



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

**Sustainable Forest
Incentive Program**

NOVEMBER 2013

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

November 2013

Members of the Legislative Audit Commission:

The Legislature created the sustainable forest incentive program to encourage a long-term commitment to sustainable forestry management by private landowners. The program is administered by the Department of Revenue with limited involvement of the Department of Natural Resources.

We found that the incentive payments made to landowners are not clearly aligned with specific program goals. For example, while payments are an implicit acknowledgement that property taxes may be a disincentive to sustainable forest management, the amount of an incentive payment is not tied to the amount of property taxes a landowner actually pays. In addition, the program requires little assurance that participating landowners comply with program requirements.

We make several recommendations to improve the program. For example, we recommend that the Legislature align incentive payments more directly to program goals. In addition, we recommend more oversight and monitoring to ensure compliance with the program. Beyond these recommendations to improve the program, we also suggest that the Legislature consider repealing the Sustainable Forest Incentive Act and using other tools and programs to achieve the state's goals.

Our evaluation was conducted by Carrie Meyerhoff (evaluation manager) and Catherine Reed. The Department of Revenue and the Department of Natural Resources cooperated fully with our evaluation.

Sincerely,

A handwritten signature in black ink that reads 'Jim Nobles'.

James Nobles
Legislative Auditor

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Summary

The Sustainable Forest Incentive Act (SFIA) does not require sufficient assurance that program participants comply with requirements.

Key Facts and Findings:

- Between 2003 and 2013, the state made over \$44 million in payments through the sustainable forest incentive program. (p. 13)
- The number of participants in the program has increased each year and exceeded 2,200 in 2013, but participants' enrolled acreage has dropped recently due to changes to the Sustainable Forest Incentive Act (SFIA). (pp. 8-9)
- Sustainable forest incentive payment amounts are not tied to property taxes or program goals. (p. 14)
- In some cases, sustainable forest incentive payments exceed property taxes on enrolled land. (pp. 15-17)
- SFIA relies primarily on self-reported compliance; it requires little third-party verification or oversight. (p. 31)
- Some owners of land in the sustainable forest incentive program have violated the restriction against developing the property. (p. 28)
- SFIA's penalty provision is not sufficient to address different circumstances of noncompliance. (pp. 33-35)
- The Department of Revenue reviews program applications, but it is not equipped to verify all program requirements. (p. 29)
- Subsequent owners of land enrolled in the sustainable forest incentive program create challenges to program oversight. (pp. 35-37)

Key Recommendations:

- The Legislature should either tie sustainable forest incentive payments more directly to SFIA's goals or repeal SFIA and use other programs to encourage sustainable forest management. (p. 39)
- The Legislature should require program applicants to register their forest management plans with the Department of Natural Resources. (p. 42)
- The Legislature should require increased verification of program compliance. (p. 43)
- The Legislature should clarify and expand penalty options for noncompliance with SFIA. (p. 45)
- The Legislature should amend SFIA to better address changes in ownership of enrolled land. (p. 43)

Report Summary

Enacted in 2001, the Sustainable Forest Incentive Act (SFIA) created a program to encourage sustainable forest management practices on private forest land, replacing a forest taxation law dating from 1957. Over 40 percent of the 17 million forested acres in Minnesota are privately owned. In SFIA, the Legislature recognized the importance of engaging private forest landowners in sustainable forest management.

The sustainable forest incentive program offers \$7 per acre to landowners who enroll their land in the program, obtain and follow a forest management plan, and record a document (called a “covenant”) that restricts development on the enrolled land. Landowners who enroll more than 1,920 acres must allow public access. The program requires that land be enrolled for a minimum of eight years.

In 2013, approximately 2,300 landowners were participating in the program, with over 737,000 enrolled acres. In 2011, prior to legislative changes to SFIA, participating landowners had over 900,000 acres enrolled in the program. Nine owners had more than 1,920 enrolled acres in 2013. That year, the state made incentive payments totaling \$5.16 million.

Sustainable forestry involves informed and active management of forest land, but it does not prescribe management objectives.

Sustainable forest management is informed and active management of forest resources to achieve economic, environmental, and social goals,

without compromising the ability of future generations to do the same.

Other than keeping forest land as forest land, sustainable forest management does not have one specific goal. Goals might include producing timber, providing recreation opportunities, or preserving wildlife habitat, among others.

While intended to encourage sustainable forest management by offsetting property taxes, the sustainable forest incentive payment amount is not reflective of property taxes.

In passing SFIA, the Legislature recognized the disincentive to sustainable forest management that property taxes can create. However, the incentive payment amount is not based on property taxes.

Our review of a sample of participants found that their expected incentive payment in 2013 would equal between 12 and 306 percent of their property taxes on the enrolled land. For example, one landowner’s property taxes averaged \$3.25 per acre, but the incentive payment is \$7 per acre. Another landowner, whose taxes on one parcel averaged over \$100 per acre, would receive the same per-acre incentive payment.

We recommend the Legislature either align sustainable forest incentive payment amounts with the goals it is trying to achieve related to private forest land or repeal SFIA.

The forest management plans required by SFIA are underutilized as a tool of oversight and accountability.

Sustainable forest incentive payment amounts are not tied to property taxes and, in some cases, greatly exceed them.

The Legislature could amend SFIA to make greater use of forest management plans, but doing so could increase administrative costs.

The sustainable forest incentive program requires enrolled land to be managed according to a plan developed by a forester approved by the Department of Natural Resources (DNR). The activities recommended in plans must be consistent with landowners' objectives and guidelines developed by the Minnesota Forest Resources Council.

Requiring a forest management plan could support sustainable forestry because it ensures that landowners have contact with a professional forester. The forester's suggested activities could increase the benefits from well-managed land or prevent negative consequences of poor management. Owners' objectives listed in a sample of plans were consistent with sustainable forest management.

At the same time, the state has little assurance that plans meet minimum requirements and that owners follow their plans. To provide more oversight, we recommend that the Legislature require landowners to register the plans with DNR. In addition, the Legislature should consider requiring renewed plans to include an assessment of the extent to which a landowner followed recommendations in previous plans. DNR might need additional resources, depending on how its role changes.

Restrictions against development of forest land enrolled in the program have, at times, gone unheeded.

Landowners must record a covenant prohibiting development of land enrolled in the sustainable forest incentive program, and subsequent owners of the land must abide by it. But, there is little third-party verification. In some cases,

landowners have developed land enrolled in the program. Violations of the covenant have been perpetrated by participating landowners and subsequent owners of enrolled land who never applied to receive payments.

Identified violations are rare, but the true extent of violations is unknown because third-party oversight of the program is limited.

The current approach to program accountability provides little assurance that persons receiving payments comply with program requirements.

The sustainable forest incentive program relies heavily upon applicants' and participants' attestations that they meet program requirements. The Department of Revenue can confirm some aspects of applicants' eligibility. For example, staff can make sure land is not tax exempt or tax delinquent. The department relies upon the assessment of the forest management plan writer as to whether the land meets the definition of "forest land" for the purposes of SFIA.

Participants attest to their ongoing compliance annually in order to receive the year's incentive payment. However, currently, the Department of Revenue does not have the capacity or expertise to determine whether landowners are following their management plans or that their land continues to be eligible. For example, while already enrolled in the program, all or parts of the land could become ineligible by being classified as 2c Managed Forest Land or tax exempt. Or, the landowner may have become delinquent in paying property taxes.

SFIA’s penalty provision does not provide adequate clarity and flexibility.

DNR does not have a role in confirming initial or ongoing eligibility of enrolled land, and SFIA does not require assistance of county assessors (although the Department of Revenue seeks it, and some assessors are thorough in the help they provide).

We recommend the Legislature increase verification that program participants continue to be eligible for incentive payments. However, increased verification would increase state administrative costs. One option is requiring county assistance with verification, but limiting county involvement was one of the goals when SFIA was enacted.

Subsequent ownership of land enrolled in the program creates oversight challenges.

Subsequent owners of land enrolled in the sustainable forest incentive program create numerous challenges. Even if the owners do not apply for incentive payments, the land remains bound by the SFIA covenant’s development restrictions.

Challenges begin with the Department of Revenue learning who the new owners are if the sellers do not inform the department and the new owners do not apply to the program. If the new owners do not apply, the department does not include them or their land in the limited oversight that does occur. If they do apply, challenges include confirming that their land is eligible for them to receive program payments and that they have a forest management plan.

We recommend that the Legislature amend SFIA to better address changes in ownership. The Legislature should also consider how

the covenant might better prevent parcelization and development. For example, the program could prohibit a single covenant from applying to tax parcels with different owners. This would not eliminate changes of ownership, but would increase participation costs of landowners who want the flexibility to sell portions of enrolled land.

SFIA penalty provisions are insufficient.

Penalties for failing to verify compliance annually, falsely confirming compliance, or developing enrolled land must be sufficient to deter the behavior. Currently, penalty provisions are limited and seldom used. The Department of Revenue could recall only one case in which it has imposed a financial penalty.

The department has indicated that SFIA’s penalty provision is not always workable. For example, if a landowner has not received an incentive payment in the previous four years, imposing a penalty equal to the previous four years’ payments plus interest—the current penalty provision—is without effect. We recommend the Legislature increase penalty options and clarify circumstances in which the department can and should impose them.

Introduction

The sustainable forest incentive program is administered primarily by the Minnesota Department of Revenue.

The sustainable forest incentive program provides an annual payment to participating private forest landowners. As conditions of receiving the payment, landowners are required to implement a forest management plan, follow state forest management guidelines when completing activities, and record a covenant that restricts development on their land. Owners of large tracts of forest land who participate in the program must allow public access to their land. The program is administered by the Department of Revenue.

In May 2013, the Office of the Legislative Auditor undertook an evaluation of the program in response to direction from the Legislative Audit Commission. We addressed the following questions:

- **What is the history of the Sustainable Forest Incentive Act (SFIA)? What was it designed to achieve, and how has the program changed over time? How many landowners participate in SFIA, and how many acres are enrolled?**
- **To what extent do SFIA payments offset property taxes on enrolled land?**
- **Do the design and implementation of the sustainable forest incentive program provide assurance that participants are complying with program requirements?**

To answer these questions, we reviewed the act's history, analyzed program data, and reviewed participant files and forest management plans. We also interviewed staff from the departments of Revenue and Natural Resources, county assessors, and county recorders. In addition, we spoke with some participating landowners, a consulting forester, researchers, and others.

We did not evaluate the Department of Revenue's administration of the sustainable forest incentive program, taxation of forest land more generally, or other programs to encourage sustainable forest management among private landowners.

Background

The Legislature enacted the Sustainable Forest Incentive Act (SFIA) to encourage sustainable forestry by private landowners.

According to the Sustainable Forest Incentive Act (SFIA), its purpose is “to encourage the state's private forest landowners to make a long-term commitment to sustainable forest management.”¹ Land in private ownership represents a significant portion of Minnesota’s forested acres. Minnesota contains over 17 million acres of forest land, approximately 44 percent of which is privately owned.² In passing SFIA, the Legislature recognized the extent of private ownership of forest land in the state, the benefits that healthy forests provide to Minnesota citizens, and the disincentive that ad valorem property taxes could present to making long-term investments in forest management.³

In this chapter, we briefly explain sustainable forest management before providing an overview of the history of Minnesota’s forest taxation programs and SFIA. We also present data on program participation.

SUSTAINABLE FOREST MANAGEMENT

According to Minnesota statutes, sustainable forest management involves managing forest resources to achieve the state’s economic, environmental, and social goals, now and in the future.⁴ Forest resources encompass not only trees capable of producing timber, but also biological diversity, recreation, wildlife habitat, air, water, and aesthetic values, among other things.⁵ Economic, environmental, and social goals derived from these resources are wide-ranging. They include, for example, ensuring adequate timber for local industries; protecting rare species; improving water quality; providing opportunities for hunting, fishing, bird watching, or other forms of recreation; and preserving historic or cultural features. According to the Minnesota Forest Resources Council, sustainable forestry is:

A proactive form of management that provides for the multiple uses of the forest by balancing a diversity of both present and future needs. It is a process of informed decision-making that takes into account resource needs, landowner objectives, site

¹ *Minnesota Statutes* 2013, 290C.01.

² This estimate is from the U.S. Forest Service, Forest Inventory and Analysis Unit. Under the unit’s confidentiality policy, all private owners (such as businesses, conservation organizations, and individuals) are grouped together. In addition, land owned by tribal governments is included with private land.

³ *Laws of Minnesota* 2001, First Special Session, chapter 5, art. 8, sec. 5.

⁴ *Minnesota Statutes* 2013, 89A.02 (1); and 89A.01, subd. 13.

⁵ *Minnesota Statutes* 2013, 89.001, subd. 8.

capabilities, existing regulations, economics and the best information available at any given time.⁶

Sustainable forest management means, in part, maintaining forest land as forest land. Threats to doing so include parcelization and development. Parcelization is the division of tracts of land under single ownership to smaller parcels with different owners. Even without development, parcelization can make sustainable forestry difficult because different owners might have different objectives for their land. Development fragments forest land. For example, development amidst a tract of forest land might break up wildlife habitat.

