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Minnesota Agricultural Land Preservation Program

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Introduction

The Agricultural Land Preservation Policy Act of 1984 (Minnesota Statutes, Chapter 40A) provides for a statewide agricultural land preservation program consisting of:

- tools for agricultural land preservation at the local level, including guidelines for agricultural land preservation planning and official controls, voluntary “agricultural preserve” restrictive covenants, and property tax incentives for their creation;
- a program to foster awareness of agricultural land preservation and conservation issues; and
- a program of technical and financial assistance to local government.

This is a report to the Minnesota Legislature, as required by Minnesota Statutes, Section 40A.17. The report covers implementation activities undertaken in 2005. It also provides information on critical issues of agricultural land preservation.

Overview

Created by the Agricultural Land Preservation Policy Act in 1984, the Minnesota Agricultural Land Preservation Program is modeled after the Metropolitan Agricultural Preserves Act. Any county located outside the Twin Cities metropolitan area is eligible to prepare a proposed agricultural land preservation plan and implementing controls under the program for the Commissioner of Agriculture’s review. Elements which must be addressed by county plans and official controls are detailed in the statutes. Counties adopting agricultural land preservation plans and implementing controls may offer agricultural preserves (an agricultural preserve is a restrictive covenant on qualifying land limiting its use to agriculture or forestry). In return, farmers receive property tax credits, protection for normal agricultural practices, and other benefits.

History

The early 1980s in Minnesota saw passage of several pieces of landmark legislation on agricultural land preservation. In 1980, the Metropolitan Agricultural Preserves Act (Minn. Stat. Ch. 473H) was enacted, followed by the State Agricultural Land Preservation and Conservation Policy Act (Minnesota Statutes Sections 17.80–.84) in 1982, and the Agricultural Land Preservation Program Act (the statewide program, Minn. Stat. Ch. 40A) in 1984. The agricultural land preservation legislation overall was the result of recommendations of a Joint Senate Subcommittee on Agricultural Land Preservation and Soil Conservation that was established in 1977. The work of the Subcommittee was no doubt influenced by the many studies and reports on agricultural land preservation nationally and in Minnesota during that decade.

As set forth in the Agricultural Land Preservation Program Act, the Commissioner of Agriculture selected five pilot counties, based on selection criteria established in the law, to participate in a pilot program for county agricultural land preservation. The five pilot counties, Douglas, Kandiyohi, Waseca, Winona, and Wright, submitted their agricultural land preservation plans and proposed official implementing controls to the commissioner by the December 31, 1987 deadline (Minnesota Statutes, Section 40A.03). Grants of \$20,000 per county were provided to the five pilot counties in 1986.

Since January 1, 1987, any Minnesota county located outside the Twin Cities Metropolitan Area has been eligible, under the program, to prepare a proposed agricultural land preservation plan, adopt official controls, and offer agricultural preserves.

Program Goals

The Minnesota Agricultural Land Preservation Program works through a combination of state policies and guidelines, local planning and implementation, and private incentives to accomplish the following statutory goals:

- (1) *Preserve and conserve agricultural land, including forest land, for long-term agricultural use in order to protect the productive natural resources of the state, maintain the farm and farm-related economy of the state, and assure continued production of food and timber and agricultural uses;*
- (2) *Preserve and conserve soil and water resources; and*
- (3) *Encourage the orderly development of rural and urban land uses.* Minnesota Statutes, Section 40A.01.

The program is intended to protect farmland for future generations and to help farmers feel more confident in making long-term decisions. It is also intended to help in avoiding some of the problems associated with uncontrolled development of farm and forest lands. Limiting nonfarm rural development helps keep down public service costs paid by all taxpayers for such things as increased road maintenance, school transportation, and police and fire protection. Controlling such development also decreases the likelihood of conflicts between farmers and nonfarm residents over noise, dust, and odors produced by farming operations.

Program Components

Agricultural Preserves

The central feature of the program is the "agricultural preserve". The 1984 Agricultural Land Preservation Act makes it possible for owners of qualifying land to receive property tax credits of \$1.50 per acre per year, and other benefits as well, in return for agreeing to preserve their farms for long-term agricultural use.

