitoring procedures and a goal of visiting each easement property annually. Unlike the other DNR programs, the MFF enabling statute required DNR to develop "a long-term program for monitoring and enforcing Minnesota forests for the future easements."²⁴ Division staff told us that monitoring has uncovered easement violations. For example, Division of Forestry staff discovered that a landowner had erected a structure that extended onto property protected by a conservation easement, in violation of the easement terms. When notified, the landowner moved the structure.

Of note, DNR's oldest conservation easement program—Water Bank—also incorporates regular and documented easement monitoring. As reported to us, the divisions of Waters and Fish and Wildlife cooperate to maintain regular contact with landowners and periodically monitor each property for easement violations.

In spite of the programs mentioned above, we found that:

- **DNR has not always documented initial property conditions when easements were acquired and does not regularly monitor most easement properties for violations.**

DNR does not have baseline reports for most of its easements.

Easement monitoring is meaningful only when staff can compare a property's current condition to its condition at the time of acquisition. Through a combination of photographs and written narratives, baseline property reports capture the status of the property and its natural features at the time an easement is acquired. However, DNR staff have not prepared these baseline reports for the vast majority of the agency's conservation easements, including 134 Wild and Scenic River easements, over 800 AMAs, and the approximately 75 NPB easements DNR acquired through June 2007.²⁵ Collectively, these easements comprise approximately 91 percent of the DNR conservation easements reflected in Table 2.1. Evolving best practices may partly explain why some easement programs have used baseline property reports more consistently than other divisions. For example, the Division of Ecological Resources reported that staff have created baseline reports for almost all of the NPB easements DNR has acquired since June 2007.

In addition, DNR divisions do not consistently visit easement properties to monitor landowner compliance. For example, DNR staff have not visited most

²³ Minnesota Department of Natural Resources, *Conservation Easements: A Report from DNR Working Group*, 7. Also DNR, *Trust Fund 2008 Work Program*, 11-12.

²⁴ *Minnesota Statutes* 2009, 84.66, subd. 11(a).

²⁵ DNR, *Trust Fund 2008 Work Program*, 12; and interview with DNR Division of Fish and Wildlife staff, August 13, 2009.

While some DNR divisions have regularly monitored easements for compliance, others have not done so.

of the agency's 134 Wild and Scenic River easement properties in years. In an attempt to rectify this situation, the Division of Parks and Trails hired an easement coordinator in 2008. To date, the coordinator has taken aerial photos of each easement and visited 40 to 50 of the properties to collect the data necessary to prepare belated baseline property documentation.

The Fisheries Section of the Division of Fish and Wildlife and the Division of Ecological Resources have not regularly monitored easement properties. Instead, management for both divisions reported that a type of informal monitoring occurs when DNR staff access the property for resource management or members of the public use the easement property. In June 2009, the Division of Ecological Resources began test monitoring NPB easements as part of the agency's conservation easement management project.

Failure to document initial property conditions and regularly monitor conservation easements clearly creates the potential for landowner violations and temporary damage to, or permanent loss of, the conservation values purchased with public funds. It is unclear how effective informal monitoring is in addressing this risk. In the absence of information about baseline property conditions and easement terms, the ability of staff engaged in other tasks and members of the public to identify easement violations may be limited. One objective of DNR's current easement project is to determine the "accrued liability of easement violations" that the agency will need to address.²⁶

RECOMMENDATION

DNR should prepare baseline reports for all conservation easements it acquires in order to document the condition of the property at the time of acquisition and enable meaningful and effective management.

As part of DNR's easement project currently underway, a working group developed a baseline property report template. This may assist divisions that have not always created baseline reports to begin doing so.

RECOMMENDATION

After review of its forthcoming conservation easement management plans by the Legislature and relevant stakeholders, DNR should adopt a department policy that reflects and implements the plans.

A comprehensive agency-wide easement management policy should be a major improvement over DNR's current approach to conservation easement management. The agency needs to do more to safeguard the public's investment in conservation easements, particularly given the agency's plans to acquire many additional conservation easements in the years to come.

²⁶ DNR, *Trust Fund 2008 Work Program*, 10.

An agency-wide policy would require minimum standards and practices across all DNR divisions and easement programs. If necessary, DNR could establish mandatory department-wide management components, yet allow for program-specific flexibility where appropriate. The management plans being developed under the current easement management project may help identify where program flexibility is needed.

However, once an agency-wide policy is adopted, DNR may need additional funds to support its implementation. DNR does not believe it has the resources needed to implement its forthcoming management plans but will be developing an estimate of the needed funding as part of the current project.

Transfer Notification Provisions

As noted above, some DNR divisions monitor easement properties. DNR staff said violations are typically not committed by the landowner who originally conveyed the easement to DNR. Rather, issues generally involve subsequent landowners or managers who plead ignorance or purposefully choose not to abide by the conservation easement conveyed by a previous owner.²⁷

Although DNR staff noted that landowner compliance issues typically arise once the land is sold or otherwise transferred to a different party, we found that:

- **DNR does not include a transfer notification provision in all of its conservation easement contracts.**

Future DNR easement agreements should require notification to DNR when the owner sells or transfers the property.

DNR's largest and most active conservation easement program, AMA, does not include a transfer notification provision in its template easement document. In addition, the current approach to monitoring the easements—namely DNR Fisheries Section staff or the angling public periodically entering the property to access the stream corridor—does not ensure periodic landowner communications or prompt DNR awareness of new ownership.

Transfer notification provisions require the current landowner to notify DNR of an impending property transfer. Examples of these provisions can be found in sample easement documents for DNR's Native Prairie Bank and Minnesota Forests for the Future programs. If the landowner does not recall this provision, the real estate transfer process, in particular the title review, should serve as a reminder of this obligation.²⁸

²⁷ The standard property title review process should alert a potential buyer to a recorded easement and the incumbent land use restrictions.

²⁸ The template for BWSR RIM easements also includes a transfer notification provision.

RECOMMENDATION

DNR policy should mandate that all future conservation easements the agency acquires contain a clause requiring the current owner of the property to promptly notify DNR when the landowner sells or otherwise transfers the property to another party.

While ownership of real property is subject to change, most DNR conservation easements “run with the land” in perpetuity. Required transfer notice, when combined with regular landowner contact, may reduce the incidence of compliance issues with subsequent landowners.

Third-Party Agreements

DNR may work with nongovernmental conservation organizations to acquire natural resource lands, as well as conservation easements on natural resource lands. These “third parties” assist DNR with activities such as property identification, initial landowner contact, acquisition negotiations, and appraisals. In addition, sometimes the third parties purchase the land or easement and sell it to DNR.

Some people are concerned that third-party groups represent “special interests” whose involvement in DNR acquisitions may not always be appropriate. Those who expressed this concern believe political pressure, compressed acquisition timelines, or other factors may effectively force DNR staff to purchase land or conservation easements acquired or negotiated by third parties, even when the easements are not in the best interests of DNR and the state as a whole. Alternatively, a third party and a private landowner could agree to certain easement agreement provisions that are not in the best interests of the state and do so without prior approval from DNR.

In addition, there are financial concerns about third-party transactions. Third parties may seek reimbursement from DNR for costs they incur such as appraisal and survey expenses, loan costs, property taxes, attorney fees, and staff time. Third parties may also earn fees for their part in negotiating transactions. They may also benefit by selling land to DNR that they recently purchased or are about to purchase at a lower price than DNR pays them.

Because of these concerns, it is important that DNR has a clear and appropriate process for involving third parties in land and easement acquisitions. That process needs to spell out the roles and responsibilities of third parties, as well as the conditions under which DNR will reimburse third parties for certain expenses. We found that:

- **DNR has recognized the value of third parties in land and easement acquisitions and has developed a process for working with third parties, as well as minimum criteria to be used in every transaction.**

DNR says it is using criteria for third-party involvement that were proposed in an October 2008 memo, but has not formally adopted them.

For example, in its 2008 document outlining minimum conservation easement standards, DNR recommended that nongovernmental organizations and units of government agree—upfront and in writing—to their roles, responsibilities, and transaction costs.²⁹ DNR also developed a process and minimum criteria for working with third parties. This process and the criteria were proposed in an October 2008 memorandum from the Director of the Division of Lands and Minerals to senior DNR managers.³⁰ The process and criteria were also shared with various third-party groups, and DNR received comments from those groups. DNR reports that it is following the process and criteria for working with third parties that was proposed in the memorandum. However:

- **DNR does not appear to have formally adopted the proposed process and criteria as department policy.**

While this may be a somewhat technical concern, we think that DNR should formally adopt the proposed process and criteria as department policy.

RECOMMENDATION

DNR should formally adopt the proposed standards outlined in its October 2008 memorandum regarding the involvement of third parties in any DNR acquisition of a conservation easement or other interest in natural resource land.

Formalizing its policy regarding working with third parties is important since third parties play a significant role in DNR's land and easement acquisitions. DNR managers believe third parties may play an even greater role in future acquisitions.

²⁹ DNR, *Minimum Standards for Conservation Easements*, 9.

³⁰ Marty K. Vadis, Director, Department of Natural Resources Division of Lands and Minerals, memorandum to senior managers, *Land Acquisition Process and Procedures—Working with Third Parties*, October 10, 2008.

Financial Implications of Land Ownership

While there are good reasons to acquire more natural resource land, there are also serious concerns about the adequacy of resources to manage existing DNR land.

The cost of owning land and conservation easements does not end with the purchase price. Costs of owning natural resource land also include initial development and ongoing land management costs, as well as payments in lieu of taxes to local governments. Similarly, when the state acquires a conservation easement to protect natural resources on private lands, the Board of Water and Soil Resources (BWSR) or the Department of Natural Resources (DNR) assumes an obligation to safeguard this investment.

Some people are concerned that the state is acquiring additional land even though there are unmet management needs for DNR's existing landholdings. Some within and outside of DNR believe the department does not always have sufficient resources to carry out or coordinate the work that DNR land managers believe is required to maintain DNR's land portfolio.

In addition, some people question whether DNR is adequately protecting existing conservation easements at a time when additional easements are being considered. BWSR staff note that while the Legislature has continued to appropriate funds for Reinvest in Minnesota Reserve easement acquisitions, it has reduced funding for ongoing management of these easements.

On the other hand, some people argue that for ecological and recreational purposes, Minnesota should own significantly more public natural resource land and purchase additional easements on private land. These advocates say the new constitutionally dedicated sales tax revenues, unique and fleeting acquisition opportunities, and relatively low land prices combine to form an important opportunity for the state to acquire additional interests in natural resource land in order to satisfy the recreational needs of a growing population.

In this chapter, we discuss issues related to the management obligations and costs associated with state ownership of natural resource land and conservation easements. We first examine DNR's long-term goals for acquisition of natural resource land, which would result in a significant increase in the state's ownership of land. We also discuss the sources of funding for acquisition, including the dedicated sales tax revenues from the 2008 constitutional amendment. Second, we list the budgetary shortfalls reported by DNR in the management of the state's existing land holdings. Finally, we consider the need for DNR to provide more complete information to the Legislature on its land development and ongoing land management needs. That information will help the Legislature better understand the financial implications of additional land acquisition or conservation easement purchases. Although payments in lieu of taxes (PILT) are a financial implication of land acquisition, the discussion of PILT is deferred to Chapter 4 of this report.

BACKGROUND

DNR and BWSR manage the state's interests in natural resource land. DNR manages natural resource lands owned outright as well as conservation easements on private property. BWSR generally does not own land but, like DNR, manages conservation easements. Whether the state owns land outright or a conservation easement, public ownership of an interest in natural resource land entails ongoing management and related costs. The sections below describe some of the types of cost incurred in managing state-owned land and conservation easements.

State-Owned Land

Public ownership of natural resource land entails both one-time and ongoing costs. One-time costs consist of the purchase price and any initial development costs such as boundary establishment, signs, fences, and user facility construction including buildings, roads, and trails. Ongoing costs include the annual costs incurred to manage the property and its natural resources, as well as state payments in lieu of taxes (PILT) to local units of government.

Management costs take many forms. DNR's land management activities include natural resource management as well as more conventional property management duties. Examples include trash collection, campground security, fence mending, trail maintenance, trespass investigations, noxious weed control, brush clearing, and simulating natural wildfires with controlled burns. DNR staff perform these activities or coordinate the work of contracted private parties. DNR also solicits volunteer labor to perform certain activities, such as plant seed collection.

In addition, state law specifically requires DNR to manage the lands under its control to achieve and sustain the public benefits enumerated in the Outdoor Recreation Act of 1975, as amended, and various forestry laws.¹ The vast majority of DNR lands are open to public recreation. DNR typically classifies a given parcel of land as a unit in the state's outdoor recreation system. Staff in the agency's centralized real estate unit—the Division of Lands and Minerals—designate the unit for management by the appropriate DNR division. For example, the Division of Parks and Trails manages the roads, parking lots, camping areas, interpretive centers, and natural resources located in State Parks, as well as the recreational facilities in state forests. The Division of Forestry's management of state forests includes tree planting and coordinating timber harvests. Conservation officers working for DNR's Division of Enforcement enforce the laws applicable to these public lands, such as any restrictions on the use of off-highway vehicles.

Conservation Easements

Public ownership of conservation easements also entails initial one-time costs, as well as ongoing costs. Initial costs include the purchase price and development costs such as boundary surveying. For some easement programs at DNR and

The costs of land ownership include the costs of acquisition, development, and ongoing operations and maintenance, as well as payments in lieu of taxes.

¹ See *Minnesota Statutes* 2009, chapters 86A, 89, 89A, and 84.66-84.67.

Conservation easements on private property require ongoing management costs as well as acquisition, and sometimes development, costs.

BWSR, there may be additional development costs to bring the property into the desired condition. For example, DNR may incur upfront expenses to develop private property under its Native Prairie Bank program. BWSR may provide funding for property modifications including buffer strips along water under some of its programs. In addition, conservation agencies may record the status of the property's relevant features at the time of acquisition in a baseline report. The report provides important documentation for subsequent easement management and enforcement efforts.

Ongoing costs consist of those activities required to adequately monitor the property and, if necessary, enforce the easement's terms. As DNR noted in 2002, the ongoing or "true" cost of conservation easement ownership is not insignificant.² Easement management—or "stewardship"—entails regularly monitoring the easement property, regular interaction with the landowner, collecting data, and investigating and rectifying any alleged violation of the easement's terms.

Some easement programs—including the Native Prairie Bank program—also entail more traditional land management costs because the easements authorize DNR staff to enter the private property and to conduct controlled burns or actively manage the protected natural resource in other ways.

As described in Chapter 2, land with a conservation easement remains in private ownership, and the state does not incur a PILT liability. However, the acquisition of a conservation easement may have a fiscal impact on local governments if the county assessor reduces the market value of the easement property and thus lowers the property taxes collected by local governments. The market value of a property with an easement may be lower than without the easement because the easement takes away some of the rights of the private landowner. For example, the easement may prevent the land from being farmed or developed. Until 2008, state law required assessors to reduce the valuation of properties with conservation easements. The law was changed in 2008 to allow, but not require, assessors to adjust the valuation of such properties.³ The law change came after a 2007 report from the Minnesota Department of Revenue recommended the change.⁴

ACQUISITION PLANS AND FUNDING

From our discussions with DNR senior management and review of relevant reports, we found that:

² Minnesota Department of Natural Resources, *Conservation Easements: A Report from DNR Working Group with Recommendations for Future Action* (St. Paul, December 10, 2002).

³ *Laws of Minnesota* 2008, chapter 154, art. 13, sec. 27. See also *Minnesota Statutes* 2009, 273.117.

⁴ The Department of Revenue argued in the report that "all property should be valued as if it is unencumbered by any leases, easements, etc. and the entire bundle of rights is intact." The report also found that assessors were often not making reductions in the value of easement properties because they were unaware of the easements. See Minnesota Department of Revenue, *Assessment and Classification Practices Report: Lands Enrolled in State or Federal Conservation Programs* (St. Paul, February 21, 2007).

- **The long-range plans that guide each of DNR’s major landholding divisions propose additional land and conservation easement acquisitions, and some of these plans propose large acquisition increases for particular programs.**

The long-range plans for each of DNR’s major landholding divisions—Ecological Resources, Fish and Wildlife, Forestry, and Parks and Trails—set goals that involve the acquisition of additional land interests. Table 3.1 describes the increase in land ownership and easements proposed in each division’s long-range plans. When applicable, the table also shows DNR’s timeline for achieving the acquisition goal.

Table 3.1: DNR Acquisition Objectives

Division	Program	Current Holdings ^a	Acquisition Objective ^b	Percentage Increase
Ecological Resources	Scientific and Natural Areas	147 sites	500 sites by 2085	240%
	Native Prairie Bank	5,349 acres	75,000 acres	1300
Fish and Wildlife	Wildlife Management Areas	1.1 million acres	1.8 million acres by 2052	64%
	Aquatic Management Areas	834 miles	3,434 miles by 2033	311
Forestry	State Forests and other forested lands	4.0 million acres	4.2 million acres ^c	6% ^c
	Forests for the Future	65,783 acres ^d	335,783 to 595,783 acres by 2033	410 to 806
Parks and Trails	State Parks	215,000 acres	260,000 acres ^e	21%
	Water Access Sites	1,600 sites	At least 4,000 sites	150
	State Trails	1,266 miles	2,597 miles	105

^a Subject to available funding, DNR is continually acquiring additional interests in natural resource land. As a result, the figures under “Current Holdings” are approximate but serve to give a sense of the magnitude of additional acquisition planned. These figures were taken from planning and other documents created at different times and may not match those reported elsewhere in this evaluation.