Sustainable forest management does not necessarily mean leaving forest land untouched. Rather, it means managing forest land in a way that minimizes negative impacts on the resources and the benefits the resources provide. For example, sustainable forest management can include the harvest method known as “clear cutting,” during which all trees in an area are harvested. This method might be appropriate to encourage growth of trees that require a lot of sunlight, and the harvested timber could contribute to economic goals. If the harvest is completed following the state’s timber harvest and forest management guidelines,⁷ it will have been designed to achieve economic goals while minimizing negative effects on other forest resources. To accomplish that, the harvest might be designed to avoid damage to natural and cultural features and leave types or quantities of trees to minimize negative impacts on bodies of water in the harvest area, provide wildlife habitat, reduce the negative visual effect of the harvest, and perpetuate the type of tree. The forest land is maintained as long as the cleared land is not converted to another use. The landowner could allow trees to regenerate naturally or plant trees appropriate for the land and the owner’s objectives.

As this brief discussion suggests, practicing sustainable forestry can be challenging and its goals wide-ranging. The sustainable forest incentive program provides a monetary incentive to private forest landowners to encourage them to make a commitment to sustainable forest management. The Legislature intended the incentive payment to offset landowners’ property taxes, based on the assumption that property taxes can be a disincentive to sustainable forest management.

Threats to sustainable forest management include parcelization and development.

⁶ Minnesota Forest Resources Council, *Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers* (St. Paul, January 2013), 1. The Legislature established the council in 1995 to make recommendations “with respect to forest resource policies and practices that result in the sustainable management, use, and protection of the state’s forest resources.” The council’s current membership includes 17 members, 16 appointed by the Governor and 1 appointed by the Indian Affairs Council. Membership includes representatives of various interests, such as conservation organizations; commercial logging; nonindustrial private forest landowners; and county, state, and federal government. *Laws of Minnesota* 1995, chapter 220, sec. 80, subd. 2, and *Minnesota Statutes* 2013, 89A.03.

⁷ Minnesota Forest Resources Council, *Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers* (St. Paul, January 2013). The Minnesota Forest Resources Act directs the council to coordinate development of the guidelines. *Minnesota Statutes* 2013, 89A.05.

LEGISLATIVE HISTORY AND PROGRAM CHANGES

Determining how to appropriately tax forest land has been a challenge in Minnesota for decades.⁸ When the legislation passed, SFIA incorporated forest land that had been taxed under earlier forest taxation laws: the auxiliary forest law and the tree growth tax law.

Auxiliary Forest Law

Enacted in 1927, the auxiliary forest law included a small annual tax plus a yield tax on timber for private landowners who enrolled their forest land in the program. Auxiliary forest contracts could last up to 50 years and be renewed for up to another 50 years. Apparently, enrollment in the program was weak; just over 225,000 acres were enrolled as of December 1958, with over half of them in Koochiching County.⁹ The 1974 Legislature prohibited new or renewed auxiliary forest contracts. Expiring auxiliary forest land was to be automatically enrolled in the tree growth tax law. Now, expiring land qualifies for enrollment in the sustainable forest incentive program. There were approximately 32,000 acres of auxiliary forest when SFIA passed in 2001, and 11,700 acres of auxiliary forest for taxes payable in 2013. Currently, auxiliary forest owners pay taxes of \$0.10 per acre annually, as well as a yield tax on timber.

SFIA was enacted to address concerns with earlier forest taxation laws.

Tree Growth Tax Law

In passing the tree growth tax law, the 1957 Legislature asserted that the state's general approach to ad valorem property taxes was not equitable when applied to forest land, resulting "in inadequate taxes on some lands and excessive tax forfeiture on other lands."¹⁰ The tree growth tax was based on the value of annual timber growth on land, with a flat per-acre tax for temporarily or permanently nonproductive land. In 2000, approximately 710,630 acres were taxed under the tree growth tax law.

However, once implemented, there were concerns with the tree growth tax law; for example:

- Not all counties participated, and those that did varied in their administration of the law;
- The amount of property tax reduction was not an adequate incentive for forest owners to practice sustainable forest management; and
- All participants had to allow public access on their land, which was a strong deterrent to participating.

⁸ Samuel Trask Dana, John H. Allison, and Russell N. Cunningham, *Minnesota Lands: Ownership, Use, and Management of Forest and Related Lands* (Washington, DC: The American Forestry Association, 1960), xix and 274-284.

⁹ *Ibid.*, 278.

¹⁰ *Laws of Minnesota 1957*, chapter 639, sec. 2.

SFIA resulted from a study commissioned by the 2000 Legislature.

Concerns about the tree growth tax law caused legislators to commission a study to examine taxation of forest land in Minnesota.¹¹ The Minnesota Forest Resources Council and property tax experts from the Department of Revenue prepared the study. They received advice from a 12-member task force made up of representatives from several stakeholder groups such as the timber industry, the Minnesota Center for Environmental Advocacy, and county assessors. The study identified issues and made recommendations for improvements to the existing tax system.¹² The recommendations formed the basis of a bill proposing SFIA, which replaced the tree growth tax law. As shown in Exhibit 1.1, SFIA included features to address concerns with that law.

Exhibit 1.1: Sustainable Forest Incentive Act's Response to Concerns with the Tree Growth Tax Law

Concern with Tree Growth Tax Law	Sustainable Forest Incentive Act Feature
<ul style="list-style-type: none"> • Inconsistent administration by counties • Financial benefit did not foster sustainable forest management practices • Public access requirements that were a deterrent to participating 	<ul style="list-style-type: none"> • State administered • The original payment calculation was designed to provide a higher incentive payment • Public access required only of landowners enrolling more than 1,920 acres

NOTE: Supporters of the Sustainable Forest Incentive Act (SFIA) voiced the concerns with the tree growth tax law during legislative hearings and noted the features of SFIA to address the concerns.

SOURCE: Office of the Legislative Auditor, review of legislative hearings.

Sustainable Forest Incentive Act

Through SFIA, the Legislature created a program administered primarily by the Department of Revenue with limited involvement from the Department of Natural Resources. The program pays private forest landowners to make a commitment to sustainable forest management. Currently, participants receive an annual payment of \$7 per acre if they fulfill several requirements. In order to participate, a landowner must enroll a minimum of 20 contiguous acres of forest land. In addition, landowners must:

- have and follow a forest management plan prepared within the previous ten years by an approved plan writer;
- follow the state's timber harvesting and forest management guidelines when conducting forest management activities;
- record a covenant on the land, which restricts development and is binding for at least eight years; and
- allow public access if they have enrolled more than 1,920 acres.

¹¹ *Laws of Minnesota* 2000, chapter 490, art. 5, sec. 38, subd. 1.

¹² Department of Revenue, *A Tax System That Makes Sense for Minnesota: Forestry Tax Reform* (St. Paul, 2000), 7-9 and 14-19.

There have been changes to the act over time, several of which we discuss below.

Payments

When the Legislature first enacted SFIA, the per-acre payment was determined as the greatest of three values, as shown in Exhibit 1.2. In practice, the highest per-acre payment always resulted from option one, which was the difference between taxes calculated based on estimated market value and current use value. The payment formula was used from 2003 through 2010.

Initially, SFIA based per-acre incentive payments on a complex formula.

Exhibit 1.2: Original Sustainable Forest Incentive Act Payment Formula

The payment shall equal the greater of:

- (1) The difference between the property tax that would be paid on the property using the previous year's statewide average total township tax rate and the class rate for class 2b Timberland if the property were valued at (a) the statewide average estimated market value per acre for class 2b Timberland and (b) the statewide average timberland current use value per acre.^a
- (2) Two-thirds of the property tax amount determined by using the previous year's statewide average total township tax rate, the statewide average estimated market value per acre of class 2b Timberland, and the class rate for 2b Timberland.
- (3) \$1.50 per acre.

^a Current use value means the statewide average annual income per acre, multiplied by 90 percent and divided by the average annual effective interest rate for St. Paul on new loans under the Farm Credit Bank system. The statewide net annual income shall be a weighted average based on the most recent data as of July 1 of the computation year on stumpage prices and annual tree growth rates and acreage by cover type provided by the Department of Natural Resources and the United States Department of Agriculture Forest Service North Central Research Station.

SOURCE: *Laws of Minnesota* 2001, First Special Session, chapter 5, art. 8, sec. 11.

Problems related to the calculation of payment amounts arose in 2010 when a change in the formula caused the per-acre payment to increase by nearly 80 percent. The Legislature eliminated the 2b Timberland classification used in the original formula and replaced it with a new 2c Managed Forest Land classification.¹³ The 2c Managed Forest Land classification included land with significantly higher market values than the 2b Timberland classification contained, causing the calculated per-acre payment to increase from \$8.74 in 2009 to \$15.67 in 2010.

Due to this increase and budget concerns, the Legislature capped 2010 incentive payments at \$100,000 per participant.¹⁴ The payment cap affected six landowners with the largest number of acres enrolled in the program. In 2010, these landowners collectively had over 542,000 acres enrolled in the program. Without the cap, the payments for these six landowners would have totaled

¹³ *Laws of Minnesota* 2009, chapter 88, art. 10, sec. 15. A more detailed description of 2c Managed Forest Land is included in the Appendix.

¹⁴ *Laws of Minnesota* 2010, First Special Session, chapter 1, art. 13, sec. 4, subd. 3.

In 2011, the payment was simplified to \$7 per acre.

nearly \$8.5 million. The 2011 Legislature continued the \$100,000 cap per participant and set the per-acre payment at \$7.¹⁵

Three industrial landowners affected by the cap sued the state over the payment reduction, and at least one of them reportedly threatened to block some public access, causing legislators to reexamine the payment cap. These landowners lost their suit but were permitted to withdraw their land from the program without penalty.¹⁶ As a result, two of these landowners unenrolled some of their land from the sustainable forest incentive program. One landowner unenrolled nearly 130,000 acres of its land from the program.

The 2013 Legislature removed the \$100,000 cap and added a provision to SFIA allowing participants to request to leave the program immediately if changes to the payment formula result in a payment reduction.¹⁷ The Legislature also provided for the reenrollment of any acreage landowners removed in response to the payment cap.¹⁸ As a result, the previously mentioned landowner reenrolled much of its acreage in the program.

Public Access

Landowners with more than 1,920 acres enrolled in the program must allow public access to their land.

Industrial forest landowners have a long history of allowing public access to their land in Minnesota for recreational purposes. Similar to the tree growth tax law, SFIA included a public access requirement, but unlike the previous law, SFIA limited it to landowners with more than 1,920 acres enrolled in the program. These participants were required to allow nonmotorized public access.¹⁹ In 2013, legislation included a provision requiring these participants to also allow motorized public access on established and maintained roads and trails.²⁰

Easements

SFIA has always included some restrictions against enrolling land subject to certain conservation easements.²¹ Some legislators and other stakeholders have characterized simultaneous participation in both the sustainable forest incentive program and a conservation easement program as a form of “double-dipping” in that landowners would receive public money from multiple programs for the same general purpose.

In 2013, legislators added prohibitions on program enrollment of any land that becomes subject to an easement purchased with money from the Outdoor Heritage Fund, or comparable easement, in the future. Prior to 2013, SFIA did not specifically prohibit land subject to these easements from being enrolled in

¹⁵ *Laws of Minnesota* 2011, First Special Session, chapter 7, art. 6, sec. 12.

¹⁶ *Ibid.*

¹⁷ *Laws of Minnesota* 2013, chapter 143, art. 2, secs. 4 and 5.

¹⁸ *Ibid.*, sec. 35.

¹⁹ *Laws of Minnesota* 2001, First Special Session, chapter 5, art. 8, sec. 7, subd. 3.

²⁰ *Laws of Minnesota* 2013, chapter 143, art. 2, sec. 3.

²¹ *Laws of Minnesota* 2001, First Special Session, chapter 5, art. 8, sec. 6, subd. 6.