To be able to offer the benefits of agricultural preserves to property owners, a county must adopt, and have approved by the Minnesota Department of Agriculture (MDA), an agricultural land preservation plan and official controls (Minnesota Statutes, Sections 40A.04-05). An agricultural land preservation plan is a part of a comprehensive land use plan that designates land for long-term agricultural use, while also providing for expected growth around urbanized areas. The official controls are land use regulations, usually zoning and subdivision provisions, that restrict uses to agriculture, and require low residential densities (typically one dwelling unit per 40 acres) in areas designated for long-term agricultural use.

Once an agricultural land preservation plan and official controls are adopted and approved by the MDA, persons owning land in a long term agricultural zoning district of a participating county may voluntarily place "agricultural preserve" restrictive covenants on their property. The agricultural preserve covenant restricts the use of the land to agriculture or forestland. The covenants are ongoing and run with the land, even if the land is sold. The agricultural preserve may be terminated by either a landowner or the local unit of government by initiating a termination process. This termination process takes eight years to remove the agricultural preserve covenant. Once the covenant is no longer in effect, the zoning classification must also be changed in order for the property to be converted to some other use than what is permitted in the long-term agricultural zoning district (Minnesota Statutes, Sections 40A.09-11).

Owners of land with agricultural preserve covenants receive the following benefits or protections (Minnesota Statutes, Sections 40A.12–13, and 273.119):

- A \$1.50 per acre per year property tax credit.
- Local governments cannot enact ordinances or regulations that restrict or regulate normal agricultural practices.
- Annexation proceedings affecting agricultural preserves are limited and must meet certain additional criteria.
- Eminent domain proceedings are limited and subject to public and administrative review.
- Public sanitary sewer systems, public water systems, and public drainage systems are prohibited in agricultural preserves. Land in a preserve may not be assessed for public projects built in the vicinity of the preserve-covenanted property unless the project is necessary to serve land primarily in agricultural use or if the owner of the land chooses to use and benefit from the project.

Additionally, the statute permits property currently receiving “Green Acres” property tax and special assessment deferrals (under Minnesota Statutes, Section 273.111) to convert to an agricultural preserve covenant without having to repay deferred tax differentials. However, special assessments outstanding against the property must still be repaid if the agricultural preserve covenant is ever terminated (Minnesota Statutes, Section 40A.19).

The owners of land with agricultural preserve covenants are required to manage the land with sound soil conservation practices.

Planning and Official Control Requirements

The agricultural land preservation plan must contain planning elements and official controls that are included in Minnesota Statutes, Section 40A.05. The elements ensure integrated and coordinated comprehensive planning, while the official controls provide consistency with the overall plan. The agricultural land preservation plan must be adopted in accordance with the requirements of Minnesota Statutes, Chapter 394 or 462 that apply to comprehensive plans and official controls.

Funding System

All seven Twin Cities metropolitan area counties and other counties participating in this program are required to charge a \$5 fee on each recording or registration of mortgages and deeds subject to the mortgage and deed taxes. One-half of the fee must be deposited in a special conservation account in the county general revenue fund and one-half must be transferred to the Commissioner of Revenue to be credited to the Minnesota Conservation Fund. Money from the county conservation account must be used to reimburse the county and taxing jurisdictions within the county for the agricultural preserves property tax credit. If the cost of the property tax credits exceeds funds available in the county conservation account, the county is reimbursed from the Minnesota Conservation Fund for the amount the tax credits exceed the county account (Minnesota Statutes, Sections 40A.151–2).

Agricultural Land Preservation and Conservation Awareness Program

The Minnesota Agricultural Land Preservation Program legislation directs the Department of Agriculture to administer a program to promote and increase public awareness of:

- (1) *the need for agricultural land preservation and conservation and the consequences of resource degradation;*

- (2) *the physical, environmental, and social factors that affect agricultural land use; and*
- (3) *the availability and effectiveness of agricultural land preservation and conservation approaches and technologies.* (Minnesota Statutes, Section 40A.14).