^b Objectives include existing holdings. These objectives assume no new legislative additions to the Outdoor Recreation System, such as the designation of a new State Park or State Trail.

^c The Forestry acquisition objective and percentage increase do not reflect the net change of proposed exchanges. Successful completion of the exchanges would increase DNR-owned forest land to 4.1 million acres, which is an increase of 3 percent.

^d Includes conservation easements acquired by DNR with financial assistance from state, federal, or other funds at the time of the 2008 DNR report on forest easements. This figure does not include the state’s first easement under the Minnesota Forests for the Future program—a pending 187,000-acre acquisition that DNR anticipates will close in calendar year 2010.

^e Acreage represents the approximate total acreage within existing state park boundaries.

SOURCE: Office of the Legislative Auditor, compiled from various sources.

Whether the impetus for acquisition originates from legislative initiatives, citizen stakeholders, agency staff, or some combination of these, DNR's long-range plans include significant additions to the agency's current land portfolio. The plans are not binding and may be intentionally ambitious, but DNR divisions use them, along with biennial plans, to guide their acquisition efforts. Actual DNR acquisitions depend, of course, on legislative appropriations for acquisitions. In the following sections, we examine each division's acquisition plans in more detail. We also briefly mention the traditional sources of funding used for acquisition, and then focus our discussion on the newly available funds from the Legacy Amendment, which was passed by voters in November 2008.

Plans

Ecological Resources

DNR's long-range goals include significant increases in the number of scientific and natural areas and the acres of native prairie bank easements.

The Division of Ecological Resources is responsible for the acquisition and management of Scientific and Natural Areas and the Native Prairie Bank easement program. The Legislature established the Scientific and Natural Areas (SNA) program to protect and perpetuate in an undisturbed state those natural features that possess exceptional scientific or educational value.⁵ To carry out this directive, the division maintains a long-term goal of acquiring a portfolio of land that, on the whole, contains multiple instances of the state's rare or threatened plant and animal species and natural features. As shown in Table 3.1, the Division believes that accomplishing this goal will require more than tripling—from approximately 147 to 500—the current number of protected natural areas, consisting primarily of SNAs, by 2085.⁶

The Legislature established the Native Prairie Bank (NPB) program to acquire conservation easements that protect and preserve for posterity certain privately-owned prairielands.⁷ The division's goal is to significantly increase the existing 5,349 acres of NPBs and protect a total of 75,000 private acres.⁸ To meet this goal, the state would need to acquire NPB easements on more than thirteen times the number of private native prairie acres currently protected.

Fish and Wildlife

The Division of Fish and Wildlife is responsible for the acquisition and management of Wildlife Management Areas and Aquatic Management Areas. In the early 2000s, DNR convened a citizen group to set acquisition goals for these public lands. In December 2002, this advisory committee recommended that the division acquire more than 700,000 additional acres of Wildlife Management

⁵ *Minnesota Statutes* 2009, 86A.05, subd. 5.

⁶ Minnesota Department of Natural Resources, *Scientific and Natural Areas Program—Long Range System Plan* (St. Paul, October 2004).

⁷ *Minnesota Statutes* 2009, 84.96.

⁸ Minnesota Department of Natural Resources, *Minnesota Native Prairie Bank Easement Acquisition—Biennial Plan, Fiscal Years 2006-2007* (St. Paul, November 28, 2005).

Citizen advisory groups have proposed significant increases in the acres of wildlife management areas and the miles of aquatic management areas.

Areas (WMA) by 2052.⁹ This represented a 64 percent increase over the 1.1 million acres of existing WMAs at the time. The purpose of the WMA program is to acquire, develop, and manage lands and waters for wildlife production; public hunting, fishing, and trapping; and other compatible public uses.¹⁰

Similarly, in October 2007 a citizen group convened by DNR recommended that the state acquire significantly more Aquatic Management Areas (AMA). The plan recommends that DNR acquire land or easements on an additional 1,500 miles of cold water stream corridors and 1,100 miles of lake and warm water stream and river habitat by 2033.¹¹ To meet both goals would require protecting more than three times the number of AMA miles the state held at the time. The purpose of the AMA program is to protect, develop, and manage lakes, rivers, streams, and adjacent wetlands and lands critical for fish and other aquatic life, for water quality, and intrinsic biological value, public fishing, or other compatible public uses.¹²

Forestry

The Division of Forestry is responsible for the acquisition and management of State Forests and Minnesota Forests for the Future/Forest Legacy conservation easements. At the direction of division management, in 2009 staff in the division's three main regional offices recommended the strategic acquisition of more than 238,000 acres of additional forestland, representing an increase of around 6 percent over the approximately 4 million acres currently managed by the division. This amount includes proposed acquisitions minus proposed sales. If proposed exchanges are included, the increase in acreage is 3 percent.

There are also proposals to increase the amount of state-owned forest land and the acres of conservation easements in privately owned forests.

With the statutory charge of retaining the state's high-value, contiguous private timberlands, an advisory team formed by DNR in 2007 reviewed the state's past forest easement activities and the development pressures affecting the state's ability to retain its privately owned forests. The group recommended the establishment of a new state program, the Minnesota Forests for the Future Program.¹³ In addition, the group recommended that the Division of Forestry—via a combination of the new program and the existing federal Forest Legacy program—acquire conservation easements on an additional 270,000 to 530,000 high-priority acres.¹⁴ These acres are located primarily in northern Minnesota's Laurentian Mixed Forest Province.

⁹ The Citizens' Advisory Committee, *Minnesota's Wildlife Management Area Acquisition—The Next 50 Years. Report to the Department of Natural Resources, the Wildlife Roundtable, Legislature, and the Citizens of Minnesota* (St. Paul, Revised December 20, 2002).

¹⁰ *Minnesota Statutes* 2009, 86A.05, subd. 8(a).

¹¹ The Aquatic Management Area Acquisition Planning Committee, *Shoreline Habitat, Angling, and Clean Water For Our Future. Report to Department of Natural Resources Division of Fish and Wildlife* (St. Paul, October 2007).

¹² *Minnesota Statutes* 2009, 86A.05, subd. 14.

¹³ *Minnesota Statutes* 2009, 84.66.

¹⁴ Minnesota Department of Natural Resources, *Minnesota Forests for the Future—Strategic Report of DNR Commissioner's Advisory Team on the Minnesota Forests for the Future Program* (St. Paul, April 2008).

DNR is in the process of acquiring land for a new state park and, over the long run, would like to acquire some of the privately owned land within existing state parks.

Parks and Trails

The Division of Parks and Trails is responsible for the acquisition and management of state parks, water access sites, and state trails. The Legislature establishes the location and boundaries of state parks. The public purpose of the state park system is to protect and perpetuate extensive areas that showcase Minnesota's natural amenities and provide for their public use, enjoyment, and understanding in a manner that does not impair these same opportunities for future generations.¹⁵ Assuming no new additions to the state park system, division management indicated that they are pursuing acquisition of some of the 40,000 to 50,000 acres of privately-owned land located within the statutory boundaries of existing state parks. Parks and Trails may target other parcels that the division believes would improve its land management efficiency.

In addition, the Legislature periodically adds new parks to the state park system. For example, the Legislature authorized the creation of Greenleaf Lake State Park in Meeker County in 2003. The 2007 Legislature reclassified Greenleaf Lake as a state recreation area. Also, the 2008 Legislature authorized the establishment of Lake Vermilion State Park and appropriated \$20 million for the purchase of land. In January 2010, the Governor announced that the state had reached an agreement with the current landowner to purchase 3,000 acres of land for the new park.¹⁶ According to an initial assessment by DNR, up to \$30 million may be needed to develop the park's infrastructure.¹⁷

The purpose of water access sites—which include boat ramps, portages and campsites—is to provide public access to rivers and lakes suitable for outdoor recreation.¹⁸ According to management, the division's long-term goal is to acquire and develop parcels of land necessary to establish at least one public water access site on each of the state's roughly 4,000 fishable lakes. The division currently manages approximately 1,600 of these sites.

DNR's long-range goals include a 150 percent increase in the number of water access sites and the completion of the state trail system, which is only half finished.

The Legislature establishes the terminal points—but not the route—of each state trail. The multi-faceted purpose of the state trail system includes providing a recreational travel route that connects units in the outdoor recreation system.¹⁹ To date, the division has successfully acquired land for approximately half of the designated 2,600-mile state trail system. The division accordingly seeks to acquire and develop the remaining 1,300 miles. It also pursues additional parcels of land when the division believes public ownership could alleviate current management or operational issues. Given the backlog of trail miles still to be acquired and developed, DNR's plans do not include any additional state trails beyond those already authorized by state law. However, as with state parks, the Legislature periodically authorizes the establishment of new state trails.

¹⁵ *Minnesota Statutes* 2009, 86A.05, subd. 2.

¹⁶ In order to complete the purchase, DNR will need an exemption from the state law that requires the payment for the land for Lake Vermilion State Park not to exceed the land's appraised value by more than 12 percent. See *Laws of Minnesota* 2008, chapter 365, sec. 25.

¹⁷ The estimated development costs will depend on the details of how the park is developed. DNR has not yet made a decision on how the park will be developed.

¹⁸ *Minnesota Statutes* 2009, 86A.05, subd. 9.

¹⁹ *Minnesota Statutes* 2009, 86A.05, subd. 4.

Funding

Until recently, funding for acquisition and development of new properties has come from a variety of sources including state bonding appropriations, the Environment and Natural Resources Trust Fund, other dedicated state funds, and federal funding. The funding sources vary for particular types of DNR land holdings. Funding has been sufficient to provide only a modest growth in DNR land holdings. As we saw in Chapter 1, the state-owned acres of land managed by DNR have grown only 5 percent in the last two decades.

The 2008 Legacy Amendment provides additional funding for outdoor heritage projects and support for parks and trails.

Starting in fiscal year 2010, however, funding became available from the dedicated sales tax increase approved by voters in November 2008. The Legacy Amendment to the Minnesota Constitution provides funding over a 25-year period for a number of activities relevant to state-owned natural resource land. More specifically, the amendment established an Outdoor Heritage Fund to provide monies for the restoration, protection, or enhancement of wetlands, prairies, forests, and fish, game, and wildlife habitat.²⁰ In addition, the amendment set up a Parks and Trails Fund to support parks and trails of regional or statewide significance.

The availability of this source of funding for natural resources programs raised the hopes of some that additional lands could be acquired and protected by DNR, federal agencies, local governments, or nonprofit groups. But the funds do not have to be used for acquisition and development of natural resource land. For parks, the funds only need to provide support for parks and trails of regional or statewide significance. The funds may be used for acquisition or development, or they may be used for rehabilitation, restoration, enhancement, or simply to provide additional operational support. The funds must, however, “supplement traditional sources of funding for these purposes and may not be used as a substitute.”²¹

For outdoor heritage projects, the funding must be used to “restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.”²² The projects may involve acquisition and development activities. In addition, the projects may include activities on existing state-owned land provided that the activities meet the “restore, protect, and enhance” requirement and that the funds are used to supplement traditional funding sources.

²⁰ *Minnesota Constitution*, art. XI, sec. 15, authorizes a sales tax of 0.375 percent from July 1, 2009, until June 30, 2034. From the receipts, the voter-approved amendment authorizes 33 percent to be deposited in an outdoor heritage fund, 14.25 percent for a parks and trails fund, 33 percent for a clean water fund, and 19.75 percent for an arts and cultural heritage fund. The Outdoor Heritage Fund may be spent only to “restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.” The Parks and Trails Fund may only be spent to “support parks and trails of regional or statewide significance.” The Clean Water Fund may be spent “only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation.”

²¹ *Minnesota Constitution*, art. XI, sec. 15.

²² *Ibid.*

The initial outdoor heritage appropriations focused mainly on easement or land acquisitions, while a significant portion of the parks and trails appropriations were for ongoing services, maintenance, and rehabilitation.

The 2009 Legislature made the first appropriations from the Parks and Trails Fund and the Outdoor Heritage Fund. About \$36.9 million was appropriated to DNR from the Parks and Trails Fund during the 2010-11 biennium for various purposes.²³ Most of the money cannot be used for acquisition and development, but is instead targeted toward activities on existing land such as supplemental park services, restoration, invasive species control, controlled burns, accelerated facility maintenance and rehabilitation, and development of a 10-year strategic plan for state parks and trails and a 25-year plan for parks and trails throughout the state. About \$8.9 million of the \$36.9 million appropriated to DNR was for grants for acquisition, development, restoration, and maintenance of parks and trails of regional or statewide significance other than state parks and trails. In awarding these grants, the DNR must give priority to projects that provide connectivity, enhanced opportunities for commuters, and enhanced safety.²⁴

The 2009 Legislature also appropriated \$87.5 million over the biennium from the Outdoor Heritage Fund, including about \$75 million to DNR and \$9 million to BWSR.²⁵ The vast majority of appropriations to DNR are for land or easement acquisition.²⁶ The purpose of the appropriation to BWSR is to acquire easements and restore wetlands and associated uplands. Overall, the appropriations would acquire an additional 8,700 acres of land, including 5,900 acres of state-owned land. In addition, permanent conservation easements would be acquired on about 201,000 acres. The largest of the projects funded out of the Outdoor Heritage Fund is the \$36 million DNR acquisition of a conservation easement on 187,000 acres of forest land in northern Minnesota.

While most of the funds appropriated from the Outdoor Heritage Fund are for acquisitions and development, DNR received an appropriation to accelerate the restoration and enhancement of native prairie vegetation on existing public lands, including roadsides. This \$1.7 million appropriation is intended to improve wildlife habitat on the state's existing grassland wildlife management areas (WMAs). The appropriation will address about one-third of the backlogged brush removal needs on grassland WMAs.

In addition, DNR plans to use \$0.75 million of the \$36 million appropriation for the 187,000-acre forest easement to fund easement management costs in the future. Those costs include, among other activities, the costs of periodic monitoring.

MANAGEMENT RESOURCES

As briefly described earlier, "land management" encompasses a wide variety and great number of individual activities. Common activities include invasive species control; boundary maintenance; the cultivation of desirable natural

²³ *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 2.

²⁴ *Minnesota Statutes* 2009, 85.535. In addition to the appropriation to DNR, the 2009 Legislature appropriated \$27.8 million to the Metropolitan Council for similar grants.

²⁵ *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 2.

²⁶ For some of the appropriations, DNR serves as a fiscal agent and passes through grants to nongovernmental conservation organizations, local governments, or federal agencies.

species; and the maintenance, rehabilitation, or replacement of buildings, parking lots, and other facilities.

Each DNR division employs a different method to identify and prioritize land management needs. However, each division relies to a large extent on the professional judgment of local and regional field staff to identify needs and allocate available staff, equipment, and financial resources accordingly.

While the method of identifying and prioritizing land management needs varies somewhat by division, we found that:

- **All DNR divisions report unmet management needs on state-owned land. In addition, DNR staff believe the agency does not have the resources required to adequately manage all of its conservation easements.**

DNR appears to lack adequate resources to manage and maintain existing land holdings, although the full extent of funding shortfalls is unknown.

According to division managers, the land management needs identified by field staff typically exceed available resources. In this situation, division management identifies priorities and distributes limited management resources accordingly. Because resources are not sufficient to meet identified needs, unmet needs—or “backlogs”—arise.

In the following sections, we discuss the development backlogs and unmet management and operations needs that DNR reported to us for major programs that manage state-owned land. In addition, we comment briefly on the unmet management and operations needs for conservation easements. While we present some dollar figures on the amount of shortfalls for existing land holdings, it should be noted that:

- **The full extent of funding shortfalls for land development and ongoing management and operations is unknown.**

Except for the figures provided for parks and trails, the estimates provided in the following section are preliminary. Furthermore, the numbers do not cover all of DNR’s land management programs. While there is good reason to believe that there are important unmet needs for wildlife management areas, Fish and Wildlife Division management was unable to provide an estimate of the unmet needs for wildlife management areas. Finally, DNR does not have an estimate of unmet needs for easement management because DNR is currently studying that area and will be recommending a program and policies for conservation easement management. Until that study is complete, it is difficult to estimate the extent of the deficiencies in funding for ongoing management of easement properties.

State-Owned Land

Collectively, DNR division managers reported that today’s management backlogs for state-owned land are the result of a variety of factors. They include flat or decreasing budgetary resources, inflationary cost increases, aging capital infrastructure (such as buildings, roads, trails, and dams), increasing public use,

invasive species problems, and a growing land portfolio. They also noted that today's unmet needs may eventually require considerable natural resource or capital asset rehabilitation costs in the future.

Unaddressed management needs may also degrade the public benefits of owning natural resource land. Table 3.2 provides a partial listing of the unmet land management needs reported by DNR division management. For example, inadequate management resources may lead to aging and cracked state trails. When division management could reasonably estimate the total shortfall and the cost to address it, that information is also included. In the following sections, we discuss each division in more detail.