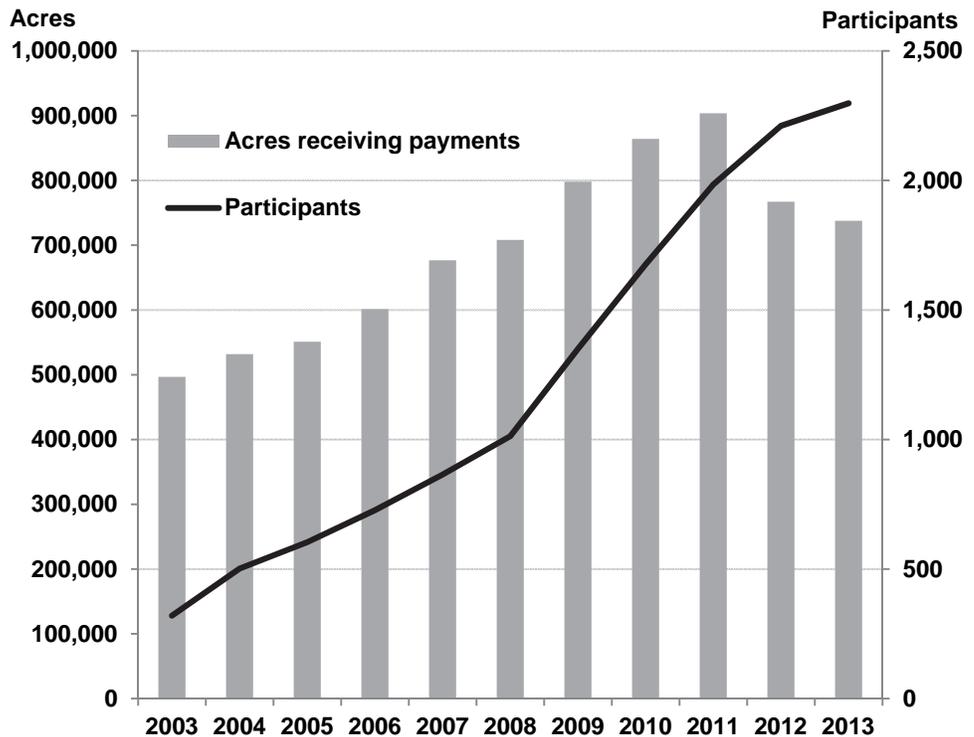
the sustainable forest incentive program. The Legislature also included a specific provision prohibiting continued enrollment of “land exceeding 60,000 acres that is subject to a single conservation easement [purchased with Outdoor Heritage funds].”²² In 2010, Blandin Paper Company placed nearly 190,000 acres under such an easement, including most of its acres enrolled in the sustainable forest incentive program. As a result of this provision, the vast majority of Blandin’s enrolled acreage is no longer eligible for incentive payments. According to Department of Revenue data, Blandin did not receive payment in 2013 for any of its previously enrolled acres.

PARTICIPATION

In 2013, the sustainable forest incentive program had approximately 2,300 participants. As Exhibit 1.3 shows, the number of participants has increased each year since the first program payments in 2003. Acreage for which the state made payments increased until 2011, when some owners of large acreages withdrew land in response to the payment cap discussed earlier.

Participation in the sustainable forest incentive program has increased each year.

Exhibit 1.3: Paid Acres and Participants in the Sustainable Forest Incentive Program, 2003-13



However, acreage for which the state has made incentive payments has dropped in recent years due to legislative changes to SFIA.

NOTE: Data reflect the number of participants who received payments in the indicated year and the number of acres for which they received payment.

SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue payment data.

²² *Laws of Minnesota* 2013, chapter 143, art. 2, sec. 2.

As Exhibit 1.4 shows, the number of new participants has varied throughout the years of the program and peaked in 2011 with over 380 new participants. These new participants applied in 2010, the year that saw the highest per-acre payment in the program's history. Exhibit 1.4 also shows the percentage of new participants in each cohort who received a payment in 2012. For example, of the 320 participants who began participating in 2003, around 80 percent received a payment in 2012.

Exhibit 1.4: Participants in the Sustainable Forest Incentive Program by First Year of Participation

	First-Year Participants	Participants Receiving Payments in 2012	Percentage Still Participating in 2012 ^a
2003	320	257	80%
2004	190	167	88
2005	106	91	86
2006	137	126	92
2007	149	130	87
2008	167	154	92
2009	351	322	92
2010	371	356	96
2011	383	373	97
2012	239	239	100

NOTES: Data for some years did not include unique identifiers that would permit us to identify new participants and track participation over time with absolute certainty. We are confident that the table provides a reasonably accurate picture of new participants each year and their ongoing participation.

^a This column reflects the percentage of landowners who received a payment in 2012. People who did not receive a payment may still be participating in the program but failed to return their certification form in time to receive the 2012 payment.

SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue payment data.

In 2012, nine landowners accounted for almost half of the acreage in the sustainable forest incentive program.

Exhibit 1.5 shows the distribution of 2012 participants by their enrolled acreage. In 2012, nine landowners had each enrolled more than 1,920 acres in the program, ranging from the Fond Du Lac Band of Ojibwe with 2,132 acres, to Blandin Paper Company with 185,537. Overall, these owners received payment for 370,644 acres in 2012, and are required to allow public access on all enrolled acres. These landowners represented nearly 50 percent of the acres receiving payment, and nearly 18 percent of the total payment amount. While landowners with over 1,920 enrolled acres made up a large share of program acreage in 2012, the vast majority of participants had a small number of enrolled acres. For 2012 program participants, the median enrolled acreage was 120 acres.

Exhibit 1.5: Sustainable Forest Incentive Program Participants’ Enrolled Acres, 2012

Acreage Range	Participants	Percentage of Participants	Acres	Percentage of Acres
Less than or equal to 40 acres	270	12.2%	9,497	1.2%
41 to 80 acres	498	22.5	34,519	4.5
81 to 160 acres	683	30.8	85,826	11.2
161 to 320 acres	487	22.0	112,476	14.7
321 to 640 acres	196	8.8	84,812	11.1
641 to 1,920 acres	72	3.3	69,267	9.0
More than 1,920 acres	9	0.4	370,644	48.3
Total	2,215	100.0%	767,041	100.0%

SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue payment data.

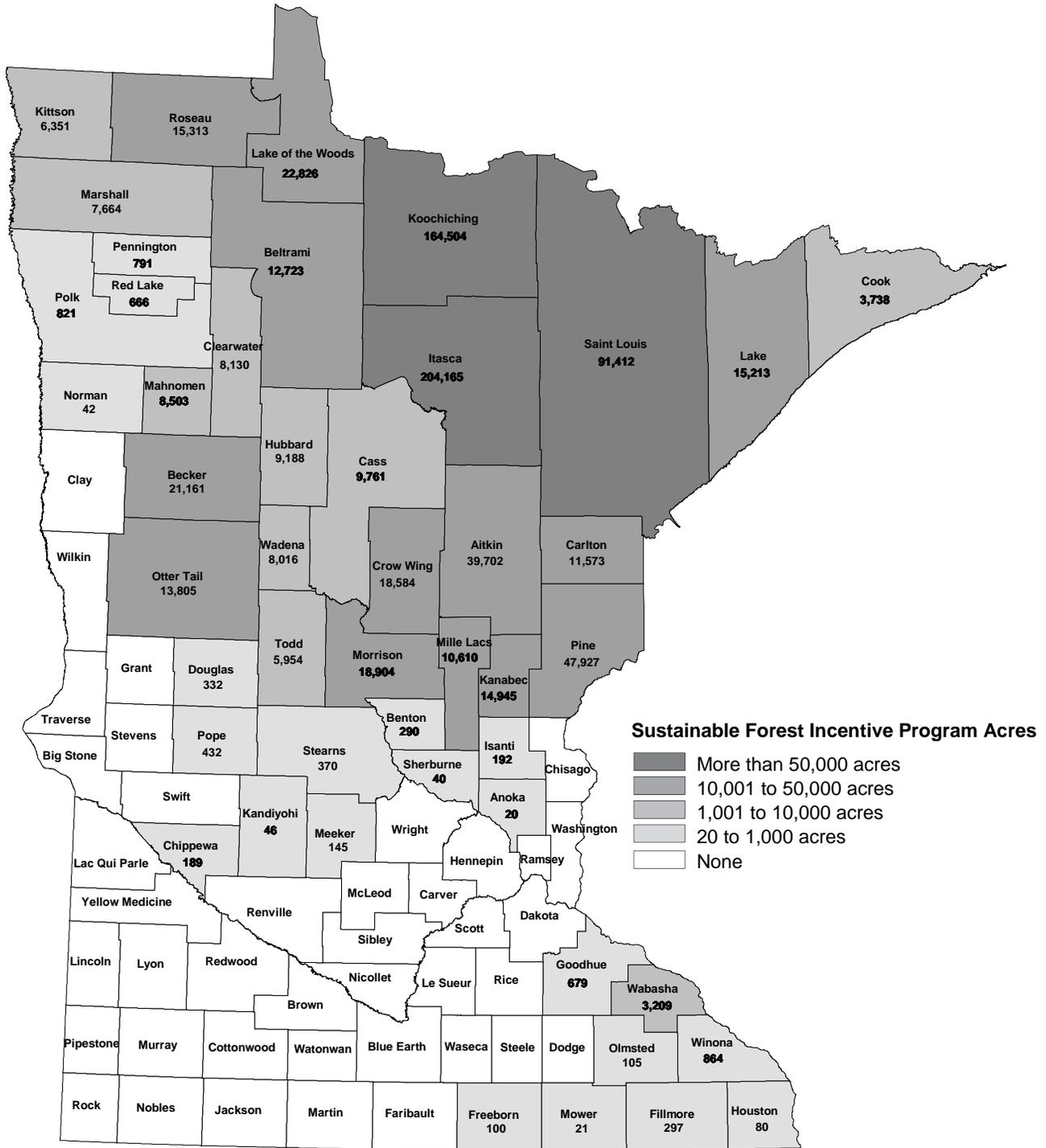
Acreage by County

Most of the acreage enrolled in the sustainable forest incentive program is in northern Minnesota.

Forty-seven of Minnesota’s 87 counties have some acres enrolled in the sustainable forest incentive program. The greatest acreages of private forest are in northern Minnesota, with over 3.6 million acres in the northeast and 2.3 million acres in the northwest.²³ Perhaps not surprisingly, enrolled acreages are highest in these regions, as Exhibit 1.6 shows. In July 2013, Itasca and Koochiching counties contained nearly half of the acres enrolled in the program. Industrial forest landowners own a large amount of land in both of these counties and account for over one-third of the total enrolled acres. Many counties with no enrolled acres are in western and southern Minnesota or in the Twin Cities seven-county metropolitan area.

²³ These estimates are from the U.S. Forest Services, Forest Inventory and Analysis Unit. Under the unit’s confidentiality policy, land owned by all private owners (such as businesses, conservation organizations, and individuals) and tribal governments is grouped together.

Exhibit 1.6: Acres Enrolled in the Sustainable Forest Incentive Program by County, July 2013



SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue program data.

Incentive Payment

Between 2003 and 2013, the state made sustainable forest incentive payments totaling over \$44 million.

When the Legislature passed the Sustainable Forest Incentive Act (SFIA), it sought to encourage private landowners to engage in sustainable forest management. To do so, the Legislature created a program that provides a payment to offset property taxes, noting that “ad valorem property taxes represent a significant annual cost that can discourage long-term forest management investments.”¹

Currently, the sustainable forest incentive program provides a \$7 per-acre incentive payment to participating landowners whose land meets program eligibility criteria.² SFIA includes an open appropriation from the General Fund to make the incentive payments, which are taxable income.³ Between 2003 and 2013, program participants received over \$44 million in sustainable forest incentive payments. In 2013, participants received \$5.16 million in incentive payments for approximately 738,000 acres. One participant received over one-third of the total payment amount; the median payment per participant was \$840.

As Exhibit 2.1 shows, between 2003 and 2010 the per-acre payment increased each year, from \$3.19 to \$15.67. Due to the \$100,000 payment cap discussed in Chapter 1, some owners of large numbers of enrolled acres received less than the per-acre payment shown in the exhibit for 2010 through 2012. For example, the two participants with the largest numbers of enrolled acres received, in effect, \$0.78 per acre and \$0.54 per acre in 2012.

We found:

- **The sustainable forest incentive payment is easy to administer and the cost is borne by the state, but the use of a single, flat per-acre payment could limit the effectiveness of the incentive for sustainable forest management.**

A single payment rate for all participating landowners simplifies the Department of Revenue’s administration of the program. A flat per-acre payment rate eases administration by eliminating the need to calculate a per-acre rate each year, while also simplifying landowners’ assessments of whether to participate in the program.⁴ A single, flat payment rate also makes it easier for the state to predict program costs. Finally, as stated above, the financial incentive is paid by the state from the General Fund.

¹ *Minnesota Statutes* 2013, 290C.01.

² The eligibility criteria are discussed in Chapter 3. In addition to meeting eligibility criteria, participating landowners must return an annual certification form to receive the incentive payment. The form is discussed in Chapter 4.

³ *Minnesota Statutes* 2013, 290C.08, subd. 2.

⁴ As described in Chapter 1, incentive payments used to be the highest of three values, two of which were based on formulas that needed to be calculated each year.

Exhibit 2.1: Sustainable Forest Incentive Program Payments, 2003-13

The per-acre sustainable forest incentive payment peaked in 2010 at \$15.67.

	Per-Acre Payment ^a	Total Payment
2003	\$ 3.19	\$1,584,339
2004	3.62	1,925,109
2005	4.32	2,380,186
2006	5.24	3,150,817
2007	7.18	4,858,311
2008	8.61	6,097,869
2009	8.74	6,975,569
2010 ^{b, c}	15.67	5,649,579
2011 ^c	7.00	3,103,011
2012 ^c	7.00	3,370,389
2013	7.00	5,159,559

^a From 2003 through 2010, the per-acre payment was based on a formula. The Legislature changed the per-acre payment to a flat rate of \$7 per acre beginning with the 2011 payment.