Under the Awareness Program staff primarily works with local governments, elected officials, and the public to increase awareness of the program as well as issues regarding the state and metropolitan area agricultural land preservation and related questions about planning and growth management. This typically includes formal presentations, attending conferences, exhibiting program information, and answering inquiries on a day-to-day basis. Other awareness projects have included:

Evaluation of Minnesota's Agricultural Land Preservation Programs. In 1999, as part the 1997 LCMR project, "Reinventing the Agricultural Land Preservation Program,"¹ the MDA completed an evaluation of the effectiveness of Minnesota's agricultural land preservation programs. The evaluation concluded that Minnesota should build upon strengths of existing agricultural land preservation programs (particularly the Minnesota Agricultural Land Preservation Program and the Metropolitan Agricultural Preserves, Minn. Stat. Ch. 473H) and explore tools used in other states (particularly purchase of development rights and transfer of development rights). Please refer to Assessment of the Public's Awareness of Agriculture Land Preservation Program on page 7 for further details on the evaluation.

Public Awareness Video. The department contracted for the production of an informational video explaining the Minnesota Agricultural Land Preservation Program. The video, completed in 1989, has been widely circulated among interested counties, and has proved a valuable public awareness and education tool.

Studies on the Cost of Rural Nonfarm Development

- **Development in Wright County: The Revenue/Cost Relationship (the Wright County Study) (1989).** In 1989, the MDA contracted for conduct of a study that analyzed the public service costs of rural nonfarm development and examined three different development scenarios in Wright County. A major finding of the study was that the net cost of providing public services for nonfarm housing units in two rural townships of Wright County, compared with the property tax revenue generated, was over four times higher than in the City of Buffalo.
- **The Cost of Public Services Study (1999).** As part the 1997 LCMR project, "Reinventing the Agricultural Land Preservation Program", the MDA completed the Cost of Public Services Study, a statewide analysis and series of five case studies on the fiscal (cost and revenue) impact of residential development. The findings generally confirm the results of the MDA's 1989 Wright County Study, that new residential development is more fiscally advantageous when it occurs within established urbanized areas than when it occurs in outlying undeveloped rural areas.

Agricultural Land Preservation and Conservation Assistance Program

The Minnesota Agricultural Land Preservation Program legislation directs the Department of Agriculture to provide both financial and technical assistance to local units of government preparing plans and official controls under the program. Minnesota Statutes, Section 40A.15, subd. 4, states:

¹ Funding provided by the Minnesota Future Resources Fund based on a recommendation by the Legislative Commission on Minnesota Resources (LCMR).

The commissioner [of agriculture] shall administer grants for up to 50 percent of the cost of the activity to be funded, except that grants to the pilot counties shall be for 100 percent of the cost up to \$30,000 of preparing plans and official controls required under this Chapter.

However, since the pilot program, no funds have been appropriated to carry out this authority.

Subdivision 5 of that section states, in part:

The commissioner shall provide for technical assistance for eligible recipients. The commissioner shall provide model plans and model official controls for the preservation of land for long-term agricultural use that address the elements contained in this Chapter.

The 1994 Minnesota Legislature passed a feedlot package that included funding for technical assistance on animal agriculture issues. Since that time, the MDA has provided information on the land use aspects of animal agriculture as part of its awareness and technical assistance on agricultural land preservation under Chapter 40A.

Staff provides direct and ongoing technical support to local governments upon request, including referral to other governmental or consulting services, and presentations to governing bodies. Staff also disseminates information on subjects relating to rural planning issues, including planning for agricultural land preservation, as they relate to animal agriculture.

With the 1994 funding mentioned previously, the MDA developed two technical assistance handbooks and released them in 1996: *Planning for Agricultural Land Preservation in Minnesota: A Handbook for Planning Under Minnesota Statutes Chapter 40A*, and *Planning and Zoning for Animal Agriculture in Minnesota: A Handbook for Local Governments*. These handbooks have been distributed to all counties, many townships, producers, and other members of the public. In 2005, staff began updating the 1996 handbook, *Planning and Zoning for Animal Agriculture in Minnesota*. This effort is an outgrowth of recommendations of the Local Siting Committee of Governor Pawlenty's Livestock Advisory Task Force. The Siting Committee recommended development of a comprehensive training and technical assistance program for local officials, to help provide consistency and predictability in the siting of livestock facilities on the local level. The handbook will be a central part of the curriculum in the program.