Ecological Resources

DNR's Ecological Resources Division has identified an \$8.7 million backlog of needed activities on existing state-owned land and conservation easement properties.

As shown in Table 3.2, Division of Ecological Resources management reported to us in August 2009 an \$8.7 million backlog of one-time activities they believe are needed to bring existing Scientific and Natural Areas (SNA) and Native Prairie Bank (NPB) properties into appropriate condition.²⁷ This estimate of need represents the sum of all backlogs reported by field staff and includes such natural resource management activities as forest and prairie reconstruction, woody biomass removal, invasive species and noxious weed control, and prescribed burning.²⁸ Some of the activities in the division's backlog list are pressing or urgent, while others are desirable but not pressing.

Division management believes that adequately managing all of the state's existing SNAs and NPBs requires \$2.4 million annually, yet available funds typically fall well short of this amount. These annual shortfalls contribute to substantial and growing backlogs.²⁹ While land management needs are ongoing, division management reports that annual funding has been sporadic. However, division management is currently unable to report how much the division spends per year for each natural resource management category. Without this information, division management cannot precisely estimate the average shortfall in annual management funding.

²⁷ Although Native Prairie Bank is a conservation easement program, we include it in this discussion of backlogs because, like state-owned land, DNR field staff actively manage the prairie ecosystem on these private lands.

²⁸ The estimated costs of one-time activities include \$7.6 million for SNAs and \$1.1 million for NPB properties. The SNA costs include \$4.1 million for prairie and forest reconstruction, \$3.2 million for woody removal and invasive species and noxious weed treatment, \$0.1 million for prescribed burning, and \$0.2 million for site development. The NPB costs include \$0.2 million for prairie reconstruction, \$0.4 million for woody removal and invasive species treatment, and \$0.3 million for site development. In addition, division management estimated that \$0.19 million in one-time money is needed to address concerns about the lack of baseline reports and monitoring for conservation easements. Most of the conservation easement needs are for NPB properties.

²⁹ Division management says it attempts to balance requests for new acquisitions with requests for management funding so that backlogs do not increase or are reduced.

Table 3.2: Reported DNR Land Management Shortfalls

<u>Division and Program</u>	<u>Example of Unmet Needs</u>	<u>Possible Consequences</u>	<u>Estimated Cost to Address Unmet Needs^a</u>
Ecological Resources			
Scientific and Natural Areas	Invasive species control	Species loss, higher rehabilitation costs	\$7.6 million onetime; unknown annual
Native Prairie Bank	Prescribed burns	Brushland transition, higher rehabilitation costs	\$1.1 million onetime; unknown annual
Fish and Wildlife			
Wildlife Management Areas	Prescribed burns	Marginal wildlife habitat, higher rehabilitation costs	Unknown
Forestry			
State Forests	Road maintenance Sapling protection	Roads: Road reconstruction, public safety and fire protection concerns Forests: lower timber revenues or other unmet objectives	Roads: \$8 million onetime; ^b \$1.3 million annual Forests: \$440,000 annual
Parks and Trails			
State Parks ^c	Facility maintenance and rehabilitation, interpretative programs	Higher rehabilitation costs, fewer park services	\$54 million onetime; \$4.4 million annual
State Trails	Crack sealing, asphalt patching	Higher rehabilitation costs	\$38 million onetime; ^d \$1.5 million annual
Water Access Sites and Fishing Piers	Facility rehabilitation	Higher rehabilitation costs	\$36 million onetime; unknown annual

^a These figures are approximate, as estimated by DNR division management upon request.

^b The Division of Forestry provided an estimated backlog only for forest roads and bridges. The estimate of onetime road and bridge needs was made in 2008. Staff in the Division of Forestry do not classify unmet forest management needs such as missed opportunities to protect new plantings and thin timber stands as a backlog.

^c Includes 66 State Parks, 7 State Recreation Areas, 8 State Waysides, and 54 State Forest Campgrounds and day use areas.

^d Includes \$6 million in onetime rehabilitation needs for trails in state parks and state forests.

SOURCE: Office of the Legislative Auditor, compiled from various sources.

For the most part, the backlog of deferred activities does not result in the degradation of SNAs or NPB properties. However, in at least one SNA, garlic mustard has established a major, invasive presence and has decreased the ground flora diversity. Division management also noted that the longer various treatments—such as woody removal, invasive species and weed control, and prescribed burning—are delayed, the greater the costs will become due to an increase in the area needing treatment.

Division management feels it is behind on prescribed burns, which are needed periodically on all NPB properties and in a portion of the SNAs. Without periodic prescribed burns or some other disturbance, native species that rely on the regenerative benefits of fire will decline or die off. Then, woody species may grow unimpeded and the prairielands may cease to be prairies at all and may transition to brushlands and eventually woodlands. Division management would like to burn 20 to 25 percent of its prairie acres each year, thus burning all prairie acres over a four- or five-year period. This goal cannot be met with existing funds and is also difficult to meet because of the limited period in the spring in which it is safe to burn. The division is considering alternatives to burning such as rotational grazing.

Fish and Wildlife

Initially conceived in 1951 as the “Save the Wetlands” program, the Division of Fish and Wildlife’s Wildlife Management Area (WMA) program consists of more than 1,000,000 acres of land managed to provide habitat for wildlife and opportunities for hunting and other compatible public uses. The lands are typically comprised of parcels that contain one or more of the four major wildlife habitat types—grasslands, brushlands, forests, and wetlands.

Although the state’s WMA portfolio is significant and growing in size, we found that:

- **The Division of Fish and Wildlife has not quantified the overall management needs for the WMA system. Although unmet needs exist, management cannot accurately identify the extent of the backlog or the cost to address it.**

One reason why the division does not have this type of information is the lack of management plans for each WMA. While there are management plans for more recently acquired WMAs—or a little more than one-third of the total units—many older units do not have one. In the absence of a plan, field staff determine the management objectives for each unit, and regional managers allocate existing resources in accordance with local priorities.³⁰ However, the absence of plans makes it difficult to measure or assess the adequacy of existing resources for meeting management and operational needs.

Division management is aware that field staff are unable to manage WMAs with the type and frequency of activity that these field staff believe is necessary to maintain or restore the wildlife habitat. Failure to perform certain activities with the proper frequency may ultimately contribute to marginal wildlife habitat. This may translate to a corresponding decline in public enjoyment of WMAs. Division management says, however, that all existing WMAs have been brought up to a minimum standard. That standard includes removing all buildings,

While there is reason to believe that a backlog of needed activities exists, DNR has not identified the overall needs of existing wildlife management areas.

³⁰ Division management reported that the management objectives for a given WMA may change as a result of field staff turnover and the lack of an enduring unit plan.

sealing wells, rectifying unsafe conditions, establishing grass cover, identifying and posting boundaries, providing public access, and restoring wetlands.³¹

Examples of backlogged WMA activities include controlled burns, removal of trees and other woody biomass, and brushland management. Aside from these habitat management tasks, the division is also falling short of its own goals for routine WMA operations and maintenance. For instance, management believes the public would be better served by more frequent WMA boundary sign, fence, and gate maintenance.

RECOMMENDATION

As soon as possible, DNR should identify and quantify the overall management needs and funding shortfalls for the state's system of Wildlife Management Areas.

Division management is aware of this need. However, management believes the division does not have adequate financial or staff resources to perform the type of multi-year custom software development project required to quantify WMA needs and properly budget for additional management costs at the time of acquisition. The division has applied to the Legislative-Citizen Commission for Minnesota Resources for project funding, but the project has not been funded. In the absence of new funds, the division will try to address this issue using existing resources.

Of note, the division has begun to identify and quantify the scope of unmet needs in a piecemeal fashion. This effort is being driven by the availability of funds for wildlife habitat enhancement on public lands via the constitutionally dedicated Outdoor Heritage Fund. As mentioned earlier, the Lessard-Sams Outdoor Heritage Council recommended, and the 2009 Legislature funded, DNR's \$1.7 million request for grassland habitat enhancement on a portion of the state's existing WMAs.³² The division quantified its grassland WMA needs by polling field staff. Division management estimates that this appropriation will address approximately one-third of the identified brush removal needs for grassland WMAs.

Forestry

Management of the Division of Forestry reported that funding available for maintenance of forest roads and bridges is consistently below the division's estimated need. For example, DNR was able to fund less than one-quarter of the estimated \$2 million needed for state forest road and bridge maintenance in fiscal year 2009. Road maintenance activities include road grading, spot graveling, culvert replacement, and other maintenance activities the division believes are essential to maintain the roads in reasonable shape.

Underfunding of road and bridge maintenance is a concern for state forests.

³¹ The division has also completed a comprehensive GIS-based inventory of all WMA lands.

³² *Laws of Minnesota* 2009, chapter 172, art. 1, sec. 2, subd. 2(a).

Underfunding of protection for new trees and intermediate treatments to improve timber production is also a concern.

Eventually, neglected road maintenance may result in the need for more expensive road work that is funded through bonding. In 2008, DNR estimated a backlog of over \$8 million for this more extensive road and bridge work. Since then, some of the projects have been fully or partially funded, but others have undoubtedly been added. Staff indicated that recently they have focused bond funds on bridges deemed unsafe or of questionable safety.

Forestry Division management also reported that the division lacks adequate funds to protect newly planted trees and perform intermediate forest stand treatments. For fiscal year 2009, the division estimated that total allotted funds were more than \$300,000 short of that year's needs. Examples of these types of activities include protecting seedlings from browsing deer and removing competing or poorly formed trees to improve the type and quality of the remaining timber. Failure to perform these activities could result in lower timber sale proceeds in the future or failure to achieve other objectives, such as reestablishing a particular type of tree. Forestry management reported that reforestation is adequately funded through bonding.

Parks and Trails

DNR's Parks and Trails Division has identified a backlog of more than \$125 million in deferred rehabilitation needs, and is underfunded by an estimated \$6 million on an annual basis.

The Division of Parks and Trails was able to provide a detailed accounting of its management needs and shortfalls. This may be a reflection of the division's development and use of a land management tracking system as well as the 2009 Legislature's directive to DNR to create a 25-year parks and trails budget analysis that included an estimate of the amount of money necessary to operate and maintain the existing system of parks and trails.³³

According to division management, there is more than \$127 million in deferred capital maintenance or rehabilitation needs for existing state parks and recreation areas, state trails, water access sites, and fishing piers. This backlog includes deferred rehabilitation projects totaling \$54 million for state parks, \$32 million for state trails, \$32 million for water access and other water recreation sites, \$4 million for fishing piers, and \$6 million for trails in state parks and state forests.³⁴

In addition, the division estimates that the budget needs for park and trail operations and maintenance exceed available funds by about \$6 million per year.³⁵ The result is the division's inability to meet its own facility maintenance and visitor services standards. This shortfall exists even after the 2009 Legislature supplemented the Parks and Trails budget for fiscal year 2010 with

³³ *Laws of Minnesota* 2009, chapter 172, art. 3, sec. 6, subd. 3.

³⁴ In addition to the estimated \$54 million in deferred rehabilitation projects in state parks and recreation areas, DNR currently has a list of \$45 million in new projects. This "new project" list includes items that would be considered upgrades or new facilities in existing parks and recreation areas. However, the list also includes some items such as vault toilets, sanitation buildings, trailer dump stations, sewer system upgrades, and picnic shelters that could be considered basic or essential elements for parks. Division management also notes that these two lists do not include all state park building rehabilitation and renewal needs or all campground, road, bridge, and utility system needs that have been identified by DNR.

³⁵ Minnesota Department of Natural Resources, Division of Parks and Trails, *Budget Analysis—Addendum* (St. Paul, November 16, 2009).

an appropriation of nearly \$12 million for specific purposes from the new constitutionally dedicated Parks and Trails Fund.

Conservation Easements

As described in Chapter 2, temporary DNR staff—funded through a one-time appropriation from the state’s Environment and Natural Resources Trust Fund—are currently compiling a definitive easement list and identifying shortcomings in the agency’s conservation easement stewardship protocol. This process will likely identify some needs for improved easement stewardship that are currently unfunded. Those needs will probably include the need to establish baseline reports for a large number of easements and to implement more formal monitoring for many conservation easements.

The impact of conservation easements on local government property tax revenues is largely unknown. The potential impacts may be substantial, however, for some local jurisdictions. The recently negotiated DNR forest easement contract in Itasca County and six other northern Minnesota counties could significantly affect some township budgets if the property receives a reduction in valuation consistent with the ratio of the easement price to the current property valuation.

FUTURE DIRECTIONS

The information we gathered from DNR suggests that there are unfunded land management and operational needs throughout the agency. The information also suggests that there is a need to balance the benefits of future growth in acquisitions against the potential consequences of continuing to underfund ongoing management and operations costs for existing state natural resource land. The state could be acquiring new land while increasing the backlogs of management, restoration, and other activities needed to maintain existing land holdings in good condition for recreational, conservation, and other purposes.

Nevertheless, the size of the unmet management and operational needs is unclear at this point because there are significant land holdings, particularly wildlife management areas, for which needs exist but DNR does not have an estimate of those needs. In addition, estimates for other DNR properties, except perhaps parks and trails, require additional refinement. As a result, we think that further work is needed to identify DNR’s unmet needs.

RECOMMENDATION

The Legislature should require DNR to prepare a long-range budget analysis that compares annual budget needs with estimated funding for all DNR-managed lands except parks and trails.

The purpose of these estimates would be to guide future funding decisions by the Legislature. These decisions would include those about the level of management and operational funding, as well as those about funding for acquisition of additional land for preservation and recreational purposes. With this information,

Conservation easement management may also be underfunded.

Long-range budget analyses would provide the Legislature with better information on how DNR’s budget needs compare with current funding.

The definition of “needs” will require careful examination by DNR and review by the Legislature.

the Legislature would be able to make more informed decisions about: (1) the extent to which management and operational budget deficiencies can be reduced or eliminated using existing funds; and (2) the extent to which additional acquisition and development can be accommodated.

The estimates, and particularly the definition of “needs,” will require careful internal review by DNR management, as well as oversight from the Legislature. Some land management or operational activities may be nice to do but not essential to maintaining a well-functioning property suitable for its intended purposes. Other activities may be essential to maintain a usable property, but the frequency of the activity may be subject to debate. For example, most people would agree that maintaining a public hunting ground in a wildlife management area requires periodic brush removal, but they may disagree about the frequency with which the activity is needed.

RECOMMENDATION

The Legislature should review the budget analyses to be prepared by DNR, particularly DNR’s assumptions about the management and other activities that are necessary for the operation of DNR land and facilities.

While implementing the above recommendations would provide a broad context for legislative decisions about future acquisitions, additional information about each proposed acquisition would also be useful.

RECOMMENDATION

When considering funding proposals for acquisition, the Legislature should require DNR or other parties to demonstrate in sufficient detail how the entity will manage the parcel to achieve specified public benefits, how it will pay for this management, and any impact the acquisition will have on the type or frequency of management of existing land holdings.

When requesting acquisition funds, DNR does not generally provide an estimate of the ongoing PILT or land management liabilities the state will incur as a result of a proposed acquisition. This is due in part to the fluid nature of acquisitions—DNR staff report that the agency works in real-time with willing landowners and may not know exactly which parcels it will acquire with requested funds and, as a result, their management costs. However, DNR may be able to provide some of this information based on assumptions about the nature of the parcels to be acquired.

This information would help the Legislature understand how new acquisitions of land will impact future management costs. For some acquisitions, like certain acquisitions within existing state park boundaries, the impact on future management costs may be minimal since the land is already in a state park and may not need to be developed. For other acquisitions, the future management costs may be significant.

Some legislators have also expressed interest in ensuring that the ongoing budgetary “tails” of acquisitions—including management, maintenance, and payments in lieu of taxes—are funded upfront along with the acquisition and development appropriation. This sort of endowment approach would be another method for addressing the financial obligations that today’s acquisitions create for future policymakers. It is also an approach used by some nonprofit conservation organizations when acquiring land or easements.³⁶

RECOMMENDATION

The Legislature and DNR should explore wider use of an upfront endowment approach to paying today for tomorrow’s management costs.

An endowment approach to Legacy funding of the ongoing costs associated with land acquisitions is worth considering but also has some limitations.

We think an endowment approach is worth considering. An endowment approach could potentially be used with Outdoor Heritage Fund appropriations for land and easement acquisitions to fund future management activities as long as those activities are consistent with the constitutional requirement that funds be used to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.

However, this approach has some limitations. First, bonding appropriations could not be used to pay ongoing management costs or PILT. Under the state Constitution, bonds can be used for the acquisition and betterment of public land and buildings, but not ongoing management costs.³⁷

Second, it is questionable whether the Outdoor Heritage Fund can be used to fund PILT. Under the constitutional amendment adopted by voters, monies from the Outdoor Heritage Fund can only be used for “restoration, protection, and enhancement” of certain natural resource lands. PILT is typically used to either provide local government tax relief or loosely provide some relief to local governments in recognition of the government services provided to state-owned lands. It is questionable whether the courts would allow outdoor heritage monies to be used for this purpose, even if they were only paying the PILT on lands acquired using the Outdoor Heritage Fund.