^b The 2010 increase in the per-acre payment reflects a change in the payment formula. Prior to 2010, the per-acre payment was based, in part, on the statewide average value per acre of land classified as 2b Timberland. In 2010, the property class used to determine the statewide average value per acre was 2c Managed Forest Land.

^c The Legislature capped the annual payment to any single participant at \$100,000. The per-acre payment rate reflected in the table is not the effective rate per acre for those participants affected by the cap.

SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue payment data.

However, there are two issues that could limit the effectiveness of the payment. First, we found:

- **The sustainable forest incentive payment amount is not tied to the program's purpose.**

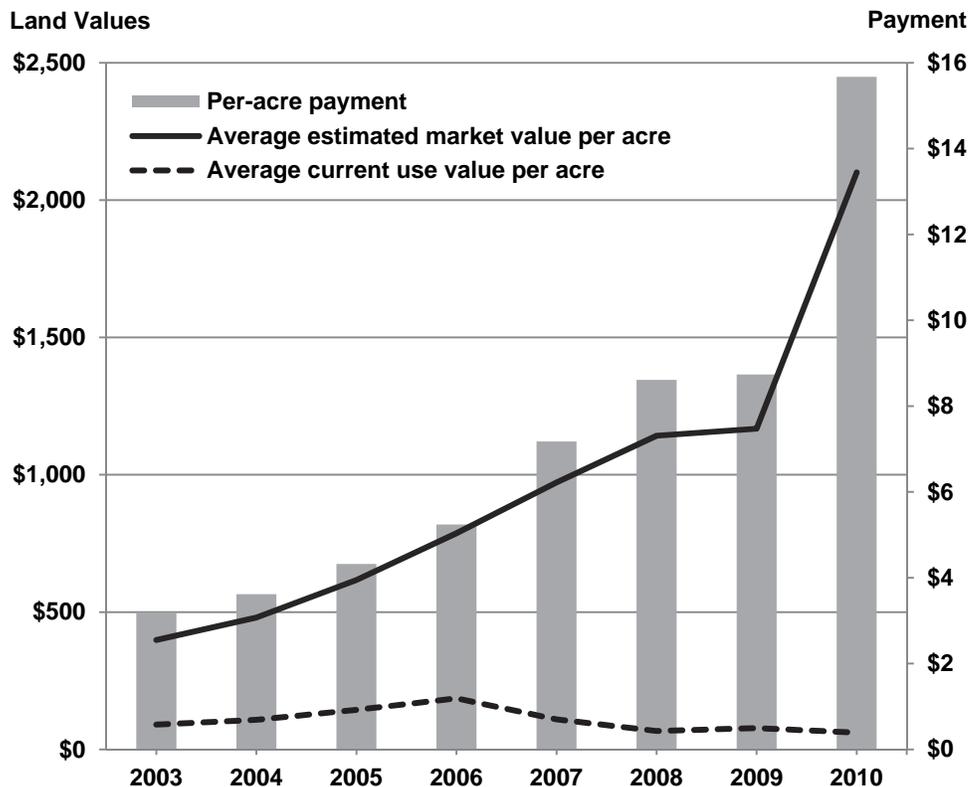
Although the sustainable forest incentive payment is intended to provide an offset to property taxes, the current payment rate of \$7 per acre is not tied to the amount of property taxes paid. It is not tied to any other specific program objectives either.

During the first several years of the program, the per-acre payment was based on property taxes, reflecting the difference between property taxes based on estimated market value and current use value.⁵ Exhibit 2.2 illustrates the increase of the statewide average estimated market value and the overall decrease of the statewide average current use value during that time period. As the average estimated market value increased relative to the current use value, the per-acre payment increased. Now, the incentive payment is \$7 per acre regardless of property taxes or the incentives that changes in property values or current use values might introduce.

⁵ The current use value was based on stumpage prices, annual tree growth rates, and acreage by cover type.

Exhibit 2.2: Components of Sustainable Forest Incentive Payment Formula, 2003-10

The amount of the incentive payment is not tied to property taxes or program goals.



NOTE: The exhibit illustrates the major components of the sustainable forest incentive formula option that determined the per-acre payment amount from 2003 through 2010.

SOURCE: Office of the Legislative Auditor, analysis of Department of Revenue data.

The per-acre payment rate is not tied to other public benefits or costs of sustainable forest management activities either. For example, retaining public access to large tracts of forest land is one goal that has been attributed to the sustainable forest incentive program. SFIA requires participants with over 1,920 acres enrolled in the program to allow public access to their land. These owners do not receive a higher payment, and owners of smaller acreages are not offered a premium to provide this public benefit.

The second issue that could limit the effectiveness of the incentive payment is that the state makes the same per-acre payment to all participating landowners. Except in years when the Legislature capped landowners' payments, this has been the case since SFIA was enacted. A single payment rate for all enrolled land means that some landowners will receive a much greater offset relative to their property taxes than others. In fact, we found:

- **In some cases, sustainable forest incentive payments exceed property taxes paid on the enrolled property.**

For a sample of participants we examined, the sustainable forest incentive payment equaled between 12 and 306 percent of estimated 2013 property taxes on the enrolled acres.

Of 36 participants whose 2013 property tax statements we reviewed, we estimated that the sustainable forest incentive payment will equal between 12 percent and 306 percent of the property taxes for their enrolled land in 13 sampled counties.⁶ As shown in Exhibit 2.3, 11 of the 36 participants will receive a 2013 incentive payment that exceeds the property taxes on their enrolled acres in the sampled counties. For example, one participant's 2013 property taxes averaged \$3.25 per acre. This participant will receive a 2013 incentive payment that exceeds his taxes for those acres by nearly \$2,000. An additional five participants own some parcels for which the incentive payment will exceed the property taxes, though their overall incentive payment will not exceed their property tax bill on all enrolled acres in the sample counties.

Exhibit 2.3: Sampled Participants' 2013 Property Taxes Offset by Sustainable Forest Incentive Payment

Percentage of Property Tax Offset by Payment	Participants
Less than 25%	3
25 to 50%	6
51 to 75%	10
76 to 100%	6
Over 100%	11

NOTES: We reviewed the 2013 property tax statements for 36 participants who had acreage enrolled in the sustainable forest incentive program in 13 sample counties in 2012. We calculated the participants' 2013 incentive payments based on these 2012 acreages. These participants enrolled a total of 8,005 acres in these 13 counties.

SOURCE: Office of the Legislative Auditor, analysis of county property tax records.

Exhibit 2.4 shows that 8 of the 13 counties included in our review contained enrolled acres for which the 2013 incentive payment will exceed the property taxes. The exhibit also shows the estimated range in property taxes per acre for sampled land enrolled in each county. For example, in Kittson County, the estimated taxes per acre ranged from \$2.28 to \$3.95 for taxes payable in 2013, compared to an incentive payment of \$7 per acre.

⁶ We collected property tax statements for taxes payable in 2013 for 36 landowners who had acreage enrolled in the sustainable forest incentive program in 13 sampled counties in 2012. For the sake of analysis, we assumed the landowners would participate in 2013 with the same acreage. We first selected a sample of 13 counties to include variance in geographic region, overall acres enrolled, estimated market value per acre, and the ratio of acres enrolled in the sustainable forest incentive program to acres classified as 2c Managed Forest Land. Within these counties, we selected participants based on the number of acres enrolled. For this analysis, we estimated property taxes for each parcel after adjusting the property tax bills to remove estimated taxes on structures and acres not enrolled in the sustainable forest incentive program. We assumed a flat per-acre estimated market value and a class rate of 1.00. Our sample is too small to draw general conclusions about how sustainable forest incentive payments compare to property taxes.

Exhibit 2.4: Sampled Participants' Enrolled Acreage and 2013 Property Taxes, by County

Counties	Total Sampled Acres	Percentage of Acres for which Incentive Payment Will Exceed 2013 Taxes	Range of Per-Acre Tax by Parcel
Anoka	20	0%	\$10.32
Becker	486	10	6.08 - 12.62
Beltrami	522	5	1.56 - 14.55
Cass	358	0	7.50 - 14.06
Cook	756	100	2.80 - 5.75
Crow Wing	343	35	3.81 - 36.31
Itasca	328	35	3.74 - 12.00
Kittson	968	100	2.28 - 3.95
Koochiching	675	100	3.50 - 6.92
Morrison	2,661	20	4.75 - 19.20
Olmsted	105	0	21.33 - 114.87
Stearns	192	0	22.41 - 57.73
Wabasha	591	0	8.77 - 31.12

In some sampled counties, the incentive payment exceeded property taxes for all of the enrolled acreage we reviewed.

NOTES: We reviewed the 2013 property tax statements for 36 participants who had acreage enrolled in the sustainable forest incentive program in 13 sample counties in 2012. We calculated the participants' 2013 incentive payment based on these 2012 acreages. These participants enrolled a total of 8,005 acres in these 13 counties.

SOURCE: Office of the Legislative Auditor, analysis of county property tax records.

An excess of the incentive payment over property taxes can occur, too, when a landowner sells enrolled property to a government entity. In one case, an organization paid pro-rated property taxes for the two months it owned the land during 2012 but received a full incentive payment for the acreage. That organization's payment exceeded its property taxes for those acres by over \$10,000.

In contrast, a few participants' 2013 property tax bills far exceeded their expected 2013 incentive payment. For example, one participant's 2013 payment will offset approximately 12 percent of his property tax bill for enrolled acres in the sample counties. This participant's tax bill exceeds his expected incentive payment by almost \$1,200. Exhibit 2.4 shows that the incentive payment will not exceed property taxes for any acreage we reviewed in five of the sampled counties. The counties in which these parcels are located had overall higher estimated market values per acre for rural vacant land than the counties in which payments exceeded property taxes for at least some acreage.⁷ As Exhibit 2.4 shows, some acreage in Olmsted County had estimated property taxes per acre of almost \$115.

⁷ The estimated market values per acre for taxes payable in 2012 were around \$2,200 for Class 2b Rural Vacant Land and \$2,700 for Class 2c Managed Forest Land in the sample counties in which property taxes will exceed incentive payments. For the counties in which the incentive payments will exceed property taxes, the land values for these classes were \$1,300 and \$2,100, respectively.

Enrollment Requirements

Forest land enrolled in the sustainable forest incentive program must be covered by a management plan and bound by a covenant that restricts development.

Land must meet several requirements before an owner can enroll it in the sustainable forest incentive program. The Sustainable Forest Incentive Act (SFIA) stipulates that eligible land must be covered by a forest management plan and a document (called a “covenant”) that restricts development. Owners of land that meets these criteria must file an application with the Department of Revenue to enroll their land and participate in the program.

ELIGIBLE LAND

As shown in Exhibit 3.1, SFIA requires certain characteristics and a minimum acreage for land enrolled in the sustainable forest incentive program.

Exhibit 3.1: Characteristics of Land Eligible for Sustainable Forest Incentive Program Enrollment

	Details
Acreage	At least 20 contiguous acres under an active forest management plan ^a
Characteristics	At least half of the acres must be comprised of land that is: <ul style="list-style-type: none"> (a) 10 percent stocked by trees of any size (or land from which the trees have been removed to less than 10 percent stocked but not converted to another use) and capable of: <ul style="list-style-type: none"> • producing timber or • exerting an influence on the climate or on the water regime OR (b) Afforested.^{a, b}
Ineligible	Land classified for tax purposes as 2c Managed Forest Land ^c Non-forest-management-related structures—at least three acres ^d Water—all acres for open water greater than or equal to three acres ^d Tax-exempt acreage ^d Land enrolled in programs such as Green Acres ^a Land encumbered by easements specified in statutes ^a Land used for residential purposes ^a Land used for agricultural purposes ^a Property with delinquent taxes ^a

NOTE: This exhibit does not list all requirements or restrictions.

^a Specified in the Sustainable Forest Incentive Act, *Minnesota Statutes* 2013, chapter 290C.

^b This reflects the Office of the Legislative Auditor’s interpretation of *Minnesota Statutes* 2013, 88.01, subd. 7. Afforested areas have been planted to create forest.

^c Specified in *Minnesota Statutes* 2013, 273.13, subd. 23 (d).

^d Established by the Department of Revenue.