Additionally, staff provides technical assistance on assessing the fiscal impact of planning decisions on local budgets. The Development Impact Assessment Model—a Technical Resource (*DIAMaTR*TM) was developed as part of the Cost of Public Services Study under the 1997 LCMR project. *DIAMaTR* is fiscal impact model software designed for use at the whole-jurisdiction level. It is intended to be an effective way for local governments to assess the fiscal implications of their own planning and zoning decisions. Through a 2001 LCMR project,² the Development Impact Assessment Model (*DIAMaTR*) was used to study the local budgetary impact of alternative residential growth patterns, from compact to sprawling, in three cities (Oronoco, Pine Island, and Long Prairie), counties (Goodhue, Olmsted, and Todd), and townships (Oronoco, Pine Island, and Long Prairie); two water and sewer utilities (Pine Island and Long Prairie); and two school districts (Pine Island and Long Prairie-Grey Eagle).

In 2000, staff completed a *Summary on Animal-Related Ordinances In Minnesota Counties* that profiles existing animal-related ordinances (existing as of March 1999) throughout Minnesota counties and several townships. The summary includes information on the most common areas of regulation, which include requirements for setbacks and separation

² Funding provided by the Minnesota Environment and Natural Resources Trust Fund as recommended by the Legislative Commission on Minnesota Resources.

distances, conditional use permits, feedlot size limitations, minimum acreage, land application of manure, manure incorporation and certificate of compliance requirements. The information is available on the MDA website for use by local and state officials, agricultural producers, and the general public. In 2005, staff began updating the summary.

Over the course of the Minnesota Agricultural Land Preservation Program, staff has worked with over one-third of Minnesota's counties in development of agricultural land preservation plans and implementing controls.

Activities Under State Agricultural Land Preservation Policies

In addition to awareness and assistance activities, staff monitors and participates in many activities that have the potential to directly or indirectly affect agricultural land preservation, which is done under the State Agricultural Land Preservation and Conservation Policy (Minn. Stat. §§17.80-17.84). Examples of some of those activities include:

Project Review. Staff reviews state agency and state-funded projects affecting ten or more acres of agricultural land to determine impacts and evaluate alternatives as required by the State Agricultural Land Preservation and Conservation Policy Act (Minnesota Statutes, Sections 17.80–17.84). For projects subject to the Minnesota Environmental Policy Act, staff reviews environmental documents and comments on the agricultural impacts of projects. Major projects that staff has reviewed and participated in include the Metropolitan Airport Commission's Dual Track Airport Planning Process (1992-1996) and the Dakota, Minnesota and Eastern (DM&E) Railroad Powder River Expansion Project (staff was member of the DM&E Working Group that prepared a report to the legislature in April 2001). Staff also has played a lead role in development of mitigation measures for impacts to agricultural land for energy transmission pipelines.

State Land-Use Policy. Staff participates in policy development activities that affect agricultural land preservation. Past activities have included the Sustainable Development Initiative (1993–1998), Community-Based Planning (1997-1998), the State Development Strategy (1999), and the Local Solutions Alliance (2000-2001).

Farm and Ranchland Protection Program. Staff cooperates with the USDA Natural Resource Conservation Service its administration of the federal Farm and Ranchland Protection Program. In 2002, staff assisted in writing the State Farmland Protection Plan, a required element of the application for federal Farm and Ranchland Protection Program funds, under which \$1.2 million has been used to match Dakota County funding for the protection of open space and natural areas.

Metropolitan Council Activities. The MDA works closely with the Metropolitan Council on agricultural land preservation issues, pursuant to the State Agricultural Land Preservation and Conservation, and due to the fact that both agencies administer very similar and complementary agricultural land preservation programs—the Metropolitan Agricultural Preserves Act (Minn. Stat. Ch. 473H) and the Minnesota Agricultural Land Preservation Program (Minn. Stat. Ch. 40A). The MDA and Metropolitan Council staff have worked jointly on policy development, the MDA staff has served on Metropolitan Council advisory bodies, and the MDA has commented on the Metropolitan Development Framework.