In addition, it is unclear whether Parks and Trails Fund monies could be used for PILT on parkland acquired using these monies. The Minnesota Constitution requires the Parks and Trails Fund to be used to “support parks and trails.” It is unclear whether the courts would consider PILT provided to local governments for general budget support as support for parks and trails. However, the PILT payment could be redesigned to more directly reflect the services that local governments provide to state parks and trails. Under such a redesign, the PILT

³⁶ The endowment approach is not typically used in the public sector when other assets like buildings, roads, or bridges are constructed. However, without an endowment approach, backlogs of deferred maintenance commonly occur for state government. See Office of the Legislative Auditor, *State Building Maintenance* (St. Paul, February 1998) and Office of the Legislative Auditor, *State Highways and Bridges* (St. Paul, February 2008).

³⁷ *Minnesota Constitution*, art. XI, sec. 5.

payments would reflect services provided to parks and trails and would arguably be used to “support” parks and trails.

However, for both outdoor heritage projects and parks and trails projects funded from the dedicated sales tax revenue, a second constitutional requirement must also be met. Expenditures must supplement existing funding sources and not supplant them. As a result, these monies could not be used to pay for PILT on existing state-owned land, since the General Fund currently pays the PILT on those lands. It could perhaps be argued that paying PILT using the constitutionally dedicated funds on lands newly acquired using the constitutionally dedicated funds does not represent a substitution of traditional funding. It may not be a substitution since no funding source was previously used to pay PILT on the newly acquired land. It is unclear whether the courts would accept that argument. A contrary argument would be that the General Fund is traditionally used to pay PILT on any newly acquired land.³⁸

Finally, an endowment could be taken by a future legislature and used for other purposes as long as those purposes are consistent with constitutional requirements. For example, an endowment funded by the General Fund could be transferred and used for many purposes including budget deficit reduction. However, an endowment established from the Outdoor Heritage Fund could only be used for other outdoor heritage projects that meet the requirements in the state constitution.

³⁸ For information on these legal issues, see the memorandum from Christie B. Eller, Office of the Attorney General, to William H. Becker, Lessard-Sams Outdoor Heritage Council, April 7, 2009.

Payments in Lieu of Taxes

The state makes payments in lieu of taxes (PILT) to local governments for natural resource land.

In addition to the acquisition and management costs discussed in Chapter 3, state ownership of natural resource land obligates the state to make payments in lieu of taxes (PILT). As a general rule, owners of land in Minnesota pay property taxes based on the value of their property. However, certain property—including land owned by the state—is exempt from property taxes.¹ For some of the land it owns—including natural resource land—the state makes PILT payments to local governments. At times, the fairness or adequacy of these payments has come into question.

In this chapter, we describe Minnesota’s approach to PILT. We provide information on the reliability of payments and how they have changed over time. We also address the adequacy of PILT by making comparisons of PILT to property taxes and discussing other benchmarks against which the adequacy of payments could be measured. Finally, we examine the distribution of the payments to local governments.

We do not compare Minnesota’s PILT to programs in other states or the federal program. Those comparisons can be misleading because, like Minnesota, other states and the federal government may share revenue generated from some public land with local governments in addition to paying PILT. Therefore, looking at only one type of payment might lead to faulty conclusions about how Minnesota compares to others. We do, however, provide descriptive information about federal PILT in Appendix A.

BACKGROUND

In general, the state makes payments in lieu of taxes to counties for land it owns for natural resource purposes.² In 2009, the state paid \$21.9 million in PILT for

¹ “Property used for public purposes” is one type of tax exempt property. Land owned by the state falls into this category. See *Minnesota Statutes* 2009, 272.02, subd. 8; and Minnesota Department of Revenue, *Property Tax Administrators’ Manual: Vol. 1 (Assessors)* (St. Paul, May 2006), sec. 1310, 2.

² There are exceptions to this general statement. First, Minnesota pays PILT on federally owned Land Utilization Project lands it leases from the federal government. DNR manages the land, which includes parcels in the Beltrami Island State Forest and Red Lake Wildlife Management Area. Second, Camp Ripley in Morrison County, which is administered by the Minnesota Department of Military Affairs, is considered a game refuge for PILT under *Minnesota Statutes* 2009, 97A.061, subd. 1(b). Third, Minnesota Department of Transportation wetland loss mitigation acres in Polk County are eligible for PILT under *Minnesota Statutes* 2009, 477A.12, subd. 1.

In 2009, the state paid \$21.9 million in PILT for natural resource land it owns or administers.

natural resource land. Payments are funded by an open appropriation from the General Fund.³

Minnesota has two primary PILT laws. *Minnesota Statutes*, 97A.061, which is part of the state’s game and fish laws, has existed in some form since at least 1945.⁴ However, *Minnesota Statutes*, 477A.11–.145 generates most of Minnesota’s PILT payments. We refer to this as “the main PILT law” in the remainder of this chapter.⁵

Eligible Land

Minnesota PILT is based on a per-acre rate, the appraised value of the land, or a share of receipts generated from the land. The payment method depends on the land’s category of PILT eligibility. Table 4.1 shows the categories of land eligible for PILT, their payment rates, and the 2009 payments.

Acquired Natural Resource Land

As Table 4.1 indicates, three types of state-owned land are considered acquired natural resource land for the purpose of calculating PILT: (1) nonhunting lands that were privately owned prior to DNR’s acquisition of them, (2) hunting grounds that were privately owned prior to DNR’s acquisition, and (3) consolidated conservation lands that are designated as a state park, state recreation area, scientific and natural area, or wildlife management area.⁶

The 2009 payment rate for most acquired land was either \$5.114 per acre or three-quarters of 1 percent of the appraised value of the land, whichever was greater.⁷ Hunting grounds, which are acquired lands that are eligible for PILT under either PILT statute, have an additional payment option. PILT for these lands may be based on 35 percent of gross receipts from the land if it would

³ An “open appropriation” is the authority to spend an unspecified amount of resources to meet a program’s objective or a constitutional requirement. The \$21.9 million includes PILT on federally owned Land Utilization Project land administered by DNR. In addition to the \$21.9 million, the state paid \$129,451 for PILT on 50,626 acres at Camp Ripley and \$9,375 for 1,824 wetland loss mitigation acres.

⁴ *Laws of Minnesota* 1945, chapter 248.

⁵ In addition to these two laws, the state has made short-term in-lieu payments for particular acquisitions. For example, the state paid PILT for private property the federal government acquired for Voyageurs National Park for four years after the removal of the land from the tax rolls. See *Minnesota Statutes* 2009, 84B.07.

⁶ The definition of “acquired land” for PILT purposes is different than the definition of acquired land used in Chapter 1. For PILT, acquired land includes only land that was on the tax rolls prior to DNR acquisition and the specifically designated consolidated conservation lands. Acquired land in Chapter 1 could include land that was offered to and accepted by DNR—such as land offered to DNR by county board resolution—that was not taxable when DNR acquired it.

⁷ Reappraisals occur on a five-year cycle.

Table 4.1: Natural Resource Land Eligible for State Payments in Lieu of Taxes (PILT)

Category of PILT Land	Payment Rate	Acres	Payments (2009)
Acquired natural resource land^a		1,415,594	\$15,516,920 ^b
Nonhunting grounds	\$3.00 per acre adjusted for inflation (\$5.114 in 2009) or three-quarters of 1 percent of appraised value	354,769	7,403,280
Hunting grounds and game refuges ^a	\$3.00 per acre adjusted for inflation (\$5.114 in 2009) or three-quarters of 1 percent of appraised value or 35 percent of receipts	423,330	4,836,677 ^c
“Acquired” consolidated conservation land ^d	\$3.00 per acre adjusted for inflation (\$5.114 in 2009) or three-quarters of 1 percent of appraised value	637,495	3,276,964
County-administered tax-forfeited land	\$0.75 per acre adjusted for inflation (\$1.278 in 2009)	2,810,389	3,591,678
DNR-administered other natural resource land^e	\$0.375 per acre adjusted for inflation (\$0.639 in 2009)	4,101,620	2,620,935
Land Utilization Project land	\$0.75 per acre adjusted for inflation (\$1.278 in 2009)	81,696	104,408
Goose management cropland	Taxes paid on comparable, privately owned, adjacent land	3,175	68,748
TOTAL		8,412,474	\$21,902,689

^a Under *Minnesota Statutes* 2009, 477A.12, subd. 1, PILT is calculated on the same basis for all acquired land in a county—either per acre or appraised value. However, since hunting grounds are eligible for PILT under *Minnesota Statutes* 2009, 97A.061, PILT for these acres can be based on appraised value (or revenue sharing), even if PILT on other acquired acres is calculated at the per-acre rate. *Minnesota Statutes* 2009, 97A.061, also includes the option of PILT at the rate of \$0.50 per acre, but we excluded that option from the table since it will never result in the highest payment.

^b This includes \$15,497,842 paid under *Minnesota Statutes* 2009, 477A.11–.12, and an additional \$19,078 paid under *Minnesota Statutes* 2009, 97A.061.

^c This includes \$4,817,599 paid under *Minnesota Statutes* 2009, 477A.11–.12, and an additional \$19,078 paid under *Minnesota Statutes* 2009, 97A.061.

^d “Acquired” consolidated conservation lands include consolidated conservation lands that are designated as state parks, recreation areas, scientific and natural areas, or wildlife management areas. Other consolidated conservation lands are considered DNR-administered other natural resource land. The state shares revenue generated from consolidated conservation lands with counties.

^e This includes approximately 912,500 acres of consolidated conservation lands that are managed as state forests. Revenue generated from consolidated conservation land is shared with the counties in which the lands are located. Shared revenue totaled \$1,976,891 in 2009.

SOURCES: *Minnesota Statutes* 2009, 477A.11–.12 and 97A.061; and Office of the Legislative Auditor, analysis of Department of Revenue and Department of Natural Resources data on 2009 payments in lieu of taxes and revenue sharing payments.

The highest PILT rate is paid for land that was on the property tax rolls when acquired by the state.

result in a higher payment.⁸ Although acquired natural resource land accounted for only 17 percent of the acres eligible for PILT in 2009, it accounted for 71 percent of state PILT.

Tax-Forfeited Land

Minnesota also pays PILT for tax-forfeited natural resource land. This land is owned by the state, but counties administer it. In addition to PILT, the counties and other local governments retain proceeds from timber harvests or other revenue-generating activities on the land. As Table 4.1 shows, in 2009, state PILT for this land was \$1.278 per acre and totaled almost \$3.6 million.

DNR-Administered Other Natural Resource Land

Land categorized as “DNR-administered other natural resource land” is also eligible for state PILT. The rate for this type of land was \$0.639 per acre in 2009. Most DNR-administered other natural resource land—over 2.5 million acres—is school trust land. An additional 900,000 acres is consolidated conservation land.⁹ DNR acquired most of the remaining land in this category through county board resolution. PILT paid in 2009 for other DNR-administered land was about \$2.6 million for about 4.1 million acres.

Land Utilization Project Land

Minnesota makes payments in lieu of taxes on about 82,000 acres of federal land it leases and administers. As the table shows, PILT for these “Land Utilization Project lands” is at the same rate as county-administered tax-forfeited land—\$1.278 per acre in 2009.

Goose Management Cropland

Lastly, PILT is paid for a relatively small number of “goose management cropland” acres. As Table 4.1 indicates, these PILT payments are calculated based on property taxes on comparable, privately owned, adjacent land. All of the goose management cropland acres are in two towns in Chippewa County.

History

Prior to the passage of the state’s main PILT law in 1979, payments to local governments related to state-owned natural resource land were chiefly dependent

⁸ Under the main PILT statute, PILT is calculated on the same basis for all acquired land in a county—either per acre or appraised value. However, since hunting grounds are eligible for PILT under both statutes, payments for these acres can be based on appraised value or other criteria, even if PILT for other acquired acres in the county is calculated at the per-acre rate. Also, *Minnesota Statutes* 2009, 477A.17, provides for PILT for Lake Vermilion State Park, if the state acquires land to create it. The annual PILT payment for the new state park would be 1.5 percent of the property’s value—twice the rate of PILT for acquired land when based on appraised value.

⁹ These consolidated conservation lands are managed as state forests. In addition to PILT, the state shares revenue generated from consolidated conservation lands with the counties in which the lands are located.

upon the revenue generated from the land.¹⁰ In addition, the state did not make payments to local governments for some natural resource land, such as school trust land granted to the state by the federal government.¹¹ As a consequence, payments could fluctuate from year to year and vary greatly among local governments.

In the late 1970s, the Legislature required the Legislative Commission on Minnesota Resources (LCMR) to make findings and recommendations for payments in lieu of taxes on state and federally owned land. The commission ultimately recommended per-acre payments for all types of natural resource land, due in part to administrative simplicity and predictability. Specifically, the commission recommended a per-acre base payment rate, with increases to the base rate based on: 1) use and service demands, which would vary depending on the type of land; 2) the percentage of land in a jurisdiction that was state-owned; and 3) local cost-of-service differences.¹²

**The 1979
Legislature
adopted a per-
acre payment
system to
supplement
revenue sharing.**

The 1979 PILT law created a system of per-acre payments for natural resource land. The law created per-acre payment rates for three types of land—acquired land, DNR-administered other natural resource land, and tax-forfeited land—but the rates did not incorporate the differentials recommended by the commission. This system increased the consistency of land-related payments. Payments could still fluctuate from year to year and vary by county, but all counties were guaranteed a minimum payment based on the number of state-owned acres within their borders. If total payments to a county under the other related payment laws were below the total minimum payment amount calculated under the new law, the state made a supplemental payment to the county so that the county's total payment equaled the minimum payment.¹³

Over time, the Legislature changed the relationship of PILT to revenue-sharing payments and eliminated some revenue-sharing provisions.¹⁴ Currently, rather than providing a supplement to other payments, the state's main PILT law accounts for most of the land-related payments. As mentioned earlier, PILT payments totaled \$21.9 million in 2009. Revenue sharing on consolidated

¹⁰ The exception was hunting grounds, which received the higher of revenue sharing and a per-acre payment. We do not include payments to the Permanent School Fund or payments related to mineral leases in our discussion of revenues generated from state land.

¹¹ The federal government granted land to the state for certain purposes. Net revenue generated from the land is used for that purpose. Net revenue generated from school trust land is deposited in the Permanent School Fund.

¹² *Laws of Minnesota* 1975, chapter 204, sec. 55, subd. 1. See Legislative Commission on Minnesota Resources, Tax Study Commission, and Barton-Aschman Associates, *Minnesota Public Lands Impact Study, Summary of Conclusions and Recommendations* (St. Paul, 1978), 88. The LCMR was the precursor to the current Legislative-Citizen Commission on Minnesota Resources.

¹³ *Laws of Minnesota* 1979, chapter 303, art. 8. PILT under the new law supplemented the following payment laws already in place: *Minnesota Statutes*, 84A.51 (consolidated conservation land revenue sharing); 89.036 (state forest land revenue sharing, repealed in 1992); 97.49, subd. 3 (PILT for hunting grounds); and 272.68, subd. 3 (lease revenue sharing).

¹⁴ For example, the Legislature eliminated sharing of revenue generated from land that counties had given to the state through county board resolutions. This change did not necessarily mean less revenue to local governments. As long as the shared revenue was less than or equal to the minimum PILT payment the following year, the net effect of eliminating revenue sharing was zero. *Laws of Minnesota* 1992, chapter 513, art. 2, sec. 32.

Subsequent legislatures changed the calculation of PILT for certain lands to one based on land value.

conservation lands, the largest of the remaining revenue-sharing provisions, was just under \$2 million in 2009.¹⁵

Finally, the Legislature has made changes to the PILT payment amounts under the main PILT law. Beginning in 1996, PILT for acquired land was based on the appraised value of the land if the resulting payment was higher than the payment based on the per-acre rate. The Legislature also increased the per-acre rates in 2001 and indexed them for inflation thereafter. Finally, the Legislature redesignated some consolidated conservation lands from DNR-administered other natural resource land to acquired land. These changes significantly increased the PILT payment on the various types of natural resource lands.

RELIABILITY

Given the complexity of PILT and the numerous changes that have occurred in the way it is calculated, we first looked at how PILT, in general, has performed since the main PILT law was passed in 1979. Overall, we found that PILT compared favorably to the payments it supplemented, has withstood inflation, and has been paid consistently. However, this conclusion has not been true for the full time period we examined, or for all counties.

PILT Compared to Payments It Replaced

As we described above, the main PILT law originally supplemented other land-related payments to local governments, many of which were based on revenue sharing. We found that:

- **When it passed in 1979, the payments in lieu of taxes law resulted in higher land-related state payments than had previously been made.**

In the first few years of payments under the state's new PILT statute, the state paid over \$4 million each year in supplemental payments. The state made supplemental PILT payments to all counties the first few years.¹⁶

PILT Growth Compared to Inflation

In addition, we found that:

- **Overall, Minnesota's payments in lieu of taxes and related payments have grown faster than inflation since 1980, although not throughout the entire time period we examined, nor for all counties.**

As Figure 4.1 shows, the overall per-acre payment for PILT and related payments that the state made in 2009 exceeded the 1980 payment adjusted for inflation.¹⁷

¹⁵ Under current law, counties receive PILT *and* revenue-sharing payments for consolidated conservation lands.