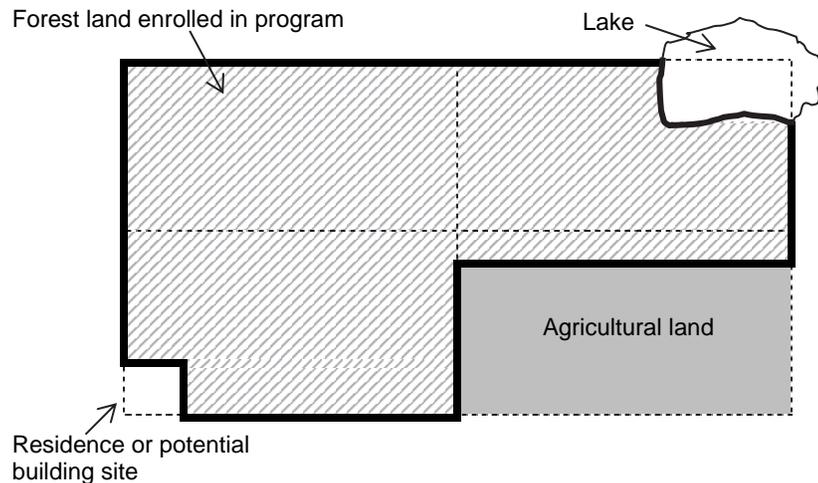
SOURCES: *Minnesota Statutes* 2013, 290C.02, subd. 6; 88.01, subd. 7; and 273.13, subd. 23 (d); and Office of the Legislative Auditor, interviews with Department of Revenue staff.

Acreage enrolled in the program cannot include land used for residential or agricultural purposes.

Landowners must enroll at least 20 contiguous acres of land, at least half of which meet the definition of “forest land” in *Minnesota Statutes* 2013, 88.01, subd. 7.¹ This definition takes into account the density of tree cover (called “stocking”) and the land’s use. It also includes afforested areas, which are areas that have been planted to create forest.²

SFIA does not specify characteristics that acreage must have if it does not meet the definition of “forest land” under *Minnesota Statutes* 2013, 88.01, subd. 7. However, there are several things that none of the enrolled acres may be. Listed in Exhibit 3.1, these exclusions are in state statutes or have been established by the Department of Revenue. Exclusions in state law include, for example, that enrolled acres may not be used for residential or agricultural purposes, enrolled in certain programs such as Green Acres, or encumbered by certain conservation easements.³ The Department of Revenue requires omitting a minimum of three acres from enrollment of tax parcels with non-forest-management-related structures and does not allow enrollment of bodies of open water that equal or exceed three acres.⁴ Exhibit 3.2 illustrates some of these concepts for a hypothetical landowner who has enrolled all or portions of four tax parcels in the sustainable forest incentive program. The owner has excluded acreage for an actual or potential structure, open water, and land used for agricultural purposes.

Exhibit 3.2: Illustration of Land Enrolled in the Sustainable Forest Incentive Program



NOTES: The exhibit illustrates land enrolled in the sustainable forest incentive program by a hypothetical landowner. The enrolled acreage includes all or portions of four tax parcels. The owner has not enrolled acreage for an existing or future building, open water, and agricultural land.

SOURCE: Office of the Legislative Auditor.

¹ *Minnesota Statutes* 2013, 290C.02, subd. 6.

² *Minnesota Statutes* 2013, 88.01, subd. 7.

³ *Minnesota Statutes* 2013, 290C.02, subd. 6. Green Acres is a program that provides tax advantages to agricultural land.

⁴ SFIA does not allow land with non-forest-management-related structures to be enrolled in the program. The Department of Revenue has established the three-acre exclusion as a standard.

SFIA does not require that land have a particular property tax classification to be enrolled in the sustainable forest incentive program. However, when the Legislature created the 2c Managed Forest Land property tax classification in 2008, it specified that land enrolled in the sustainable forest incentive program could not be so classified.⁵ In addition, the Department of Revenue does not allow enrollment of tax-exempt land. Among a sample of parcels we reviewed, the majority of parcels were classified as 2b Rural Vacant Land. Additional property classifications included 2a Agricultural Nonhomestead and 4c Seasonal Residential Recreational, among others.

We found:

- **The Sustainable Forest Incentive Act’s definition of “forest land” is unclear.**

The interpretation of “forest land” can lead to differences in the number of acres eligible for incentive payments.

The definition of “forest land” in SFIA is somewhat complex. We interpret it to require that at least half of the acreage an individual applies to enroll in the sustainable forest incentive program has tree cover of a minimum density, has been harvested of the trees and not converted to another use, or is afforested. The Department of Natural Resources’ (DNR) interpretation is more inclusive of other cover types, such as brush. Differences in interpretation could affect acreage enrolled in the program. For example, the Department of Revenue rejected 70 acres of land an applicant was trying to enroll in the program because 50 percent of it did not meet the department’s interpretation of “forest land.” The applicant appealed the rejection, arguing that the definition required only that 10 percent of the land be forested and noting that his plan writer was a retired DNR employee.⁶ DNR requested clarification about how the Department of Revenue interpreted the definition of eligible land for program enrollment. Ultimately, the Department of Revenue permitted enrollment of 40 of the acres.

A potentially complicating factor is differences in definitions among programs for which forest management plans might be written. For example, the sustainable forest incentive program requires 20 contiguous acres of forest land that meets the conditions outlined above. The 2c Managed Forest Land classification requires 20 acres of forest land on contiguous tax parcels, and forest land is undefined. The Forest Stewardship Program requires a minimum of 20 acres of land, at least half of which is forest land or has “other woody vegetation.” These programs also disallow different acreages from tax parcels that include structures or bodies of water. For example, the 2c Managed Forest Land classification requires county assessors to split-classify a tax parcel with a structure, excluding ten acres from the classification. As explained above, the Department of Revenue instructs landowners to exclude three acres from enrollment in the sustainable forest incentive program for non-forest-management-related structures.

⁵ *Laws of Minnesota* 2008, chapter 154, art. 2, sec. 12; and chapter 366, art. 6, sec. 26. See the Appendix for a description of the 2c Managed Forest Land property tax classification.

⁶ Presumably, the landowner was misinterpreting the definition of forest land in *Minnesota Statutes*, 88.01, subd. 7, which requires the land be 10 percent stocked.

The Department of Natural Resources approves people qualified to write forest management plans.

FOREST MANAGEMENT PLAN

A key feature of SFIA is the requirement that enrolled land be covered by a forest management plan. The plan must have been prepared within the previous ten years by a DNR-approved plan writer, and activities recommended in the plan must be consistent with the state's timber harvesting and forest management guidelines.⁷ These requirements ensure that private landowners who participate in the program obtain the input of a professional forester and, by following plan recommendations, follow the state's forest management guidelines.

Plan Writers

Writers of forest management plans required by SFIA must be approved by DNR.⁸ Standards that plan writers must meet are listed in Exhibit 3.3. They include minimum education and experience requirements, as well as continuing education requirements. These standards were developed by the state's Forest Stewardship Committee for the federal Forest Stewardship Program. In addition to meeting these requirements, persons applying for approval as a plan writer must submit to DNR a plan they developed working with an approved plan writer, a completed open-book quiz, and reviews of two sample forest management plans.

Exhibit 3.3: Forest Management Plan Writer Qualifications

To gain approval:

- Four-year degree in a natural-resources-related field plus one year mentored plan writing experience
OR
- Two-year associate degree from an institution recognized by the Society of American Foresters followed by three years mentored plan writing experience
OR
- Recognition as a certified forester by the Society of American Foresters
OR
- Individual approval by the state's Forest Stewardship Committee

To maintain approval:

- Complete 20 continuing education units each year
- Attend a Forest Stewardship Plan Writers Workshop once every three years

SOURCE: Department of Natural Resources, *Orientation Manual for Minnesota Forest Stewardship Plan Preparers* (St. Paul, 2008), 10-11.

⁷ *Minnesota Statutes* 2013, 290C.02, subs. 6 and 7. The Minnesota Forest Resources Council developed the guidelines at the direction of the Legislature. The guidelines reflect sustainable forest management practices. They include, for example, recommended practices for managing forest land that borders water to minimize potential negative effects on shoreline stability, water quality, and wildlife habitat. See, Minnesota Forest Resources Council, *Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers* (St. Paul, January 2013).

⁸ *Minnesota Statutes* 2013, 290C.02, subd. 2; and 290C.03 (a)(2). The act indicates that individuals who have been certified by the Society of American Foresters meet the standards.

Plan writers are private foresters, Soil and Water Conservation District employees, or DNR foresters. DNR foresters write plans for landowners in areas where there are not many private foresters providing the service or who are unable to engage the services of a private forester for some other reason.

Plan writers work with landowners to identify the owners' forest management objectives, create a plan to help them achieve the objectives, and identify acreage eligible for program enrollment. Plan writers might play a recurring role with a landowner. For example, they might assist the landowner with projects recommended in the plan, such as timber sales, planting projects, timber stand improvement, invasive species control, or trail design. Plan writers can also be a source of information about programs in which private forest landowners might have interest. Some of the forest management plans we reviewed included information or materials about the sustainable forest incentive program and other programs.

Forest management plans can cost several hundred dollars.

When the sustainable forest incentive program began, DNR foresters wrote or DNR paid for the required forest management plans. There was no cost to the property owner. With the creation of the sustainable forest incentive program and 2c Managed Forest Land classification, demand for plans increased and DNR could no longer afford to write or finance plans at no cost to the owner. DNR began charging for plans and, as the program has evolved, private foresters have taken over this function for the most part. Forest management plans can cost landowners several hundred dollars. For example, one plan writer charges \$250, plus \$5 per acre. DNR charges \$350 plus \$7 per acre for the plans its foresters write, with the cost to register the plan included in the price.⁹

Plan Contents

SFIA outlines minimum forest management plan contents. Shown in Exhibit 3.4, they include the owner's goals, recommended activities to meet the goals, and a timetable for the activities, among other things. The act also directs DNR to "provide a framework for plan content and updating and revising plans."¹⁰ As with plan-writer qualifications, DNR uses the framework established for the Forest Stewardship Program. DNR instructs plan writers to present the plan in a three-ring notebook provided by DNR that includes a 220-page woodland stewardship guide.¹¹

Forest management plans differ based on land conditions, tree and other vegetative cover types, landowner objectives, and foresters' insights. For example, Exhibit 3.5 shows recommended activities from two forest management plans. The landowners had different objectives for their property, and their property has different cover types.

⁹ Landowners do not need to register their plan to participate in the sustainable forest incentive program, but DNR registers all plans its foresters write. DNR invites landowners with registered plans to seminars and field days, and registration is required for a landowner to be considered for cost-sharing programs. DNR administers cost-sharing programs that can help offset costs associated with forest management activities such as thinning, invasive species control, and tree planting.

¹⁰ *Minnesota Statutes* 2013, 290C.02, subd. 7.

¹¹ University of Minnesota Extension and Department of Natural Resources, *Woodland Stewardship: A Practical Guide for Midwestern Landowners*, 2nd edition (St. Paul, 2009).

Exhibit 3.4: Required Contents of Forest Management Plans

"Forest management plan" means a written document providing a framework for site-specific healthy, productive, and sustainable forest resources. A forest management plan must include at least the following:

- owner-specific forest management goals for the property;
- a reliable field inventory of the individual forest cover types, their age, and density;
- a description of the soil type and quality;
- an aerial photo and/or map of the vegetation and other natural features of the property clearly indicating the boundaries of the property and of the forest land;
- the proposed future conditions of the property;
- prescriptions to meet proposed future conditions of the property;
- a recommended timetable for implementing the prescribed activities; and
- a legal description of the land encompassing the parcels included in the plan.

SOURCE: *Minnesota Statutes* 2013, 290C.02, subd. 7.

Exhibit 3.5: Forest Management Plan Activities

Example A	Example B
Management plan for approximately 160 acres in a northwest county. Objectives include habitat for waterfowl and general management planning.	Management plan for approximately 70 acres in a northwest county. Objectives include habitat for deer and grouse and maximizing timber value.
10 acres of lowland grass <ul style="list-style-type: none"> • Prescribed burning and invasive control 	30 acres of 15-year-old aspen <ul style="list-style-type: none"> • Continue to maintain trails and food plots
30 acres of mature aspen <ul style="list-style-type: none"> • No action (should be left to grow for 30 to 40 years) 	30 acres of northern hardwoods <ul style="list-style-type: none"> • Thin mature oak and harvest all aspen, birch, and maple in a corridor fashion and reseed all main skid trails and landing to clover after harvest OR • Leave as is OR • Clear-cut all species
50 acres of lowland brush <ul style="list-style-type: none"> • Periodic prescribed burning 	10 acres of lowland grass and brush <ul style="list-style-type: none"> • Leave as is OR • Mow shooting lanes and trails, place food plots, excavate wildlife ponds OR • Mow or burn for regeneration, place food plots, plant large mast producing plants^a
50 acres of marsh <ul style="list-style-type: none"> • Periodic prescribed burning 	

NOTES: We reviewed 14 forest management plans. The two plans reflect diversity of objectives and recommended activities. We rounded acreages and simplified the descriptions of recommended activities, which often included more detail.

^a Mast is seeds, nuts, and fruits that provide food for wildlife.

SOURCE: Office of the Legislative Auditor, review of forest management plans.

Forest management plans reflect landowners’ objectives for their land.