Program Participation

Three of five pilot counties in the Minnesota Agricultural Land Preservation Program are currently recording restrictive covenants submitted by property owners: Waseca, Winona and Wright Counties (Douglas County and Kandiyohi County decided not to accept restrictive covenants due to concerns about the long-term funding of the program). The number of covenants recorded in these counties; and the acreage under covenant, are shown in Table 1 (because covenants are accepted until December 31, and most recordings occur at the end of

the year, the table shows covenants recorded as of December 31, 2004). A total of 155,595 acres of agricultural preserves covenants have been recorded to date: 113,164 acres in Waseca County, 32,725 in Winona County, and 9,706 in Wright County. Together with the Metropolitan Agricultural Preserves Program (which had enrollment of 189,200 acres), a total of 344,795 acres was protected by agricultural preserves in 2004.

Table 1. County agricultural preserve covenants (number of covenants and acres under covenant).

Year	WASECA		WINONA		WRIGHT		TOTALS	
	Covenants	Acres	Covenants	Acres	Covenants	Acres	Covenants	Acres
1988	160	25,712	0	0	0	0	160	25,712
1989	61	7,236	8	2,207	47	5,478	116	14,921
1990	850	68,074	1	543	25	2,368	876	70,985
1991	6	514	5	883	71	906	82	2,303
1992	25	2,079	96	22,753	1	62	122	24,894
1993	12	808	6	1,844	6	394	24	3,046
1994	8	7,669	6	2,877	0	0	14	10,546
1995	5	574	5	1,127	12	617	22	2,318
1996	5	558	0	0	0	0	5	558
1997	5	552	0	0	3	156	8	708
1998	0	0	2	342	2	43	4	385
1999	0	0	0	0	0	0	0	0
2000	0	0	0	0	1	53	1	53
2001	0	0	1	75	-6	-371	-5	-296
2002	0	0	1	74	0	0	1	74
2003	-1	-164	0	0	0	0	-1	-164
2004	-4	-448	0	0	0	0	-4	-448
Totals	1,132	113,164	131	32,725	162	9,706	1,425	155,595

Source: December 2005 Survey of Counties Participating in the Minnesota Agricultural Land Preservation Program

Assessment of the Public's Awareness of Agriculture Land Preservation Program

Since the inception of the program, staff has worked diligently to increase the public's awareness about the issues confronting the preservation of agricultural land in Minnesota through the Awareness Program. Technical assistance is offered to local governments to develop an agricultural plan which includes careful consideration of effective tools to preserve and protect agricultural land. Regardless of the efforts, the program has only attracted three counties. Enrollment has slowed considerably in all three counties.

An evaluation of the program was conducted through the 1997 LCMR project, "Reinventing Agricultural Land Preservation." The *Evaluation of Minnesota Agricultural Land Preservation Programs* indicated that many of the Awareness and Assistance Program efforts have had a widespread and positive influence on counties which has resulted in plans and controls that emphasize the importance of agricultural land preservation and protection. In addition it showed that 13.5 million acres of agricultural land in 45 counties are protected for long-term agricultural use by limiting residential density³, and 17 counties had agricultural zoning ordinances which had been in existence since 1990.

³ Data collected in that survey indicates that 45 counties have agricultural zoning that utilizes a density limitation of one dwelling unit per 20 acres or less, and 41 counties have agricultural zoning that utilizes a density limitation of one dwelling unit per 40 acres or less. Land in Minnesota with a density limitation of one dwelling unit per 20 acres or less comprises an estimated 13.4 million acres. Land with a density limitation of one dwelling unit per 40 acres or less comprises an estimated 12.4 million acres

Current Activities

Currently, staff is assisting other Department staff working on providing assistance to local governments and livestock producers in the area of livestock facility siting, including development of a comprehensive training and technical assistance program for local government officials. Components of that effort are development of a checklist to clarify the expectations of the siting process, and update of the 1996 handbook, *Planning and Zoning for Animal Agriculture in Minnesota*.