¹⁶ We refer to payments to counties because the state makes the payments to the counties. However, counties distribute part of the payments to other local government units as directed by statute. Different types of local government units may not have fared equally well.

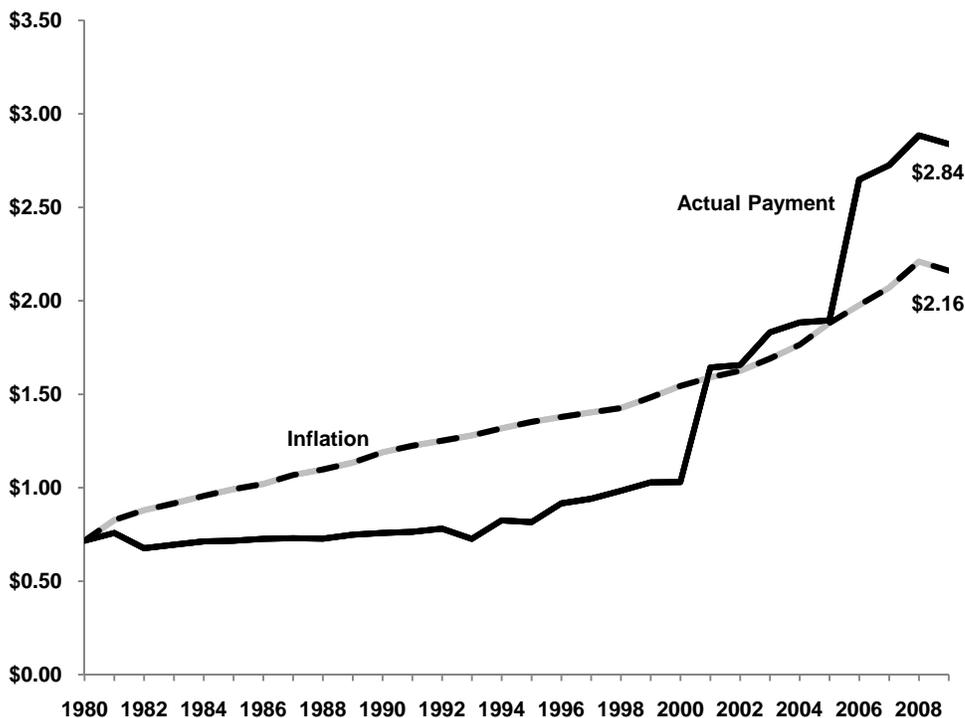
The 1979 law increased the payments to local governments.

In 2009, the state paid an average of \$2.84 per acre through PILT and related payments. Had the state simply made inflationary adjustments to the 1980 per-acre payment, the average per-acre payment in 2009 would have been \$2.16.

However, as the figure shows, PILT and related payments per acre did not keep pace with inflation for the first twenty years we examined. Payments declined about 40 percent in inflation-adjusted dollars by 1995 when the Legislature

The growth in PILT and revenue-sharing payments failed to keep pace with inflation for two decades, but has exceeded inflation since 2001.

Figure 4.1: Overall Per-Acre Payments in Lieu of Taxes and Related Payments, 1980-2009



NOTE: Payments in lieu of taxes and related payments include payments under *Minnesota Statutes*, 84A.51 (consolidated conservation land revenue sharing); 89.036 (state forest land revenue sharing, repealed in 1992); 97A.061 (PILT for hunting grounds and goose management cropland); 272.68, subd. 3 (lease revenue sharing); and 477A.12 (PILT for acquired and other natural resource land).

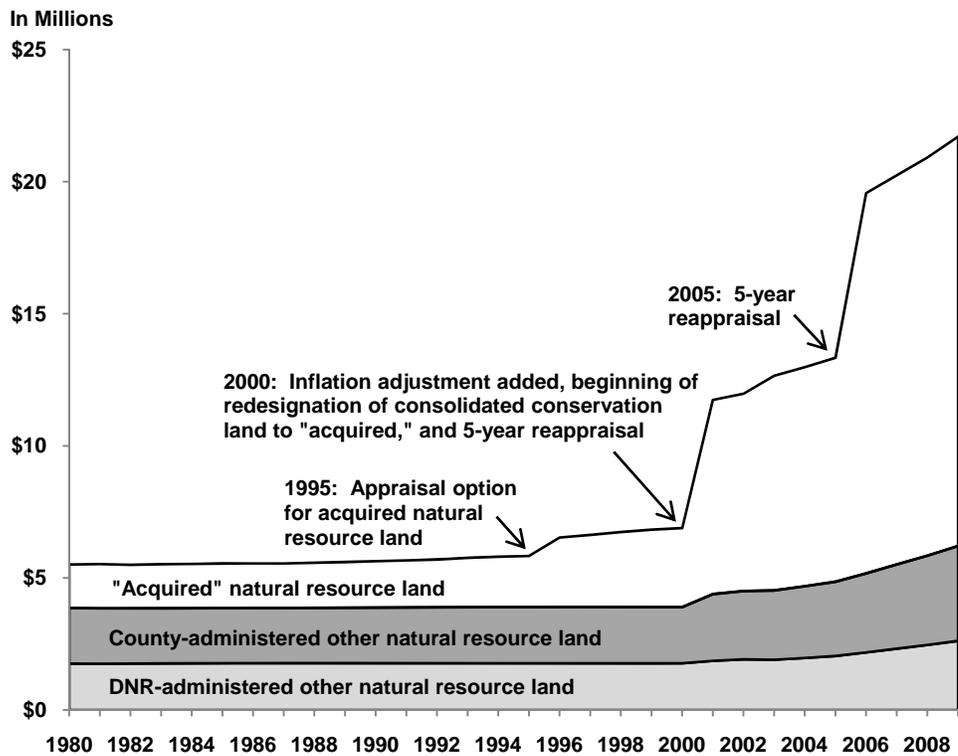
SOURCES: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources and Minnesota’s Information Access Warehouse; and Bureau of Economic Analysis implicit price deflator for state and local government consumption expenditures and gross investment, <http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=Y>, accessed September 29, 2009.

¹⁷ *Laws of Minnesota* 1979, chapter 303, art. 8, secs. 1-4, created a supplemental payment to revenue-sharing payments the state was already making. We considered these payments to be “related payments.” Currently, the related payments are primarily shared income from consolidated conservation lands. We analyzed the payment per acre to control for changes in the number of acres owned by the state. We adjusted for inflation using the Bureau of Economic Analysis’ implicit price deflator for state and local government consumption expenditures and gross investment. See “Table 1.1.9: Implicit Price Deflators for Gross Domestic Product,” <http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=Y>, accessed September 29, 2009.

began making changes to PILT calculations. Figure 4.2 highlights some of the more significant changes to the state’s main PILT law, and how payments changed. Beginning in 1996, the payment for acquired land was based on the appraised value of the land if the resulting payment was higher than the one resulting from the \$3.00 per-acre rate. Reappraisals every five years have increased the values. In addition, the Legislature increased the per-acre rates by about 19 percent in 2001, and indexed them for inflation thereafter. Finally, the Legislature redesignated some consolidated conservation lands as “acquired” land, increasing PILT on these lands eightfold.

PILT has increased due to legislative changes made since the mid-1990s.

Figure 4.2: Payments in Lieu of Taxes on State-Owned Land, *Minnesota Statutes, 477A, 1980-2009*



NOTE: Figure reflects state-owned natural resource land. It includes neither payments for Land Utilization Project land that is owned by the federal government, nor payments made for Minnesota Department of Transportation wetland loss mitigation acres.

SOURCES: Office of the Legislative Auditor, analysis of Department of Revenue and Department of Natural Resources data.

Despite these changes, PILT payments in some counties have not kept up with inflation over the last three decades. Counties containing mostly “DNR-administered other natural resource land” and county-administered tax-forfeited land (and little acquired DNR land) are more likely to have experienced a decline in inflation-adjusted PILT payments. Even though an inflation adjustment to the

per-acre rates was added to statute in 2000, they have declined about 44 percent since 1980 because of the absence of an inflation adjustment during earlier years.

As indicated in Table 4.2, Aitkin County provides an example of a county that has seen a drop in its PILT payments after adjusting for inflation. Aitkin County’s payment increased over 130 percent between 1980 and 2008, but declined by 20 percent after adjusting for inflation. In contrast, counties with highly-valued acquired land or with redesignated consolidated conservation land—such as Otter Tail and Marshall counties in Table 4.2—are more likely to have experienced an increase in inflation-adjusted PILT payments since 1980.

Table 4.2: PILT Payments under *Minnesota Statutes, 477A.11–.145, Selected Counties, 1980 and 2008*

Legislative changes to PILT have been most beneficial for counties with “acquired” natural resource land.

	Total Acres	Total Payment	Total Payment in 1980 Dollars	Payment per Acre	Payment per Acre in 1980 Dollars
Aitkin County					
1980	611,934	\$321,943	\$321,943	\$ 0.53	\$ 0.53
2008	615,117	749,705	257,128	1.22	0.42
Percentage change	0.5%	132.9%	-20.1%	131.7%	-20.5%
Cook County					
1980	140,572	\$ 63,335	\$ 63,335	\$ 0.45	\$ 0.45
2008	144,296	185,213	63,523	1.28	0.44
Percentage change	2.6%	192.5%	0.3%	184.9%	-2.3%
Marshall County					
1980	115,799	\$ 94,045	\$ 94,045	\$ 0.81	\$ 0.81
2008	117,182	432,435	148,313	3.69	1.27
Percentage change	1.2%	359.8%	57.7%	354.4%	55.8%
Otter Tail County					
1980	18,504	\$ 47,428	\$ 47,428	\$ 2.56	\$2.56
2008	25,044	394,523	135,311	15.75	5.40
Percentage change	35.3%	731.8%	185.3%	514.6%	110.8%

NOTE: Counties may receive land-related payments in addition to PILT. For example, Aitkin and Marshall counties receive revenue-sharing payments for consolidated conservation land.

SOURCES: Office of the Legislative Auditor, analysis of data from the Department of Natural Resources and Bureau of Economic Analysis implicit price deflator for state and local government consumption expenditures and gross investment, <http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=Y>, accessed September 29, 2009.

Consistency of Payments

While local government representatives with whom we spoke were not united in their opinions about the adequacy of PILT, the reliability of the payments was very important to them. We found that:

- **Since 1979, the state has made a PILT payment for natural resource acres that it owned each year, although some payments were delayed in the early 1980s.**

Under the state's main PILT law, Minnesota paid PILT for land that it owned each fiscal year between 1979 and 2008. For the most part, the state paid PILT to local governments each year during the period we reviewed. The state has changed the timing of PILT payments, such that payments for land that the state owns in a given fiscal year are now made two fiscal years later. For example, the payments for land the state owned in fiscal year 2008 were made in July 2009, which is fiscal year 2010. In addition, during the transition in timing of payments, the state missed a payment one year, but made it up the next.¹⁸ However, overall state PILT has provided revenue that local governments could count on receiving. This is in contrast to federal payments in lieu of taxes, which have not always been fully funded.

ADEQUACY

To evaluate the adequacy of PILT, we first tried to determine its purpose. For example, if PILT is intended specifically to compensate local governments for lost property tax revenue and other costs associated with state-owned land, then the adequacy of payments could be judged based on how they compared to those costs. However, we found that:

- **The purpose of the state's payments in lieu of taxes has not been clearly established.**

State law is not explicit as to the purpose of PILT, making it difficult to draw conclusions about the adequacy of payments. In addition, we did not find agreement among the local officials and staff with whom we spoke as to the purpose of PILT. Local officials and staff expressed opinions about whether PILT is fair or adequate. However, the opinions were not always based on the same criteria. For example, some people judged PILT relative to property taxes, while others said they would not expect PILT to equal property taxes. Some officials emphasized other local government costs of state land, such as providing emergency services to users of the land.

Although statutes are not clear as to the purpose of PILT, we considered possible local fiscal impacts of state land ownership that PILT might have been intended to at least partly offset. These impacts are listed in Table 4.3, with an indication of whether the impact would be associated with only land removed from the tax rolls, other land, or both. For example, if the state acquired taxable land, the local government would see a corresponding reduction in its property tax base. However, if the land was not taxable when the state acquired it, the local government's tax base would not change. In either case, state land might have an impact on the value of adjacent properties, as indicated by the second item listed

Absent a clear purpose stated in law, local officials have different opinions about how PILT is intended to address the fiscal impacts of state-owned natural resource land on local governments.

¹⁸ Initially, the state paid PILT early in the calendar year following the fiscal year that provided the basis for payment. For example, the state made the payment for fiscal year 1979 in February 1980. However, the payment for fiscal year 1981 was not made until April 1983. The payment for fiscal year 1982 was made in July 1983.

in Table 4.3. For example, a pristine natural area might raise the property values of adjacent properties, thereby increasing property tax revenues.

Table 4.3: Potential Local Government Impacts of State-Owned Natural Resource Land

State land ownership can affect local government spending, property tax revenues, and other state aids to local government, as well as local economies.

	Land Removed from Tax Rolls	Other Land
<ul style="list-style-type: none"> • Lost property tax revenue due to removing land from tax base (or higher tax rate to maintain the same level of property tax revenue) 	x	
<ul style="list-style-type: none"> • Changes in property tax revenue from adjacent properties due to changes in value 	x	x
<ul style="list-style-type: none"> • Changes in expenditures for local government services, such as public safety costs and road and bridge construction, maintenance, and repair^a 	x	x
<ul style="list-style-type: none"> • Increased state aids for counties, cities, and school districts 	x	
<ul style="list-style-type: none"> • Net revenues generated from tax-forfeited land 		x
<ul style="list-style-type: none"> • Revenue sharing from consolidated conservation land 		x
<ul style="list-style-type: none"> • Economic impact of visitors to state parks, recreation areas, and other state land 	x	x

^a The impact of public land on expenditures for local government services could be either positive or negative. For example, a heavily used park might increase police or ambulance costs for a local government unit. In contrast, private land that is purchased and managed as a remote, seldom-visited scientific and natural area might require fewer public services than if the land was privately owned.

SOURCE: Office of the Legislative Auditor.

Local government expenditures for services might also be affected by natural resource land. Fiscal impacts on local governments might be negative or positive. For example, public use of a state park might increase local government road and bridge costs. On the other hand, isolated scientific and natural areas might demand little in the way of local government services, and might be less of a fiscal burden than if the property were privately owned and developed. For private land the state purchases, the relevant consideration is the extent to which the change in ownership affects local government expenditures. For land that was never on the tax rolls, the total costs of services that the state land demands are important.

Local governments might see increases in revenue from other sources when the state owns land. For example, as shown in Table 4.3, if the state removes land from the tax rolls, a county might see an increase in the county program aid paid by the state. For land not removed from the tax rolls, a county might realize net revenues from its management of county tax-forfeited land, or receive revenue-sharing from consolidated conservation land. Finally, state land that attracts outdoor recreation users might have a positive effect on local economies.

Much of the data needed to directly measure the fiscal impacts of state land on local governments are not available.

Statistical analyses suggest that PILT adequately compensates counties for the overall fiscal impact of state land.

However, we found that:

- **Data were not available that would allow us to measure the overall fiscal impact of state-owned natural resource land on local governments.**

Most significantly, information was not available on the costs of local government services. Although local governments report financial information to the Office of the State Auditor, it is not detailed enough for us to identify local spending and changes in spending attributable to public natural resource land. In addition, there are no statewide data to measure the impact of public natural resource land on the value of adjacent taxable property. Measuring broader economic impacts—the last item listed in Table 4.3—would have been a major task, requiring data on the public’s use of land, related spending, and other measures of economic activity.

Absent data to measure the individual local government fiscal impacts that might result from public land ownership, we attempted to identify the general impact of public land on the finances of outstate counties using statistical methods. We wanted to determine if higher percentages of public land in a county are associated with greater levels of financial stress as indicated by higher tax rates or lower levels of expenditures. As a general rule, we did not find a statistical relationship between the percentage of land in a county that is state or federally owned natural resource land and county expenditures per capita, property tax revenues per capita, or effective property tax rates.¹⁹ These results suggest that state PILT—as well as other revenues such as revenue sharing from the lands, county program aid from the state, or federal PILT—are adequately compensating most counties for the impact of public land on their finances.

We were unable to conduct a similar analysis for townships due to the lack of reliable data on public land ownership for township taxing jurisdictions. As a result, we could not use statistical analyses to determine how public land ownership affects township finances. However, as part of its work in the late 1970s, the LCMR looked for fiscal impacts of public land, focusing on townships in two Minnesota counties. Researchers did not find a direct relationship between township expenditures and the amount of natural resource land within the township.²⁰

¹⁹ We conducted numerous regression analyses that measured the impact of various factors, including the percentage of public land in each county, on three measures of a county’s fiscal status (county expenditures per capita, county property tax revenues per capita, and county effective tax rates). The overall percentage of public land in a county was not a significant factor in explaining the variation in county expenditures or taxes. In a few cases, specific types of land were significant factors. For example, higher percentages of DNR-acquired land (excluding consolidated conservation land) were associated with lower county tax rates. Also, higher percentages of federal natural resource land were associated with higher county tax revenues per capita, but not with higher tax rates. In both of these cases, the results suggest that higher amounts of certain public lands may be statistically associated with lower levels of fiscal stress for counties.