We found:

- **Overall, landowners’ objectives outlined in a sample of forest management plans aligned with potential public benefits of sustainable forest management.**

Among the 14 forest management plans we reviewed were goals to: (1) produce timber, (2) provide recreational opportunities, (3) maintain wildlife habitat, and (4) improve or maintain the environment.¹² Some of the objectives indicated in the plans we reviewed are listed in Exhibit 3.6. Among the objectives listed is to enroll in SFIA, suggesting that the program is at least contributing to some owners’ motivation to consult with a professional forester about their land.

Exhibit 3.6: Sustainable Forest Incentive Program Participants’ Management Objectives

Timber

- Harvest or thin pole and/or saw timber trees to generate income, improve stand health and vigor, and produce tree regeneration
- Manage forest to produce high quality hardwood veneer and saw log products
- Maximize the timber value and growth in an environmentally sensitive manner
- Promote timber yield through extensive management

Recreation

- Develop and maintain quality deer and grouse habitat for recreational hunting and observation
- Provide good wildlife habitat for a variety of game, especially white-tailed deer, ruffed grouse, woodcock, and bear, and nongame wildlife species
- Continue to maintain trails for access, hunting, and other recreational uses

Environment

- Maintain open water and wetlands for water quality and wildlife habitat
- Reduce river bank and soil erosion
- Control invasive species

Habitat

- Maintain young forest growth for wildlife habitat and a future timber supply
- Provide a diverse area for wildlife including a variety of forest age classes and open grassy areas

Other

- Increase the overall value of the property, while possibly earning some revenue through harvests
- Preserve aesthetic beauty of property
- Enroll in the Sustainable Forest Incentive Act (SFIA) tax-relief program

NOTES: We reviewed 14 forest management plans to identify a range of management goals set by landowners. Each plan included between two and eight goals. Some goals included multiple objectives.

SOURCE: Office of the Legislative Auditor, review of participant forest management plans.

¹² We reviewed a sample of plans that owners submitted to the Department of Revenue. Landowners are not required to submit their plans to the department, but some do. We did not select a random sample, but we reviewed plans that represent different areas of the state and numbers of enrolled acres.

However, we noted:

- **SFIA does not require third-party review of forest management plans or verification that participating landowners follow their plans.**

SFIA does not require participants to register their forest management plans with DNR or submit them to the Department of Revenue. Nor does the act require independent verification that participants are following their plans. We have two concerns with this lack of requirements. First, while there is a basis for forest management plans to differ, they should meet minimum standards in state law and follow the framework created by DNR. For example, recommended activities should comply with the state's timber harvesting and forest management guidelines and be consistent with meeting the desired future condition of the land. The state has no assurance that forest management plans meet these standards.

Second, the sustainable forest incentive program requires that landowners not only obtain a plan, but also follow it. Landowners must attest to this in an annual certification. But here, too, the state has no assurance that sustainable forest management practices are occurring.¹³ Several stakeholders voiced concerns to us about the dearth of followup to make sure participants follow their management plans. One DNR publication recommended against using a federal cost-share program for forest management plans due, in part, to a "strong concern" that landowners were obtaining the plans to qualify for SFIA or the 2c Managed Forest Land classification but not undertaking forest management activities.¹⁴

COVENANT

The sustainable forest incentive covenant is binding for a minimum of eight years.

SFIA requires enrollment of land in the sustainable forest incentive program for a minimum of eight years.¹⁵ This is accomplished by the landowner recording a covenant on the land. The covenant, which can only be released by the Department of Revenue, prohibits the person initially enrolling the land and all other owners, including subsequent owners, from developing the land in violation of SFIA. As Exhibit 3.7 shows, the covenant restrictions include, for example, prohibitions against agricultural and residential use and improvements that are not included in the forest management plan for the property. The covenant does not prohibit sale of enrolled land.

¹³ DNR reviews randomly selected timber harvest sites, including sites on private land, to monitor implementation of the harvesting guidelines developed by the Minnesota Forest Resources Council. However, private property owners can deny DNR access to their land. This monitoring is not tied to the sustainable forest incentive program and focuses only on timber harvests and related activities (such as constructing logging roads), not other forest management activities. DNR began monitoring harvest sites in 2000. DNR did not review any timber harvest sites in 2012 or 2013, but it plans to monitor sites in specific forested watersheds in 2014 and 2015. The most recent report is: Department of Natural Resources, *Timber Harvesting and Forest Management Guidelines on Public and Private Forest Land in Minnesota, 2011 Monitoring Implementation Results* (St. Paul, August 2012).

¹⁴ Department of Natural Resources, "Stewardship Newsletter," Vol. 5, Issue 1, January 2013.

¹⁵ *Minnesota Statutes* 2013, 290C.03 (a)(4).

Exhibit 3.7: Sustainable Forest Incentive Program Covenant Restrictions

As the claimant, on behalf of all the owners and myself, I accept all of the following restrictions on the property. These restrictions shall run with the property and bind me, all other owners, our heirs, and any future owners as provided under the SFIA law. The restrictions are a condition for entrance into the SFIA program and are required in order to receive an annual incentive check from the Department of Revenue. The restrictions are:

The property is not and will not be developed in violation of the provisions of the SFIA. This means that the property is not and will not be:

- used for residential purposes;
- used for agricultural purposes;
- enrolled in the Reinvest in Minnesota (RIM) program or in a state or federal conservation reserve or easement reserve program (CRP or CREP) under sections 103F.501 to 103F.531;
- enrolled in the Minnesota Agricultural Property Tax Law (also known as Green Acres) under section 273.111;
- subject to agricultural land preservation controls or restrictions as defined in section 40A.02 or the Metropolitan Agricultural Preserves Act (also known as Ag Preserves) under chapter 473H;
- improved with a structure, pavement, sewer, permanent campsite, or any road (other than a township road), that are used for purposes not prescribed in the forest management plan for the property;
- classified as 2c Managed Forest Land under section 273.13; or
- enrolled in the Rural Preserve Program under section 273.114.

NOTES: The exhibit includes the text, verbatim, from the sustainable forest incentive program's model covenant. "SFIA" is the Sustainable Forest Incentive Act.

SOURCE: Department of Revenue, undated.

After four years, program participants may request release from the covenant, which will occur four full calendar years later.

For the most part, once land is enrolled in the sustainable forest incentive program, a landowner must wait four years before requesting that land be released from the covenant. The covenant remains in effect for four calendar years after a landowner requests that the covenant be released. The Department of Revenue must release the covenant on January 1 of the fifth year following the request.¹⁶ For example, if an owner requested release of a covenant on May 13, 2012, the Department of Revenue would release the covenant January 1, 2017. There are some circumstances under which the Department of Revenue releases land from a covenant before eight years have elapsed and without requiring the four-year delay or imposing a penalty. These are listed in Exhibit 3.8.

Landowners must pay a fee to the county to record, modify, or release a covenant. Currently, the statewide fee is at least \$46. The fee could be higher if the property to be covered by the covenant includes abstract and Torrens property or multiple certificates of title.¹⁷

¹⁶ *Minnesota Statutes* 2013, 290C.055.

¹⁷ "Abstract" and "Torrens" refer to different means of recording documents that affect the title to land. Abstract land has not been registered. The county recorder accepts and records all items that affect abstract land, maintaining a running "abstract of title" for each parcel of land. Torrens property has been registered, which results in a "certificate of title." Property might be registered after a judicial hearing that has, for example, resolved problems identified during an examination of the abstract of title.

Exhibit 3.8: Reasons for Early Release from the Sustainable Forest Incentive Program Covenant

The Department of Revenue:

- must release a covenant if the department rejects the landowner's application to enroll land in the program.
- will release land from a covenant after the death of the landowner, unless the heirs apply to remain in the program.
- will release all or some of the tax parcels covered by a covenant if no program payments have been made for the parcel(s). For example, one participant requested release of a single tax parcel so he could sell the land to cover medical expenses. Since the land had only recently been accepted into the program and the department had not made any payments, the department released the parcel.
- must release all or part of a parcel enrolled in the program if the land is obtained by a government entity for a public purpose. For example, the department released some enrolled land because the Minnesota Department of Transportation acquired the land for a truck station.

SOURCES: *Minnesota Statutes* 2013, 290C.04 (c); 290C.12; 290C.055; and 290C.10; and Office of the Legislative Auditor, interviews with Department of Revenue staff and file reviews.

We found:

- **Development has occurred on forest land enrolled in the sustainable forest incentive program, in spite of the covenants.**

County assessors have reported new improvements on land enrolled in the sustainable forest incentive program. For example, one county assessor identified four landowners who built structures on enrolled land. Two of these landowners who purchased and built on enrolled land never applied to the program themselves.

County assessors have found new structures not related to forest management on land enrolled in the sustainable forest incentive program.

In addition, we found:

- **The effectiveness of the covenant at preventing parcelization of forest land is unclear.**

Although the covenant does not prohibit sales of enrolled land, a covenant might slow parcelization of forest land by making the land less attractive to potential buyers who are interested in developing it. Parcelization, which is the division of large tracts of land under single ownership to smaller parcels involving numerous owners, can interfere with efficient sustainable forest management.

However, landowners can enroll portions of tax parcels in the sustainable forest incentive program, withholding acres for future development. In other words, an owner could enroll 37 acres of a 40-acre parcel, omitting three acres from the program as a potential building site. For example, one participant's file indicated the owner's intention to sell a parcel of land of which he had enrolled all but three acres, and the potential buyer's plan to build there. This participant enrolled at least nine parcels of land in the sustainable forest incentive program, withholding from enrollment a "potential building site" of three acres from each of the nine parcels.

APPLICATION

After obtaining a forest management plan and recording a covenant, a landowner must apply to the Department of Revenue to participate in the sustainable forest incentive program. Interested landowners must apply by September 30 in order to be eligible for a payment the next year.¹⁸ The commissioner has 90 days to notify the landowner whether the application has been approved, and the applicant has 60 days to appeal a denial.

The application includes several statements that landowners must certify as true. For example, the landowner must certify that the land is not classified as 2c Managed Forest Land. The application also requires that landowners list the property identification number, covenant number, county, and eligible acres for each property identification number the owner is applying to enroll. The applicant must include a copy of each parcel's property tax statement, as well. In addition to being signed by the applicant, the application must be signed by an approved plan writer who has verified the SFIA-eligible acres for each parcel.

The Department of Revenue verifies that (1) the application is complete, including required maps and tax statements; (2) the plan writer who signed the application has been approved by DNR; (3) the applicant has recorded a covenant; (4) the land to be enrolled meets program requirements for minimum acreages, contiguousness, and type; and (5) other requirements have been met. We found:

- **The Department of Revenue's application review process has identified problems with applications, but the department is not well equipped to verify all eligibility requirements.**

The department has rejected applications for failing to meet one or more of the eligibility requirements that the department verifies.¹⁹ The department has also reduced the acreage a landowner is applying to enroll based on its review.

However, Department of Revenue staff lack knowledge of forestry and may be unaware of encumbrances, such as easements, that would prohibit enrollment of land.²⁰ The department relies primarily on forest management plan writers to determine a landowner's acreage that is eligible for program enrollment and works with DNR when needed to resolve questions. For example, in one case the Department of Revenue questioned an applicant's acreage due to the vegetation cover types identified by the plan writer. The department worked with DNR and the plan writer to determine whether all of the acres were eligible. Plan writers, DNR, and county assessors might not be aware of all easements on a property, however, and may need to rely upon the landowner to disclose them.

¹⁸ *Minnesota Statutes* 2013, 290C.04 (a).

¹⁹ In some instances, applicants have remedied the problem and been accepted into the program.

²⁰ Department staff indicated that they may have difficulty implementing a 2013 legislative change prohibiting land that is subject to easements purchased with Outdoor Heritage funds or "comparable" easements from program enrollment.

Oversight and Penalties

Landowners' forest management plans and the Department of Revenue's review of application materials provide third-party assessment of whether land is eligible for enrollment in the sustainable forest incentive program. After enrollment, however, landowners could take actions that render their land ineligible. In this chapter, we discuss oversight to ensure continued compliance with eligibility requirements, as well as penalties for noncompliance. We also discuss the particular oversight and penalty issues raised by subsequent owners of enrolled land.

OVERSIGHT

Oversight of participants in the sustainable forest incentive program is accomplished through two mechanisms. First, the Sustainable Forest Incentive Act (SFIA) requires annual certification to monitor compliance of participating landowners. Second, the Department of Revenue appeals to county assessors to report program violations. We found:

- **Oversight of the sustainable forest incentive program is limited and does not ensure compliance.**

Neither annual certification nor voluntary assistance of county assessors provides assurance that recipients of sustainable forest incentive payments comply with program requirements on an ongoing basis.

Annual Certification

SFIA requires the Department of Revenue to mail a certification form to program participants to obtain their attestations that they continue to meet program requirements each year after enrolling their land.¹ The certification form includes, for example, statements that the landowner is meeting conditions in his or her forest management plan and that there are no delinquent taxes on the property. The form also lists all of the parcels the participant has enrolled in the program. Participants attest that they own, or are the authorized representative for, all the listed parcels and indicate any parcels that they have sold.