²⁰ Legislative Commission on Minnesota Resources, Tax Study Commission, and Barton-Aschman Associates, *Minnesota Public Lands Impact Study—Phase I: Natural Resource Lands* (St. Paul, March 1977), 68.

We compared PILT for acquired land to property taxes for similar land, an important comparison for acquired land removed from the tax rolls.

In the following sections, we discuss the local government fiscal impacts presented in Table 4.3 in more detail. We focused on the property tax impact of the state removing land from property tax rolls. In large part, we did so because data were available that would allow us to compare PILT to property taxes, but not to make other comparisons.

The comparison of PILT to property taxes is relevant to land acquisitions. Because DNR long-range plans have identified opportunities to acquire significant acreage over the next several decades, the extent to which PILT on acquired lands compensate local governments is important and timely. After presenting our comparison of PILT to property taxes, we briefly discuss other possible local fiscal impacts of state land.

Property Taxes

As Table 4.3 shows, lost property tax revenue is a possible fiscal impact of state land acquisition. We made several comparisons of PILT for acquired land to estimated property tax measures. For the most part, we found that state payments in lieu of taxes were generally higher than property taxes.

Comparison of PILT to property tax payments requires consideration of both the property tax rate and the value of the property. First, we did a straightforward comparison of the county-town tax rates to the PILT rate for acquired land. Second, we looked at how differences between the taxable and appraised values of land affect property tax and PILT payments.

Tax Rates

Most PILT for acquired land is for nonhunting or Con-Con land and is distributed to counties and towns.

We compared the PILT rate for acquired land with average county-town property tax rates for agricultural nonhomestead property for taxes payable in 2009.²¹ We focused our analysis on county and town taxes because over two-thirds of PILT on acquired land is paid under the main PILT statute, which limits distribution of PILT to counties and towns.²²

For 74 of Minnesota's counties, the PILT payment rate is 0.75 percent of appraised value. The PILT payment rate for these counties is comparable to a tax rate of 75 percent of net tax capacity for property with a 1 percent class rate.²³ The other 13 counties receive a per-acre PILT payment.²⁴ The effective PILT

²¹ We aggregated estimated property tax revenues and net tax capacities for all towns and unorganized territory in a county to calculate an overall county-town tax rate for each county. We excluded cities under the assumption that most natural resource land is in towns and unorganized territories. We defined agricultural nonhomestead property to include real property in the categories: agricultural nonhomestead, private airports, migrant housing, noncommercial seasonal recreational, timberland, and managed forest land.

²² Under the main PILT statute, "acquired land" includes some consolidated conservation land. In other words, not all acquired land was removed from the property tax rolls.

²³ Most classes of agricultural nonhomestead real property have a 1 percent class rate, although rates range from 0.65 to 1.25 percent.

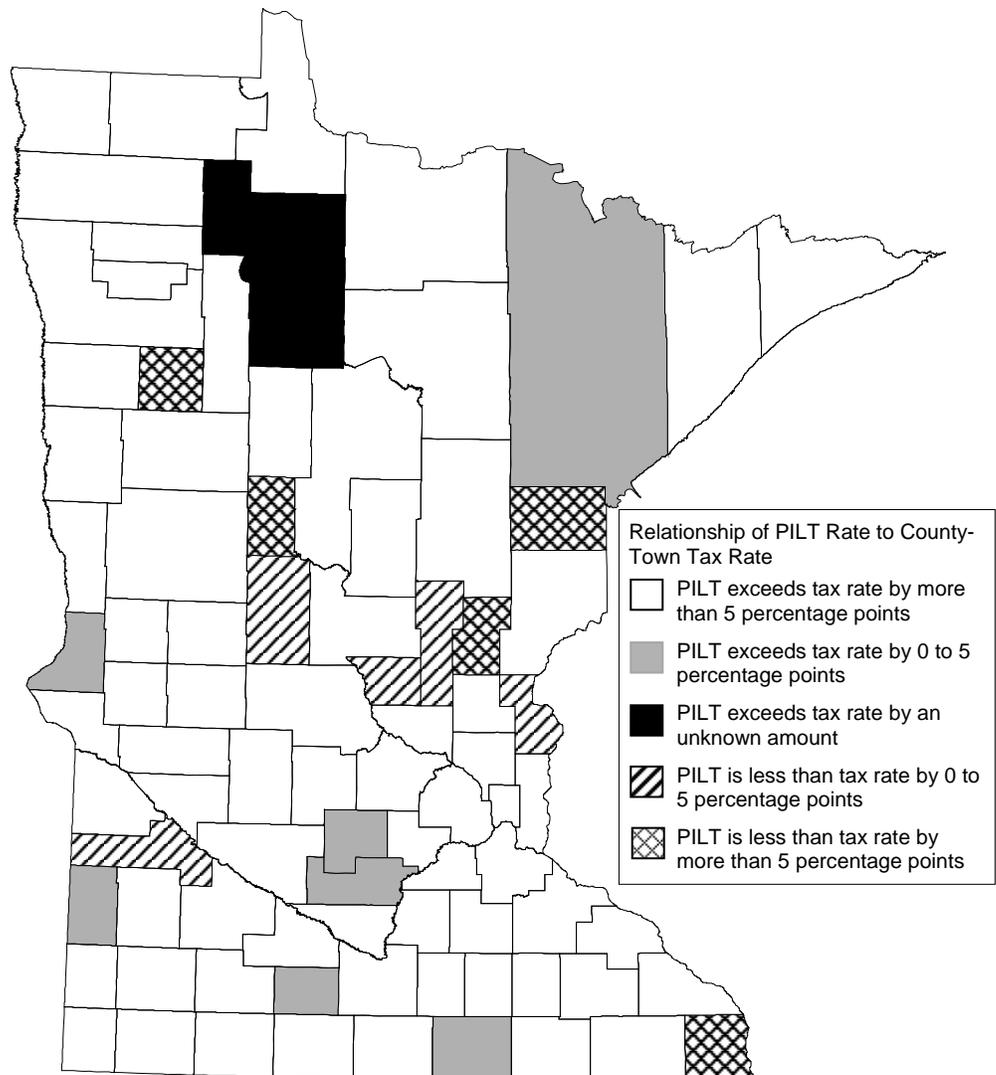
²⁴ The 13 counties are: Beltrami, Clay, Faribault, Kittson, Lake of the Woods, Mahnomens, Marshall, Norman, Pennington, Polk, Red Lake, Roseau, and Wilkin.

payment rate for 11 of these counties ranges from about 80 to over 150 percent of net tax capacity. For the other two counties—Beltrami and Lake of the Woods—the exact PILT payment rate cannot be determined because of an absence of information on appraised values, but it is likely to be greater than 75 percent. As Figure 4.3 illustrates, we found that:

- **The state’s payment rate for payments in lieu of taxes for acquired natural resource land was higher than the overall county-town property tax rate for most counties for taxes payable in 2009.**

Figure 4.3: Effective PILT Rate Relative to County-Town Tax Rates, 2009

For most counties, the PILT rate for acquired non-hunting land exceeds the county-town property tax rate.



SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Revenue for PILT and taxes payable in 2009.

As the unpatterned counties in the figure show, the effective PILT rate for acquired natural resource land exceeded county-town property tax rates for 77 of 87 counties in 2009. The ten counties with PILT rates lower than county-town property tax rates contain only 7 percent of the acquired land for which PILT is distributed to counties and townships.

For acquired land, the average PILT rate of 80.5 percent exceeded the average county-town tax rate of 62.4 percent by about 18 percentage points.²⁵ In other words, the PILT rate was about 29 percent higher than the county-town tax rate. Table 4.4 provides information on the extent to which PILT rates exceeded county-town tax rates. For the counties receiving PILT based on the value of acquired land, PILT exceeded the average tax rate by 15 percentage points. For counties receiving PILT based on acreage, the average effective PILT rate exceeded the average county-town tax rate by 38 percentage points.

Table 4.4: Percentage Point Difference between the PILT Rate and the County-Town Tax Rate, 2009

Percentage Points	Number of Counties		
	Value Counties ^a	Per-Acre Counties ^b	All Counties
40 or more	0	5	5
30 to 40	10	4	14
20 to 30	14	0	14
10 to 20	24	2	26
0 to 10	17	1	18
0 to -10	7	0	7
-10 to -20	2	0	2
-20 or more	0	1	1
Average Difference in Percentage Points	15	38	18

For some counties, the PILT rate on acquired non-hunting land is much higher than the county-town tax rate.

NOTES: County-town tax rates are based on real property in the following classes: Class 1d migrant housing, Class 2b agricultural nonhomestead, Class 2b private airports, Class 2b timberland, Class 2c managed forest lands, and Class 4c noncommercial seasonal residential recreational. We aggregated estimated property tax revenues and net tax capacities for all towns and unorganized territory in a county to calculate an overall county-town tax rate for each county. We excluded cities under the assumption that most natural resource land is in towns and unorganized territories.

^a The “value counties” include the 74 counties that received the 2009 PILT payment for acquired natural resource land based on appraised value. For these counties, the PILT rate of 0.75 percent of appraised value of acquired natural resource land is comparable to a tax rate of 75 percent of net tax capacity for property with a 1 percent class rate. Most classes of agricultural nonhomestead real property have a 1 percent class rate, although rates range from 0.65 to 1.25 percent.

^b The “per-acre counties” include the 13 counties that received the 2009 PILT payment for acquired natural resource land at the rate of \$5.114 per acre. For 11 of the 13 counties, we calculated county effective PILT rates by dividing county PILT payments for acquired land by its reported appraised value, and multiplying the result by 100. We were unable to calculate rates for the other two counties since they did not report appraised values for all of their acquired land. We assumed that their effective PILT rates were 75 percent, although the rates were likely higher than 75 percent, or the counties would have opted for PILT based on the appraised value of their acquired land.

SOURCES: Office of the Legislative Auditor, analysis of Department of Natural Resources data for July 2009 PILT payments, and Department of Revenue property tax data for taxes payable in 2009.

²⁵ To calculate this average, we assumed that the effective PILT rate for Beltrami and Lake of the Woods counties was 75 percent. Their PILT rates are likely higher than this, but cannot be computed because of a lack of data on the appraised values of acquired land in those two counties.

As explained above, we compared PILT to property tax rates of counties and towns, the recipients of PILT under the main PILT statute. However, about 31 percent of PILT on acquired land (and 22 percent of total PILT) is paid for hunting lands under the other PILT statute, and this PILT is distributed to school districts as well. When we added school district taxes to county and town taxes for agricultural nonhomestead real property, the PILT rate of 75 percent was *lower* than the tax rate in 64 percent of the counties.

Tax Rates and Land Values

Differences between the assessed and appraised value of land will also affect how PILT payments compare to property taxes. Assessed values might be different from appraised values due to deferral programs that lower a property's taxable value (such as "Green Acres") and local assessment practices.

We examined a hypothetical DNR purchase of nonhunting land with an appraised value of \$100,000, and compared PILT to the estimated property taxes had the owner retained the land. For this comparison, we estimated property taxes using an effective tax rate based on estimated market value, and a property value based on the appraised value adjusted by the sales ratio.²⁶ An effective rate based on estimated market value expresses property taxes as a percentage of a property's actual value rather than a value limited by deferral programs. Adjusting the appraised value by the sales ratio adjusts for differences in local assessment practices. We found that:

- **In nearly all counties for which data were available in 2009, estimated payments in lieu of taxes resulting from a DNR purchase of nonhunting land would have exceeded county and town tax revenues had the private owner kept the property.**

For a hypothetical DNR purchase of \$100,000 of agricultural nonhomestead land, most counties—61 of 64 counties with usable data—would have received a higher 2009 PILT payment from the state than they would have received in county and town taxes had the private property owner retained the land.²⁷ In 32 of the counties, the average PILT payment exceeded the estimated county-town taxes by more than 50 percent. Across all 64 counties, the average difference was 64 percent.

Although our analysis indicated that PILT in 2009 would have been higher than property taxes in most counties for a hypothetical purchase, this might not be true in subsequent years. The appraisals which form the basis of PILT payments are updated only every five years. If assessed values would have increased in private ownership, but appraised values are held constant, property tax payments in

For newly acquired non-hunting land, PILT is, on average, almost two-thirds higher than estimated county-town taxes.

²⁶ We used the sales ratio for timber, seasonal recreational, and agricultural land sales over 35 acres. We included counties that had at least six sales upon which to base the sales ratio.

²⁷ We excluded the 13 counties that receive PILT payments for acquired land on a per-acre basis. It is not possible to calculate their PILT payment for a hypothetical DNR purchase of land worth \$100,000 without knowing how many acres are included in the purchase. In addition, we excluded 10 of the 74 counties that receive PILT based on a percentage of appraised value because there were less than six sales used to calculate the sales ratio.

Because state-owned property is reappraised every five years, the average difference between PILT for acquired non-hunting land and county-town taxes may decline between appraisals.

following years might exceed PILT payments. However, the increase in property values would have to be very large to offset the 64 percent average difference between PILT and county-town taxes in the year of the purchase.²⁸

In this section, we attempted to account for differences in land values and tax rates when comparing PILT to property taxes. However, there could be other influences on land values. For example, some people suggested that some types of land that the state might be interested in acquiring, such as unproductive farmland, might have a higher appraised value if the state purchased it than if it continued to be owned by a farmer. For example, one study noted that:

“Years ago, farmland was reportedly sold based upon the amount of tillable acres with the woods and wasteland ‘thrown in.’ In today’s market, in many parts of the state, the opposite is now often true. Because of unparalleled demand for woods and even swampy or waste type land, the greatest demand and hence the greatest value is now often attributed to the wooded lands....”²⁹

It is unclear the extent to which the adjustments we made in this section—using estimated market values and sales ratios—would address effects on land values like the one noted above.

Value of Adjacent Properties

Some legislators have questioned whether the proximity of public land might raise the property values of nearby private land, thereby mitigating the impact on local property tax revenue of the state acquiring land. In theory, public land could also negatively affect the value of adjacent property, depending upon how the public land is managed and used. For example, traffic and trespass issues might negatively affect owners of adjacent property.

There is no statewide database that would allow us to look at property values of land adjacent to public land, and most county databases do not include information on adjacency to public land. Available literature on this issue largely focuses on metropolitan area parkland and not rural forests and other DNR-type land. We are aware of one county that found a positive impact of DNR land on

State-owned land may affect the property values of adjacent private properties, although its impact is largely unknown.

²⁸ For example, we looked at the growth in the appraised value of DNR-acquired land from 2000 to 2005. Over this period, the overall appraised value approximately doubled. We assumed an annual growth rate of 15 percent, which results in about a 101 percent increase over five years. Even this large growth, which is not likely to occur every five years, would not cause the county-town taxes to exceed PILT payments until the last year of a five-year period. For the average county, PILT exceeds county-town taxes by 64 percent in the first year of the period, 43 percent in the second year, 24 percent in the third year, and 8 percent in the fourth year. In the fifth year, PILT is about 6 percent lower than combined county-town taxes. As we discuss later in this chapter, the county’s share of PILT on acquired nonhunting land tends to be higher than its share of the combined county and town taxes on private land. Consequently, the average county’s PILT could exceed county taxes on the land even in the fifth year of our example.

²⁹ Minnesota Department of Revenue, *Assessment and Classification Practices Report: Agricultural Land Including Land Enrolled in the Green Acres Program* (St. Paul, April 2006), 4.

State ownership of land could either increase or decrease local government expenditures.

adjacent private property values. However, there is no reason to assume other counties would find the same impact if they were to study the issue.³⁰

Costs of Government Services

Table 4.3 summarized the types of fiscal impacts that state-owned natural resource land might impose, including changes in the costs of local government services. For example, a heavily used state park might demand more police and ambulance services than similar privately owned land. Alternatively, large tracts of forested state land might demand fewer services than if the land were privately owned and developed.

As noted above, however, we did not have data on the actual costs of local government services to state-owned land. In the previously mentioned study from the 1970s, researchers identified local police costs and road and bridge costs as likely affected by state natural resource land, but determined that data necessary to estimate costs were not available. The researchers found it impossible to separate local service demands and costs by natural resource land and other land.³¹

State Aids and Other Revenues

DNR acquisitions of state land may increase state aids paid to counties, cities, and school districts, in addition to PILT. These aids are discussed below. We also discuss other revenues that local governments receive for certain types of state land.

County Program Aid

A county would receive more county program aid from the state if DNR acquired land in the county that was previously on the property tax rolls. For an acquisition of \$100,000 of property, we estimated that a county would receive between \$9 and \$112 more aid per year, depending on the population of the county. (Counties with smaller populations would receive more aid.) The increase in state aid would not increase the state's aid payments overall, but would reduce the payments received by other counties.³²

³⁰ In response to the state finding that Roseau County's sales ratio was outside the acceptable range, the county assessor investigated and found that the properties most under-assessed were those adjacent to state land. Those properties were revalued to reflect a 6 to 25 percent increase in their valuations—the amount depending on the extent to which they were adjacent to public land. This case suggests that, at least in Roseau County, being adjacent to public land increases the value of private land and the property taxes it generates.

³¹ See Legislative Commission on Minnesota Resources (LCMR), et al., *Minnesota Public Lands Impact Study, Summary of Conclusions and Recommendations*, 28-43; and LCMR, et al., *Minnesota Public Lands Impact Study—Phase I*, 84.

³² The estimates for county program aid and local government aid for cities do not reflect the impact of the Governor's unallotments of aid.

State acquisition of land increases certain state aids to local governments in addition to PILT.**Local Government Aid to Cities**

Similarly, a city would receive more local government aid from the state if DNR acquired land in the city that was previously on the property tax rolls. For an acquisition of \$100,000 of property, the increased state aid would be about \$275 annually. However, most DNR acquisitions are not within city boundaries. Townships do not receive similar state aid from the state and thus would not automatically receive an additional payment from the state beyond PILT.

State Aid to Schools

The impact of DNR acquisitions of land on the revenues of school districts is complicated. For some education revenues, there is no property tax component. For example, basic formula revenue of \$5,124 per pupil unit is paid entirely by the state. As a result, a portion of school district revenues are unaffected by DNR land acquisitions that remove property from the tax rolls. For some other types of revenues, the removal of land from the property tax rolls results in additional state aid, which matches the amount of school property taxes previously collected on the acquired land. For yet other revenues, such as debt service and operating referendum revenues, state aid increases may or may not completely offset lost property tax revenues depending on certain factors.³³ When the increase in state aid does not match the property taxes previously paid on the newly acquired property, school districts continue to receive the same amount of revenues, but the local school tax rate increases to offset any shortfall.³⁴

Other Revenues

In addition, local governments receive other revenue related to state-owned land. Counties generate and may share with other taxing jurisdictions revenues from timber sales on tax-forfeited land. Counties receive a share of the net revenues generated from DNR-administered consolidated conservation lands.³⁵ In a sense, schools receive all of the net revenue from the state's management of school trust land because it is deposited in the Permanent School Fund as required by the state constitution. Local governments may also receive funds from the State Park Road Account for road projects that provide access to state parks and other state recreation areas. However, the funds available in this account are relatively small—around \$2.7 million per year.

³³ The referendum levy does not apply to agricultural homestead property other than the house, garage, and one acre of land on each homestead. In addition, the levy does not apply to rural vacant land, managed forest land, other agricultural land, and seasonal recreation property. If DNR purchases any of these types of property, the tax base to which referendum levies are applied is unaffected. Consequently, neither referendum tax rates nor overall referendum revenues are affected by such purchases.

³⁴ If the cumulative removal of property from the tax rolls is significant, it is possible that the referendum tax rate would be high enough to affect voters' willingness to approve operating referendums. In that case, land acquisitions would reduce school district referendum revenues.

³⁵ *Minnesota Statutes* 2009, 84A.51, subd. 4. The counties share these payments with other local government units, as directed by state law.

Economic Impacts

Finally, state-owned natural resource land could have local fiscal impacts beyond those on local government finances. For example, a state park might attract visitors who spend money on food and lodging during the course of their visit. Proprietors of the local businesses might hire additional staff, expand their business, or make other investments, and the recipients of those investments might make investments of their own.³⁶ The impact on local businesses could raise property values and increase the property tax revenues of local governments.

Identifying appropriate and reliable spending data and calculating multiplier effects make such estimates challenging. However, we acknowledge that state land might have an economic impact in local areas, and note that the economic impact of state land would likely vary depending on the land's location and use.

DISTRIBUTION

The state makes PILT payments to counties.³⁷ Counties deposit or distribute the payments as required by state law. Different proportions of payments are shared with other taxing jurisdictions, depending on the type of natural resource land.

Counties retain the vast majority of the payments made under the state's main PILT law. This statute covers acquired nonhunting and consolidated conservation lands, county-administered tax-forfeited land, and DNR-administered other natural resource land. We found that:

- **The state's main PILT law requires that counties forward relatively little of the payment made under the law to townships.**

Counties are required to distribute up to 10 percent of the PILT payment for acquired nonhunting and consolidated conservation land to the townships containing the land. The percentage can be significantly less than 10 percent because when the option of PILT based on appraised value was added for these lands, the proportion to be shared with townships remained at a per-acre rate.³⁸ Counties distribute to townships up to 10 percent of the PILT payment for county-administered tax-forfeited land, and 20 percent of the payment for DNR-administered other natural resource land.

However, data for taxes payable in 2009 indicate that overall town levies represented more than 10 percent of the county-town tax rate in most counties, and exceeded 20 percent in many counties. Based on our estimates, the overall town tax rate exceeded 10 percent of the county-town tax rate in 83 counties, and exceeded 20 percent in about 40 counties. In the median county, the overall town

For acquired non-hunting and “Con-Con” lands, townships receive a relatively low share of the PILT payments compared to their share of the property tax bill.

³⁶ The “ripple effect” of the visitor spending is called a “multiplier effect.”

³⁷ The Department of Revenue pays PILT under *Minnesota Statutes* 2009, 477A.13, with the first installment of local government aid. DNR pays PILT under *Minnesota Statutes* 2009, 97A.061.

³⁸ This would affect townships in the 74 counties that received PILT on acquired natural resource land based on appraised values.

The state’s current approach to school funding may make sharing PILT payments for hunting lands with school districts unnecessary.

tax rate represented 19 to 20 percent of the overall county-town tax rate.³⁹ Although there is not a clear indication of what proportion should be shared with townships, less than 10 percent for acquired land seems low.

Under current law, school districts receive a portion of the state’s PILT payments for acquired hunting land and goose management croplands based on their share of the property taxes.⁴⁰ For other lands—including nonhunting acquired land, consolidated conservation land, tax-forfeited land, and other DNR-administered natural resource land—only counties and townships receive a share of the state-paid PILT. We found that:

- **It is unclear why school districts continue to receive PILT for acquired hunting lands, and not other natural resource land.**

The statutory provision governing the distribution of payments for acquired hunting land dates back to at least 1945, while the provisions governing the distribution of PILT for other lands was passed in 1979. It is not entirely clear why the 1979 Legislature did not include school districts as a recipient of PILT for other natural resource lands besides hunting lands. However, we think there were two good reasons for not providing PILT to school districts at that time, and these reasons continue to be valid today. First, PILT does not need to be provided to school districts to help reimburse them for the costs of providing services to state-owned land. State land benefits from some services provided by counties and townships like law enforcement, emergency rescue, and roads. But school districts do not provide services that are used by state parks, wildlife management areas, or other state-owned land. Second, as we discussed earlier, most school district revenues are unaffected by DNR land acquisitions that remove land from the property tax rolls. Certain school revenues are paid by the state and do not have a property tax component. Other revenues may be unaffected because the land acquisition simply increases the portion of revenues that a school district receives from state education aids and reduces the portion from property tax revenues. However, under certain circumstances, some acquisitions may increase the local school property tax rate for debt service and operating referendums. Whether this latter impact is sufficient cause to keep providing PILT to school districts on acquired hunting lands is unclear.

Furthermore:

- **It is unclear why cities are not eligible for PILT payments.**

As a general rule, cities do not receive PILT, but if the state acquires natural resource land within their borders, they can lose property tax revenue and incur expenses associated with the land. An exception is provided for townships that received PILT for hunting land in 2006 or later and subsequently incorporate as cities.⁴¹ We do not know how many cities contain state natural resource land and

³⁹ Our “town” rates include rates for unorganized territories.

⁴⁰ *Minnesota Statutes* 2009, 477A.17, requires that PILT for Lake Vermilion State Park be shared equally among the county, town, and school district containing the property.

⁴¹ See *Minnesota Statutes* 2009, 97A.061, subd. 2(c). This currently affects the city of Columbus in Anoka County.

do not receive PILT. However, one city's aid base was increased by \$30,000 beginning in 2009 to help offset the city's fire and rescue costs associated with the state park within its boundaries.⁴²

RECOMMENDATION

The Legislature should consider whether the current distribution of the state's payments in lieu of taxes bears a reasonable relationship to the local fiscal impacts of state-owned natural resource land.

We think that state PILT should reflect that different types of state land impose different expenses on different government units. It makes sense for PILT to bear some relationship to those expenses. At a minimum, that means that local governments that do not have expenses associated with state land ownership should not receive PILT, while those that do have expenses should.

As we noted above, the proportion of PILT on acquired natural resource land that is distributed to townships seems low, and it is unclear why schools districts continue to receive PILT on some types of state land, and most cities are not eligible for PILT at all. As a first step, we think the Legislature should consider amending *Minnesota Statutes* 2009, 477A.14, subd. 1(b)—regarding the amount of PILT for acquired land that counties pay to townships. Specifically, we think if the PILT payment is based on appraised value, at least 10 percent of the payment should be shared with the township in which the acreage is located.

⁴² *Laws of Minnesota* 2008, chapter 154, art. 1, sec. 1. The Legislature increased the city aid base for Taylors Falls, apparently in response to fire and rescue operations related to Interstate State Park. In other years, Taylors Falls has received money from the state or Chisago County related to providing services to the park.

List of Recommendations

- DNR should continue to evaluate its land holdings and sell, exchange, and acquire property in order to more efficiently and effectively achieve its land management goals. (p. 17)
- DNR should conduct land evaluation projects with additional counties similar to the pilot project with Roseau County. (p. 17)
- DNR should report back to the 2011 Legislature on the implementation of changes in the land exchange process for acquired land and the advisability of applying similar changes to the exchange process for school trust fund land. (p. 18)
- DNR should prepare baseline reports for all conservation easements it acquires in order to document the condition of the property at the time of acquisition and enable meaningful and effective management. (p. 31)
- After review of its forthcoming conservation easement management plans by the Legislature and relevant stakeholders, DNR should adopt a department policy that reflects and implements the plans. (p. 31)
- DNR policy should mandate that all future conservation easements the agency acquires contain a clause requiring the current owner of the property to promptly notify DNR when the landowner sells or otherwise transfers the property to another party. (p. 33)
- DNR should formally adopt the proposed standards outlined in its October 2008 memorandum regarding the involvement of third parties in any DNR acquisition of a conservation easement or other interest in natural resource land. (p. 34)
- As soon as possible, DNR should identify and quantify the overall management needs and funding shortfalls for the state's system of Wildlife Management Areas. (p. 48)
- The Legislature should require DNR to prepare a long-range budget analysis that compares annual budget needs with estimated funding for all DNR-managed lands except parks and trails. (p. 50)
- The Legislature should review the budget analyses to be prepared by DNR, particularly DNR's assumptions about the management and other activities that are necessary for the operation of DNR land and facilities. (p. 51)
- When considering funding proposals for acquisition, the Legislature should require DNR or other parties to demonstrate in sufficient detail how the entity will manage the parcel to achieve specified public benefits, how it will

pay for this management, and any impact the acquisition will have on the type or frequency of management of existing land holdings. (p. 51)

- The Legislature and DNR should explore wider use of an upfront endowment approach to paying today for tomorrow's management costs. (p. 52)
- The Legislature should consider whether the current distribution of the state's payments in lieu of taxes bears a reasonable relationship to the local fiscal impacts of state-owned natural resource land. (p. 76)

Federal Payments in Lieu of Taxes

APPENDIX A

The U.S. Department of the Interior distributes federal payments in lieu of taxes (PILT). In federal fiscal year 2009, the department made payments in lieu of taxes totaling \$2.7 million to 26 Minnesota counties for 2.9 million acres of federal land.¹ Table A.1 shows federal fiscal year 2009 acres and payments to Minnesota counties.

Congress created federal PILT in 1976 to stabilize revenue payments to local governments and lessen the interest local governments expressed in the federal management of public land. Prior to PILT, payments to local governments were primarily in the form of revenue sharing of proceeds from activities on the land. As a consequence, the size of the payments could vary greatly by location and, due to market conditions, from year to year. In addition, payments generated from revenue sharing meant that local officials were very interested in how the federal government managed the land. PILT provided at least a minimum level of funding that all local governments would receive for federal land within their jurisdiction.² Federal PILT is supplemental to payments made under several other federal payment laws.

ELIGIBLE LAND

The Department of the Interior makes payments in lieu of taxes to local governments each year for tax-exempt federal “entitlement” land.³ In 2009, most federal PILT land in Minnesota was in the National Forest System (2.8 million acres). The National Park System and Army Corp of Engineers also administered federal entitlement land in Minnesota (104,378 and 25,297 acres, respectively). The Bureau of Land Management and U.S. Fish and Wildlife Service (USFWS) managed smaller amounts of entitlement land (4,812 and 289 acres, respectively). Additional federal PILT is made for land acquired to expand the National Park System or National Forest Wilderness Areas.

¹ The Department of the Interior does not make a payment to counties that would be paid less than \$100. Several Minnesota counties that contained small numbers of PILT-eligible acres did not receive a payment in 2009.

² M. Lynne Corn, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, CRS Report 98-574 (June 24, 1998), <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-790:1>, accessed June 2, 2009; and Ervin Schuster, “PILT: Its Purpose and Performance,” *Journal of Forestry* 93, no. 8 (August 1995): 31-35.

³ Land that qualifies as entitlement land is outlined in 31 *U.S. Code*, sec. 6901 (2007).

Table A.1: Federal Payments in Lieu of Taxes to Minnesota Counties, 2009

	Acres	Payments
Aitkin	1,164	\$ 2,729
Anoka	14	0
Becker	40	0
Beltrami	62,142	116,625
Big Stone	42	0
Brown	1	0
Cass	283,136	351,449
Chippewa	207	486
Chisago	2,483	5,821
Cook	639,498	208,736
Crow Wing	1,061	2,488
Dakota	1,027	2,830
Goodhue	4,939	11,578
Grant	4	0
Hennepin	50	118
Houston	3,329	7,804
Hubbard	12	0
Itasca	305,476	381,964
Koochiching	4,022	9,681
Lac Qui Parle	306	717
Lake	727,338	237,409
Lake of the Woods	4,623	10,838
Le Sueur	1	0
McLeod	7	0
Marshall	6	0
Meeker	16	0
Mille Lacs	1	0
Morrison	30	0
Murray	1	0
Otter Tail	2,059	4,827
Pine	2,054	4,815
Pipestone	298	698
Polk	5	0
Ramsey	27	0
Renville	5	0
St. Louis	842,838	1,347,701
Sherburne	1	0
Swift	221	518
Todd	1	0
Traverse	550	1,290
Wabasha	5,203	12,133
Wadena	16	0
Washington	1,563	3,664
Wilkin	2	0
Winona	4,261	9,765
Wright	2	0
TOTAL	2,900,262	\$2,736,684

NOTE: The U.S. Department of the Interior makes PILT payments only if the payments exceed \$100.

SOURCE: U.S. Department of the Interior, "Payments in Lieu of Taxes: County Payments and Acres," <http://www.nbc.gov/pilt/pilt/search.cfm#search>, accessed June 11, 2009.

Not all federal land administered by these agencies is considered entitlement land. For example, with some exceptions, land that the federal government obtains from a state or local government—that is, the land was tax-exempt prior to federal ownership—is not eligible for PILT. In addition, the only USFWS-administered lands considered to be entitlement lands are those that were “withdrawn from the public domain” and are administered as a reserve area. In Minnesota, the USFWS had over 391,000 acres in 2009, but PILT was paid on only 289 acres.⁴

FORMULAS AND PAYMENTS

The calculations for federal PILT payments depend on whether the land is entitlement land and whether it was acquired for the National Park System (NPS) or National Forest Wilderness Areas (NFWAs).

As Table A.2 shows, the federal government pays PILT on entitlement land based on one of two formulas. One formula (option A in Table A.2) consists of an amount based on a per-acre payment, minus payments made under various other federal payment laws. The second formula (option B in the table) is based on a smaller per-acre payment, but the payments made under other payment laws are not subtracted.⁵

For land acquired for the NPS or NFWAs, the Department of the Interior makes additional PILT payments for five years after acquisition. As described in Table A.2, the annual payment is equal to 1 percent of the fair market value of the interest in the land on the date that the U.S. acquired it, but not to exceed the amount of property taxes levied on the property in the last fiscal year before acquisition.

Prior to 2008, appropriations for federal PILT were insufficient to cover the full amount calculated under the PILT formulas. According to federal law, “[i]f Congress provides insufficient monies to provide full payment to each local government during any fiscal year, the Department shall reduce proportionally all payments in that fiscal year.”⁶ Since 1994, actual PILT payments to local governments were 41 to 77 percent of the authorized amount. However, the Emergency Economic Stabilization Act of 2008 requires full payment of PILT authorized amounts through 2012.⁷

⁴ Although local governments do not receive federal PILT for acquired lands administered by the USFWS, they do receive payments under the Refuge Revenue Sharing Act. The payments for purchased land “administered solely or primarily” by the service are the greatest of (a) three-quarters of 1 percent of the market value; (b) 25 percent of net receipts; or (c) \$0.75 per acre. Payments for lands that were never on the tax rolls are 25 percent of net receipts.

⁵ 31 *U.S. Code*, sec. 6903 (2007).