SFIA does not require independent verification of participants' attestations and the department does not routinely verify whether program participants continue to adhere to program requirements. Starting with the 2013 certification, the Department of Revenue modified the certification form so participants must initial each eligibility requirement listed, indicating their compliance. They must also sign and date the form. Prior to using the modified form, the department's

The Sustainable Forest Incentive Act (SFIA)—in design and implementation—does not require that participants comply with program requirements.

¹ *Minnesota Statutes* 2013, 290C.05.

certification form required participants to read, sign, and date the form to certify compliance with program eligibility requirements.

When SFIA was enacted, failure to return the certification form was an indication that the landowner no longer met program requirements. The act clearly stated that “failure to return the form by the due date shall result in the removal of the lands...and the imposition of any applicable removal penalty.”² Removal of their land meant participants would no longer receive a payment but their land would remain bound by the covenant until the appropriate amount of time had elapsed.³ We found:

- **The Sustainable Forest Incentive Act does not provide clear consequences for participating landowners who do not comply with the required program oversight.**

The only consequence to participants who do not cooperate with the chief mechanism of program oversight is no payment that year. According to the department, SFIA no longer explicitly indicates that failure to return the certification form will result in removal of land from the program and related penalties. Instead, it refers to a section of statutes that addresses penalties for participants who fail to meet a list of requirements that does not include returning the certification form.

County Reviews

SFIA does not define a role for county assessors in the sustainable forest incentive program.

The Department of Revenue uses an additional approach to check for landowners’ compliance with certain program requirements. Annually, the department requests that county assessors review a list of enrolled property in their county that is owned by participating landowners. The department requests that the assessors inform the department if any of the property is classified as 2c Managed Forest Land, is enrolled in other programs that would make it ineligible for the sustainable forest incentive program, has delinquent property taxes, or has recent improvements.⁴ This could identify participants who are not complying with program requirements. However, we found:

- **County assessors’ annual review of property enrolled in the sustainable forest incentive program is limited in its ability to find program violations.**

Two factors limit the effectiveness of this oversight. First, SFIA does not define a role for county assessors in the program’s administration. County assessors with whom we spoke indicated that they respond to the information from the

² *Laws of Minnesota* 2001, First Special Session, chapter 5, art. 8, sec. 9.

³ Land must be enrolled for a minimum of eight years. If the violation occurred after four years of participation, land would be released from the covenant on January 1 of the fifth calendar year after the determination to remove the land. Participants could appeal the removal of their land from the program.

⁴ Assessors might not be able to determine whether properties are enrolled in federal easement programs that make them ineligible for the sustainable forest incentive program.

department with different levels of scrutiny. In one case, a county assessor worked with her staff in 2013 to do a thorough review of the approximately 550 parcels associated with participating landowners. Staff checked ownership, acreage, tax delinquency, tax classification, and improvements. This two-week effort identified possible errors in enrolled acres and program violations. For example, one participant's land was enrolled in the sustainable forest incentive program and classified as 2c Managed Forest Land, and other participants had non-forest-management-related structures on the acreage they had enrolled in the program. Other assessors gave the list more limited scrutiny, for example checking only that none of the parcels were classified as 2c Managed Forest Land. Lack of attention by some county assessors may lead to violations going undetected.

Second, the list of parcels sent to county assessors each year includes only parcels belonging to actively participating landowners (i.e., landowners who have applied to the program and are receiving incentive payments). Omitted from the list is land that is still bound by a covenant but for which the owner has never participated or is no longer participating. Violations that county assessors have identified on such land include, for example, constructing a home.

PENALTIES

SFIA includes a penalty provision for participants who become delinquent in their property taxes or violate certain program requirements.⁵ The Department of Revenue is required to notify participants if it intends to remove their land from the program, and participants have 60 days to appeal the determination or, in the case of delinquent taxes, pay the taxes.⁶ According to the department, it has given participants the option of remedying other violations, too, before proceeding with removal and penalties. For example, the department gave one participant, whose land was also enrolled in the Green Acres program, the option of removing her land from that program instead of facing penalties. If the department removes land from the sustainable forest incentive program, the landowner is penalized an amount equal to the payments received in the previous four years, plus interest.⁷ In addition, the land remains bound by the covenant until the appropriate amount of time has elapsed.⁸

SFIA's penalty provision is limited in flexibility and scope.

We found:

- **The Sustainable Forest Incentive Act's penalty provision is not sufficient to address different circumstances of noncompliance.**

⁵ *Minnesota Statutes* 2013, 290C.11.

⁶ *Minnesota Statutes* 2013, 290C.09 and 290C.11.

⁷ *Minnesota Statutes* 2013, 290C.11 (b).

⁸ As explained previously, land must be enrolled for a minimum of eight years. If the violation occurred after four years of participation, land would be released from the covenant on January 1 of the fifth calendar year after the determination to remove the land. *Minnesota Statutes* 2013, 290C.055.

Although confirmed violations of SFIA are rare, we have concerns with the current penalty provision. The provision bases penalties on payments landowners have received rather than the severity of violations. It also removes violators from the program, which might not always be in the interests of sustainable forest management. Finally, the provision has affected the department's ability to pursue penalties.

Penalty Provisions

Penalties based on payments the violator received are inadequate for violators who have received no payments or who have not received payments in the four years prior to discovery of the violation. As explained above, the only financial penalty specified in SFIA is a landowners' repayment of the previous four years' payments, with interest.⁹ If landowners have never received payments or have not received payments during the previous four years, SFIA does not indicate a penalty.

Basing penalty amounts on payments received might be sufficient for violations that do not threaten sustainable forest management, such as enrollment in the sustainable forest incentive program and classification as 2c Managed Forest Land. In such a case, the participant has received two financial benefits but has not necessarily abandoned sustainable forestry practices. Requiring the participant to repay the incentive payment seems reasonable. In fact, SFIA does not specify any penalty for this violation.

Participants who have built structures on land enrolled in the sustainable forest incentive program have not been penalized beyond losing future incentive payments.

However, some owners of enrolled land have developed their property. Development threatens sustainable forest management and is contrary to the purpose of the program. Development violations seem to warrant more severe monetary consequences than other noncompliance. For example, in 2010 the department learned that a participant violated the development restrictions of the covenant by placing a mobile home on enrolled property. The participant had received two payments within the previous four years totaling \$694. Requiring only that the landowner return the incentive payments with interest seems an inadequate penalty.¹⁰

In addition to collecting financial penalties from a violator, SFIA requires the department "to remove all enrolled land" from the program.¹¹ In some cases, removing all of a participant's land from the program might be counter-productive to the program's purpose. For example, if the department learned that an owner of a large tract of enrolled forest land had conducted a harvest inconsistent with state guidelines, sustainable forest management might be better served by keeping the large tract of land enrolled in the program.

⁹ *Minnesota Statutes* 2013, 290C.11 (b).

¹⁰ The department has not pursued penalties from this participant. In fact, the department could only recall one specific instance in which it imposed and received payment of penalties.

¹¹ *Minnesota Statutes* 2013, 290C.11 (a). As described above, the land remains bound by the covenant for the appropriate period of time.

Pursuing Penalties

In some instances, the department has not pursued penalties for noncompliance or resolved reports of possible violations. This may be because it is unclear what the penalty would be if a violation is confirmed. For example, the department has not resolved a potential violation identified by a county assessor involving a participant who built a home on what may be enrolled land. This landowner purchased enrolled land and applied to the program but never received payments. Although this potential violation was identified in 2010, the department has not reached a resolution. If the violation is confirmed, there would be no financial penalty to pursue. The department, or another party with standing, could file a lawsuit to enforce the covenant. However, department staff indicated that the time and resources necessary for filing suit make it unlikely the department would do so.

A participant's failure to return the annual certification form is another example. As mentioned above, SFIA no longer provides clear penalties for this noncompliance. Thus, the only consequence to participants who do not cooperate with program oversight is no incentive payment that year. The department does not take any other action besides withholding the year's payment.

SUBSEQUENT OWNERS

Sales of enrolled land further complicate oversight and penalties. When a landowner enrolls property in the sustainable forest incentive program, the covenant, plan, and eventual payment align with the owner and the property. But, as explained in Chapter 3, participating landowners may sell or transfer all or part of their enrolled land. In some cases, the original owners inform the department about enrolled land they have sold and include the new owners' names and addresses. If the department is aware of the identity of a subsequent owner of enrolled land, it will send a notice inviting the new owner to apply for participation in SFIA and include information about the program and the covenant that binds the land.

When subsequent owners apply to the program, they are committing to continue sustainable forest management of the enrolled land. Overall, among participants in 2012, we estimate that approximately 10 percent were subsequent owners of over 163,000 acres of enrolled land. For example, two industrial landowners have sold over 3,300 enrolled acres to 31 different owners who then applied to the program.

However, in many cases, it appears that new owners of enrolled land have not applied to the program. For example, a third industrial landowner sold at least 213 enrolled tax parcels, consisting of 8,221 acres. The owners of only 320 of these acres have applied to the program.

We found:

- **The Sustainable Forest Incentive Act does not adequately address changes in ownership of enrolled land.**

The sale of land that is enrolled in the sustainable forest incentive program creates challenges for oversight and imposition of penalties.

When landowners sell or transfer all or part of their enrolled land, it can create challenges for program oversight and imposition of penalties. The greatest challenge is presented by subsequent owners of whom the department is unaware or who do not apply to the program.

Subsequent owners of enrolled land do not have to apply to the sustainable forest incentive program.

Annual Oversight

SFIA requires “owners, transferees, or grantees” of enrolled land to notify the Department of Revenue who should receive the incentive payment.¹² However, subsequent owners of enrolled land are not required to apply to the sustainable forest incentive program. If a new owner is unaware that the land is enrolled in the sustainable forest incentive program or does not want to comply with its restrictions, the new owner might not apply to the program. While the land remains enrolled in the program until the new owners request its release from the covenant, these landowners are not monitored; the department sends the annual certification form—the primary means of oversight in the program—only to program participants. In addition, parcels belonging to subsequent owners who do not apply are not included with the information the department sends to county assessors each year asking about possible violations.

Management Plan

As mentioned previously, the annual certification form includes a statement asserting that conditions in the forest management plan are being met. However, the Department of Revenue does not require a person who purchases land that is already enrolled in the sustainable forest incentive program to obtain a new forest management plan. The Department of Natural Resources has also indicated that a new plan might not be necessary if the subsequent owner’s objectives are consistent with those of the former owner. But, there is no guarantee that the new owner has a forest management plan. Subsequent owners of industrial forest land provide a good example. One industrial landowner with whom we spoke indicated the company’s forest management plan consists of a comprehensive computer-based plan, not a bound document. It is unclear how or whether this landowner would provide a copy of it to a subsequent owner so the owner could manage the land within the plan’s conditions.

Subsequent owners who do not apply to the program will not receive incentive payments, making penalties unclear.

Penalties

Penalties for subsequent owners of enrolled land who do not apply to the program are unclear. These owners will not receive any payments. As discussed above, SFIA’s penalty provision does not address landowners who have not received incentive payments. One county assessor has identified enrolled property that has been developed by new owners who never applied to the program or received payments.¹³ This assessor identified two subsequent

¹² *Minnesota Statutes* 2013, 290C.02, subd. 3 (b).

¹³ The Department of Revenue indicated that it has not tried to penalize original owners for violations of subsequent owners.

landowners who built structures on enrolled land. Another subsequent landowner opened a gravel pit on enrolled land.

Confirming Continued Eligibility

As the program is currently administered, subsequent owners' land is not required to meet eligibility criteria.

Changes in ownership of portions of enrolled land create additional challenges related to confirming continued eligibility of the enrolled land. Subsequent owners who apply to the program do not need to get the signature of a forester, which would confirm that the land is eligible for enrollment. With sales of portions of enrolled land, the new owner's land—or the land that remains with the previous owner for that matter—might not meet program eligibility criteria. As described in Chapter 3, land enrolled in the sustainable forest incentive program must meet minimum acreage requirements, and at least half of the acreage must meet the definition of “forest land” under *Minnesota Statutes* 2013, 88.01, subd. 7. This is also one of the eligibility requirements that, if violated, can result in removal of land from the program and financial penalties.

The Department of Revenue has said that a subsequent owner of a portion of previously enrolled land, whatever the portion's characteristics, would be eligible for incentive payments as long as the land is at least 20 acres. The department has reasoned that the portion was part of a larger parcel that met the definition of forest land when it was enrolled. At the same time, the department has stated that subsequent owners of fewer than 20 acres cannot apply to the program, although that land, too, was part of a larger parcel that met eligibility criteria. In essence, this reduces the eligibility criteria to acreage only.

Recommendations

The Sustainable Forest Incentive Act (SFIA) has achieved some of what it was designed to, but some issues need attention.