⁶ 43 *CFR* sec. 44.51 (2009).

⁷ U.S. Department of the Interior, “News Release: \$139 Million Distributed to State and County Governments in Full Compensation for FY 2008 Payments in Lieu of Taxes,” (November 20, 2008), <http://www.blm.gov/or/news/files/11-20-08PILT.pdf>, accessed June 18, 2009.

Table A.2: Formulas for Federal Payments in Lieu of Taxes

Entitlement Land (either A or B)

A { \$1.65 per acre adjusted for inflation (\$2.37 for 2009 payments), not to exceed a maximum amount determined by multiplying the local government's population by a dollar limit (also adjusted for inflation)
 minus
 The amount received by the local unit of government in the prior fiscal year under "payment laws"^a

OR

B \$0.22 per acre adjusted for inflation (\$0.33 for 2009 payments), with a maximum amount depending on the local government's population multiplied by a dollar limit (also adjusted for inflation)

Land Acquired for the National Park Service or National Forest Wilderness Areas

For only five years after acquisition, the annual payment is equal to 1 percent of the fair market value of the interest in the land on the date that the U.S. acquired it, but not to exceed the amount of property taxes levied on the property in the last fiscal year before the U.S. acquired it.

^a There are ten "payment laws" that include other payments to states or local governments that might be made related to entitlement land.

SOURCE: Office of the Legislative Auditor, analysis of 31 *U.S. Code*, secs. 6903-4 (2007).

OTHER PAYMENTS IN LIEU OF TAXES

At least in the past, the USFWS has used a different approach to PILT under some circumstances.⁸ According to a 2005 review by the Office of the Inspector General of the Department of the Interior, the USFWS completed "four transactions, where payment for property purchased in waterfowl production areas (WPAs) exceeded fair market value."⁹ These payments occurred in Wisconsin and Minnesota, for land that would receive revenue-sharing payments instead of PILT. According to the review, the regional director established a policy of creating a "county trust" with up to 10 percent of the fair market value of land purchased within a county, "as a way to assuage local government concern over lost property tax revenue."¹⁰

⁸ We were unable to reach officials in the USFWS to confirm whether the practice is still in place.

⁹ U.S. Department of the Interior, Office of Inspector General, *Payments to Counties to Acquire Waterfowl Production Areas in Minnesota and Wisconsin*, Report No: W-IN-MOA-0119-2003 (September 2005), 1, <http://www.doioig.gov/upload/2005-G-0040.pdf>, accessed June 23, 2009.

¹⁰ *Ibid.*

**2009 Payments in Lieu of Taxes for State-Owned Land under Minnesota Statutes, 477A.12
APPENDIX B**

	Acquired Natural Resource Land		DNR-Administered Other Land		County-Administered Tax-Forfeited Land		Total	
	Acres	Payments	Acres	Payments	Acres	Payments	Acres	Payments
Aitkin	44,008	\$ 274,404	349,763	\$ 223,498	221,491	\$ 283,065	615,261	\$ 780,968
Anoka	18,116	188,029	1,261	806	226	289	19,603	189,124
Becker	15,255	162,627	41,560	26,557	74,717	95,488	131,532	284,672
Beltrami	357,281	1,827,135 ^a	207,673	132,703	146,730	187,521	711,684	2,147,359
Benton	2,178	57,105	156	100	77	99	2,411	57,303
Big Stone	5,800	51,835	3,854	2,462	42	53	9,695	54,351
Blue Earth	4,614	92,310	267	171	0	0	4,881	92,481
Brown	4,095	53,118	262	168	15	20	4,373	53,305
Carlton	8,752	90,714	70,402	44,987	72,310	92,412	151,463	228,112
Carver	1,496	80,444	26	17	22	28	1,544	80,489
Cass	11,209	683,054	182,208	116,431	253,478	323,945	446,895	1,123,430
Chippewa	4,106	106,198	3,879	2,479	308	394	8,293	109,071
Chisago	16,479	709,944	1,053	673	310	397	17,843	711,014
Clay	8,301	42,451 ^a	977	624	55	70	9,333	43,145
Clearwater	20,057	157,949	35,608	22,753	90,182	115,253	145,847	295,955
Cook	10,107	106,760	130,629	83,472	4,211	5,382	144,947	195,614
Cottonwood	6,874	121,469	851	544	50	65	7,776	122,077
Crow Wing	6,297	216,113	29,539	18,875	100,787	128,805	136,622	363,793
Dakota	5,118	76,091	459	293	695	888	6,271	77,273
Dodge	1,241	17,544	3	2	0	0	1,244	17,546
Douglas	5,845	279,179	347	222	408	522	6,600	279,922
Faribault	3,202	16,374 ^a	171	109	0	0	3,373	16,484
Fillmore	13,996	249,631	708	452	0	0	14,704	250,083
Freeborn	3,414	28,754	151	97	4	5	3,570	28,856
Goodhue	10,638	180,010	640	409	6	8	11,284	180,427
Grant	3,517	22,676	59	38	0	0	3,576	22,713
Hennepin	1,044	297,775	494	316	652	833	2,190	298,924
Houston	15,605	285,401	1,260	805	196	251	17,061	286,457
Hubbard	41,409	511,152	47,220	30,174	137,237	175,389	225,867	716,716
Isanti	3,904	180,303	2,098	1,340	235	300	6,237	181,943
Itasca	21,726	220,350	301,408	192,600	298,579	381,584	621,712	794,533
Jackson	6,366	111,028	57	36	7	9	6,430	111,073
Kanabec	3,682	34,898	20,473	13,082	8,451	10,801	32,605	58,781
Kandiyohi	7,229	115,732	610	390	504	644	8,343	116,767
Kittson	36,385	186,071 ^a	38,957	24,893	408	522	75,750	211,486

(continued on next page)

2009 Payments in Lieu of Taxes for State-Owned Land under Minnesota Statutes, 477A.12 (continued)

	Acquired Natural Resource Land		DNR-Administered Other Land		County-Administered Tax-Forfeited Land		Total	
	Acres	Payments	Acres	Payments	Acres	Payments	Acres	Payments
Koochiching	15,571	\$ 90,533	1,077,420	\$ 688,471	286,813	\$ 366,548	1,379,805	\$ 1,145,552
Lac Qui Parle	12,755	128,439	6,683	4,270	0	0	19,438	132,709
Lake	19,222	280,875	170,035	108,652	150,369	192,171	339,625	581,698
Lake of the Woods	150,657	770,460 ^a	286,189	182,875	1,345	1,719	438,191	955,054
Le Sueur	4,246	76,691	161	103	6	7	4,413	76,801
Lincoln	8,504	78,203	390	249	0	0	8,894	78,452
Lyon	11,660	157,623	89	57	3	4	11,752	157,685
McLeod	3,179	87,701	93	59	0	0	3,272	87,761
Mahnomen	10,293	52,640 ^a	22,211	14,193	4,029	5,149	36,534	71,982
Marshall	85,935	439,471 ^a	30,757	19,654	444	567	117,135	459,692
Martin	2,908	34,209	73	46	0	0	2,980	34,255
Meeker	3,096	55,182	83	53	11	14	3,189	55,249
Mille Lacs	15,323	172,783	51,693	33,032	1,322	1,690	68,338	207,505
Morrison	7,732	152,003	4,244	2,712	141	180	12,118	154,895
Mower	2,538	23,261	241	154	0	0	2,780	23,415
Murray	10,155	137,898	4	2	0	0	10,158	137,900
Nicollet	3,617	34,082	245	156	24	30	3,885	34,269
Nobles	4,093	74,087	109	70	0	0	4,202	74,156
Norman	7,422	37,956 ^a	903	577	240	306	8,565	38,840
Olmsted	4,160	67,066	598	382	3	4	4,760	67,451
Otter Tail	20,288	395,634	4,430	2,831	298	380	25,015	398,845
Pennington	3,099	15,847 ^a	2,562	1,637	2,170	2,773	7,831	20,257
Pine	22,508	395,846	164,336	105,011	48,349	61,791	235,193	562,648
Pipestone	3,802	45,458	245	157	0	0	4,047	45,615
Polk	20,119	102,890 ^a	5,804	3,709	75	96	25,999	106,695
Pope	4,870	38,370	672	429	5	6	5,546	38,806
Ramsey	334	105,056	3	2	30	38	367	105,096
Red Lake	2,372	12,129 ^a	777	496	394	503	3,542	13,128
Redwood	6,187	81,188	113	72	7	9	6,307	81,269
Renville	1,758	23,321	0	0	0	0	1,758	23,321
Rice	4,465	116,099	1,186	758	20	25	5,670	116,882
Rock	2,414	45,233	0	0	0	0	2,414	45,233
Roseau	29,641	151,586 ^a	233,313	149,087	3,143	4,017	266,098	304,691
St. Louis	55,846	637,197	520,213	332,416	893,647	1,142,080	1,469,706	2,111,693
Scott	5,683	158,767	365	233	20	26	6,068	159,026

(continued on next page)

2009 Payments in Lieu of Taxes for State-Owned Land under Minnesota Statutes, 477A.12 (continued)

	Acquired Natural Resource Land		DNR-Administered Other Land		County-Administered Tax-Forfeited Land		Total	
	Acres	Payments	Acres	Payments	Acres	Payments	Acres	Payments
Sherburne	4,486	\$ 239,165	2,979	\$ 1,904	6	\$ 7	7,470	\$ 241,076
Sibley	1,934	32,094	53	34	32	42	2,019	32,169
Stearns	6,953	98,866	1,614	1,032	818	1,045	9,385	100,943
Steele	2,161	18,084	77	49	0	0	2,238	18,133
Stevens	3,177	37,616	3	2	0	0	3,180	37,618
Swift	8,426	95,718	2,235	1,428	0	0	10,661	97,146
Todd	7,547	106,671	5,902	3,771	662	847	14,112	111,289
Traverse	983	9,744	50	32	0	0	1,033	9,776
Wabasha	17,075	195,161	592	378	67	86	17,734	195,626
Wadena	4,705	25,368	23,755	15,180	2,424	3,098	30,885	43,646
Waseca	2,372	14,932	12	7	0	0	2,383	14,939
Washington	5,060	636,296	1,032	659	391	499	6,482	637,455
Watonwan	1,637	17,553	104	67	0	0	1,741	17,619
Wilkin	5,795	29,637 ^a	576	368	0	0	6,371	30,005
Winona	33,697	584,743	779	498	211	270	34,688	585,512
Wright	6,215	174,706	503	321	302	386	7,020	175,413
Yellow Medicine	7,578	71,074	31	20	174	222	7,782	71,316
TOTAL	1,415,594	\$15,497,842	4,101,620	\$2,620,935	2,810,389	\$3,591,678	8,327,603	\$21,710,455

NOTES: The table reflects payments in lieu of taxes under [Minnesota Statutes, 477A.11-.45](#), for state-owned land. Additional payments under this statute in 2009 included \$5,490, \$62,887, and \$36,031 to Beltrami, Lake of the Woods, and Roseau counties, respectively, for Land Utilization Project Land. Payments in lieu of taxes under [Minnesota Statutes, 97A.061](#), included \$68,748 to Chippewa County for goose management cropland and additional hunting ground payments of \$5,137 to Beltrami County, \$5,957 to Itasca County, and \$7,984 to Kanabec County.

^a Payment for acquired natural resource land was based on the rate of \$5.114 per acre.

SOURCES: Department of Revenue and Department of Natural Resources data on 2009 payments in lieu of taxes.

Minnesota Department of Natural Resources

500 Lafayette Road · Saint Paul, Minnesota · 55155-4037

Office of the Commissioner

651-259-5555



March 1, 2010

James Nobles, Legislative Auditor
Office of the Legislative Auditor
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to the Natural Resource Lands report. In our discussion of the draft report with your office, we explained how land management is not a program. This makes it challenging when trying to perform a program evaluation of this type, and we appreciate the efforts of the Office of the Legislative Auditor.

DNR's mission is to work with citizens to conserve and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life. This three part system approach to conservation allows us to benefit from interactions among efforts, harness the energy of partnerships, tap the power of the marketplace, and sustain a broad-based commitment to the environment.



The report addresses concerns from one of the three approaches or elements of conservation, but fails to provide consideration from all three, falling short of DNR's integrated mission. The limited value of a one part approach, typical of a more simplistic type program, lacks the deeper purpose and consideration of an integrated three part approach. In keeping with this mission, DNR promotes integrated management of private and public lands in many ways, influencing both the public landscape and the public ownership of land. To achieve these goals, DNR developed a conservation agenda supported with comprehensive plans for acquiring and managing land, integrating all three conservation approaches.

The major findings in the Natural Resource Lands report support the efforts and direction of the department, and many of the recommendations direct DNR to continue its efforts toward land management goals. DNR's responses to the specific recommendations addressed in the report are as follows:

- 1) DNR should continue to evaluate its land holdings and sell, exchange, and acquire property in order to more efficiently and effectively achieve its land management goals. (p. 17)

DNR Information: 651-296-6157 or 1-888-646-6367 • TTY: 651-296-5484 or 1-800-657-3929 • FAX: 651-296-4779 • www.mndnr.gov

AN EQUAL OPPORTUNITY EMPLOYER

Agree – DNR will continue to evaluate its land holdings within the context of strategic asset management. Thank-you for supporting our direction of a more comprehensive asset management approach.

- 2) DNR should conduct land evaluation projects with additional counties similar to the pilot project with Roseau County. (p. 17)

Agree – As directed by the commissioner's office, DNR will assess the results of the pilot project, and consider the benefits from conducting additional pilot projects in other counties or regions.

- 3) DNR should report back to the 2011 Legislature on the implementation of changes in the land exchange process for acquired land and the advisability of applying similar changes to the exchange process for school trust fund land. (p. 18)

Agree - DNR will report to the Legislature on the changes in the land exchange process for acquired land(s).

- 4) DNR should prepare baseline reports for all conservation easements it acquires in order to document the condition of the property at the time of acquisition and enable meaningful and effective management. (p. 31)

Agree - DNR recently prepared a draft LCCMR proposal incorporating baseline reports for easements at the time of acquisition, and the funding to support this initiative.

- 5) After review of its forthcoming conservation easement management plans by the Legislature and relevant stakeholders, DNR should adopt a department policy that reflects and implements the plans. (p. 31)

Agree – DNR is in the process of incorporating the standards for easements into an Operational Order, thereby formalizing a department wide policy.

- 6) DNR policy should mandate that all future conservation easements the agency acquires contain a clause requiring the current owner of the property to promptly notify DNR when the landowner sells or otherwise transfers the property to another party. (p. 33)

Agree – DNR will incorporate transfer notification provisions into conservation easement contracts. The transfer notification will not eliminate, but may reduce, the incidence of compliance issues with subsequent owners.

- 7) DNR should formally adopt the proposed standards outlined in its October 2008 memorandum regarding the involvement of third parties in any DNR acquisition of a conservation easement or other interest in natural resource land. (p. 34)

Agree – DNR will adopt its proposed standards regarding the involvement of third parties in conservation easements in an Operational Order, thereby formalizing a department wide policy.

- 8) As soon as possible, DNR should identify and quantify the overall management needs and funding shortfalls for the state's system of Wildlife Management Areas. (p. 48)

Agree – As stated in the report, DNR will continue its efforts to address project needs, and request funding for financial or staff resources. DNR developed individual management plans for approximately 500 of the more than 1400 Wildlife Management Areas, even though the Outdoor Recreation Act (MS 86A.09) does not require management plans. These efforts will take time, however, as there are over 900 remaining management plans to be developed. In the absence of specific funding for custom software development, the department will try to address the issue using existing resources.

- 9) The Legislature should require DNR to prepare a long-range budget analysis that compares annual budget needs with estimated funding for all DNR-managed lands except parks and trails. (p. 50)

Partially Agree – DNR will continue to work with the Legislature on funding for long term budget analysis. The land records management database project will provide management with improved financial tools, which may result in challenges to existing management decisions. In addition to financial tools, management plans need to be developed that consider policies, program relationships and new approaches. Budget trends, long term needs, and program flexibility from new approaches will require careful analysis by DNR management.

- 10) When considering funding proposals for acquisition, the Legislature should require DNR or other parties to demonstrate in sufficient detail how the entity will manage the parcel to achieve specified public benefits, how it will pay for this management, and any impact the acquisition will have on the type or frequency of management of existing land holdings. (p. 51)

Disagree – Fundamentally speaking, the department does not consider it cost effective to manage land parcel by parcel. However, DNR will continue to gather information for acquisition programs, and make this information available to the Legislature to support funding proposals.

Again, thank you for the opportunity to respond to the draft report. When addressing the complexity of land management, consideration of the points discussed above will provide a more balanced and accurate reporting of the current or immediate direction of both the department and Legislature.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Holsten". The signature is written in a cursive, flowing style.

Mark Holsten, Commissioner
MN Department of Natural Resources

c: Denise Anderson, Chief Financial Officer

Forthcoming Evaluations

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Recent Evaluations

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Charter School Financial Accountability, June 2003
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Preserving Housing: A Best Practices Review, April 2003
Managing Local Government Computer Systems: A Best Practices Review, April 2002
Local E-Government: A Best Practices Review, April 2002
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