The Sustainable Forest Incentive Act (SFIA) has accomplished some of what it was designed to do. It replaced an approach to forest taxation that appeared to be unsuccessful at supporting sustainable forest management, replaced a county-administered program with one that is administered and funded by the state, and secured public access to large tracts of private land.

However, we identified aspects of SFIA and the sustainable forest incentive program that could be limiting the act's effectiveness. While we did not find widespread problems, we still think our evaluation indicates a need for improvements. In this chapter, we make recommendations but also assess the strengths and weaknesses of various options for change. We offer some options that go beyond incremental change, and we hope they will stimulate discussions among legislators and other stakeholders.¹

INCENTIVE PAYMENT

The purpose of the sustainable forest incentive program is to encourage a long-term commitment to sustainable forest management. The program provides encouragement by making incentive payments to help offset property taxes. However, the payment amount is not tied to property taxes. The current payment amount is easy to understand and administer but, as we discussed in Chapter 2, we are concerned about its effectiveness.

RECOMMENDATION

The Legislature should either tie sustainable forest incentive payments more directly to the goals of SFIA or repeal SFIA and use other programs to encourage sustainable forest management.

We identified four goals implicit in SFIA: (1) provide property tax relief to owners of managed forest land, (2) encourage nonindustrial owners of forested acreages to adopt sustainable forest management practices, (3) prevent parcelization and development of forest land, and (4) secure public access to large tracts of private forest land. The Legislature should tie SFIA's financial incentives more directly to these goals by changing the payment structure or repeal SFIA and use other programs to achieve the goals.

¹ Such discussions could also consider the report and recommendations issued earlier this year by the Minnesota Forest Resources Council: *Private Forestland Management Study and Recommendations* (St. Paul, January 2013).

Option 1

The Legislature could retain the sustainable forest incentive program but modify the payment structure to more explicitly reflect one or more goals. We suggest this option knowing that SFIA allows landowners to leave the sustainable forest incentive program without penalty if legislative changes to the payment formula reduce their incentive payment amount.² In addition, changing the payment structure would likely increase administrative complexity.

The Legislature could tie incentive payment amounts to property taxes alone or could devise a payment structure that reflects various state goals for private forest land.

If the Legislature pursues this option, legislators could follow an approach suggested in a 2000 report issued by the Department of Revenue.³ That study recommended a property tax refund and cost sharing for forest management activities. In the cover letter to the report, the Commissioner of Revenue recommended addressing public-access goals outside of the property tax system.

Exhibit 5.1, which is for illustration purposes only, shows another possible approach. This approach reaches a total per-acre incentive payment by explicitly valuing goals the state is trying to achieve through SFIA. As illustrated, it retains a minimum incentive payment of \$7 per acre for owners of more than 1,920 acres; landowners with smaller acreages could increase their per-acre payment to \$7 if they permit public access. Owners of land with higher property taxes would receive higher payments to encourage forest management and retain tracts of

Exhibit 5.1: Sample Goal-Oriented Sustainable Forest Incentive Payment Structure

Goal	Incentive Amount		
	Minimum		Maximum ^a
	Acreages of 1,920 or Less	Acreages Over 1,920	All Acreages
Encourage sustainable forest management through property tax relief	\$3 per acre	\$3 per acre	30% of property taxes
Retain tracts of forest land	\$2 per acre	\$2 per acre	20% of property taxes
Secure public access	<u>\$0 per acre^b</u>	<u>\$2 per acre</u>	<u>\$2 per acre</u>
Total	\$5 per acre ^b	\$7 per acre	varies ^a

NOTE: Payment amounts are for illustration purposes only. They do not reflect research-based valuations of these benefits or their relative values.

^a The Legislature could cap the maximum per-acre payment.

^b Landowners could increase their minimum payment per acre by \$2 by allowing public access.

SOURCE: Office of the Legislative Auditor.

² *Minnesota Statutes* 2013, 290C.055 (c)(2).

³ Department of Revenue, *A Tax System That Makes Sense for Minnesota: Forestry Tax Reform* (St. Paul, 2000). The report was completed by the Minnesota Forest Resources Council and published by the Department of Revenue.

forest land. The Legislature could cap the maximum per-acre payment to limit the state's financial exposure. Also, as per-acre costs increase, the state might want to be more selective about the forest land it targets than occurs with SFIA.

Both of these approaches tie the incentive payment, at least in part, to property taxes. If the Legislature retains an incentive payment that is not directly tied to property taxes a landowner pays, it should consider how to handle incentive payments when only a partial year's property taxes are paid, as may be the case when land is sold to a public entity.

Option 2

Rather than compensating forest landowners for various goals within a single program, the Legislature could repeal SFIA and use new or existing approaches to individually address legislative goals. There could be advantages of using separate programs to address separate goals. For example, owners of forest land under certain conservation easements are not eligible for the sustainable forest incentive program, but they might be encouraged to improve their forest management activities by property tax relief. In addition, property tax programs are considered by the legislative committees with jurisdiction and administered by the Department of Revenue, while forestry programs are considered by other legislative committees and managed by the Department of Natural Resources (DNR).

To provide property tax relief, the Legislature could rely on the 2c Managed Forest Land classification, either as it currently exists or expanded to include owners of larger acreages. Relying more heavily upon the 2c Managed Forest Land classification might be unpopular with local governments, however, as the reduced class rate would shift the property tax burden to other local tax payers. To retain state funding and administration, the Legislature could create a property tax refund for forest landowners who meet certain requirements, such as having a current forest management plan.

To encourage sustainable forest management among nonindustrial forest landowners, the Legislature could expand existing programs that provide technical assistance and cost sharing to these landowners. These programs, administered by DNR, have experienced significant state and federal funding cuts in the past few years, however, and would be unable to accommodate an increase in demand for services without additional resources.

Finally, the Legislature could consider using tools such as permanent or temporary conservation easements or fee title acquisitions to retain tracts of forest land and procure public access. These tools can be costly, however.

We recognize that repealing SFIA would be controversial and difficult. Therefore, combined with Option 1, we make the following additional recommendations to improve the sustainable forest incentive program. Some of the issues these recommendations address—such as the type of land that should be eligible for programs or how to assure compliance—also bear consideration if

There could be advantages of using separate programs to address separate goals.

Whether in the context of SFIA or other programs, issues such as oversight and compliance need attention.

the Legislature chooses to repeal SFIA and rely upon other programs to achieve goals related to private forest landowners.

ELIGIBILITY AND OVERSIGHT

We found weaknesses with initial and ongoing verification of eligibility requirements and oversight. SFIA requires little to no external verification. This approach has the benefit of being easy and inexpensive to implement, but provides little assurance that applicants and participants meet requirements.

RECOMMENDATION

The Legislature should require registration of forest management plans with DNR prior to enrollment in the sustainable forest incentive program.

This recommendation would move the responsibility for verifying program eligibility related to forest land from the Department of Revenue to DNR. Forest management plan registration would give DNR the opportunity to review plans to ensure that they meet minimum plan requirements. DNR could also verify that the plan writer has correctly identified acreage eligible for the sustainable forest incentive program. When DNR registers plans, it also records the date of the plan. DNR could perform these activities for the sustainable forest incentive program and periodically provide the Department of Revenue with a list of landowners with plans that meet requirements.

The departments of Revenue and Natural Resources would need to determine how best to manage shared responsibility for verifying eligibility given program application deadlines. Also, DNR charges landowners \$50 to register their plans. The Legislature will need to decide whether to pass this cost to applicants or appropriate funds to DNR to cover registration costs. If the Legislature appropriates funds, it should consider doing so for all forest management plan registrations; DNR does not necessarily know to which programs, if any, a landowner will apply.

RECOMMENDATIONS

The Legislature should clarify the type of land that qualifies for enrollment in the sustainable forest incentive program.

DNR should require that forest management plans developed in contemplation of enrollment in the program specify the number of acres that meet the definition(s) of forest land.

The Legislature should clarify the type of land eligible for sustainable forest incentive payments. The current definition is open to interpretation and relies upon forestry concepts that are not well understood by non-foresters. The Legislature could amend the definition of forest land in SFIA or amend the definition the act references (i.e., *Minnesota Statutes* 2013, 88.01, subd. 7).

Plan registration would move responsibility for verifying an applicant's eligible acreage to the Department of Natural Resources.

Clarifying the type of land that owners can enroll in SFIA could simplify eligibility determinations.

Amending the latter definition could have consequences for other sections of statutes that reference it, however.

DNR already directs plan writers to indicate total eligible acreage in forest management plans. If SFIA continues to reference the definition of forest land in *Minnesota Statutes* 2013, 88.01, subd. 7, DNR should require that forest management plans reflect the acreage meeting that particular definition, as well as the total eligible acreage. This should manage landowners' expectations about their eligible acreage. If the Legislature does not implement the recommendation about plan registration, including both acreages should also simplify the Department of Revenue's verification of applicants' total eligible acreage.

RECOMMENDATION

The Legislature should amend SFIA to better address issues related to subsequent owners of enrolled land.

The Legislature should amend SFIA to require new owners of enrolled land to notify the Department of Revenue when land changes ownership. The department should not make a final payment to the former owner unless the new owner's notification indicates his or her agreement to those terms.

Subsequent owners who apply to the program should be required to meet the same eligibility criteria as any new applicant, including owning at least 20 contiguous acres of land, at least half of which is forested, and obtaining a forest management plan. If the owner does not meet criteria, the state should not make payments and the land should be released from the covenant after the appropriate amount of time. The same should hold true for the original owner if the land he or she retains does not meet program eligibility criteria.

RECOMMENDATION

The Legislature should require increased verification of participants' assertions that they are complying with program requirements.

The Legislature needs greater assurance that participants are complying with program requirements.

The Legislature could require the Department of Revenue to provide greater scrutiny of whether participants continue to meet program requirements. For example, staff could obtain access to county property tax information and verify that there are no new structures or delinquent property taxes on enrolled property, that the property is not classified as 2c Managed Forest Land, and that no enrolled acres have become tax exempt. During this review, staff could also verify ownership and obtain new-owner information if an enrolled property was sold. This could be a large undertaking, however, and might require increased staffing. If staff verified a 5-percent sample of participants each year, they would need to verify information of over 110 participants, some of whom have enrolled many tax parcels. In addition, staff would need to review parcels that are still bound by a covenant but whose owners are not participating in the program.

Alternatively, the Legislature could require county assessors to play a greater role in the program. Some assessors indicated reluctance to take on a greater role in a state-administered program. The additional work this would impose would vary greatly, too, from Anoka or Mower County, each of which contained approximately 20 enrolled acres in 2012, to Itasca County with over 200,000 acres enrolled. Also, the sustainable forest incentive program was designed, in part, to limit county involvement.

The Legislature should consider requiring periodic assessment of the extent to which participating landowners follow their forest management plans. For example, DNR could require plan writers, when updating forest management plans, to include an assessment of the extent to which the landowner followed recommendations in the previous plan. If participants are required to register their forest management plans with DNR, agency staff could review the assessments. DNR's conclusions from these reviews could inform decisions about participants' eligibility to remain in the program. Forest management plans may recommend that landowners do nothing, however, which could make it difficult to determine when absence of activity equals noncompliance. In addition, this activity is not covered by the \$50 plan registration fee DNR charges. DNR estimated that the agency would need at least one additional full-time-equivalent forestry employee to fulfill this responsibility.

COVENANT

Currently, participating landowners can enroll all their land in a county under a single covenant and sell portions of enrolled land to others. In addition, owners of undeveloped land can enroll portions of tax parcels, reserving acreage for development. As discussed elsewhere in this evaluation, parcelization and development are threats to sustainable forest management.

RECOMMENDATION

The Legislature should consider revising covenant restrictions to better prevent parcelization and development.

For example, the Legislature could amend *Minnesota Statutes* 2013, 290C.04, to prohibit a single covenant from applying to tax parcels of land owned by different individuals. This would allow owners who want to enroll large acreages for long periods of time to continue doing so under a single covenant. However, owners who intend to sell portions of their land would need to enroll the portions under separate covenants. The Legislature could also consider not allowing landowners to enroll only parts of undeveloped tax parcels due to plans for future development.

There are risks with either approach. First, landowners might choose not to enroll their land at all, rather than having to enroll parcels under separate covenants or enroll entire undeveloped parcels. Second, the recommendations could result in additional administrative burdens. The first approach would include more paperwork for the Department of Revenue and county recorders

Options for revising covenant restrictions should be considered, but would likely be unpopular.

and additional costs for people who want to enroll land but retain flexibility. Participants may be able to work around the second approach by asking the county to divide parcels before enrollment. As a result, neither option might be effective.

PENALTIES

SFIA relies almost exclusively on self-reported assertions of program compliance by participating landowners. Particularly under these circumstances, it is important that penalties provide a deterrent to noncompliance.

RECOMMENDATION

The Legislature should expand penalty options for noncompliance with sustainable forest incentive program requirements, including increasing financial penalties for owners who develop enrolled land.

A greater range of penalties and clarity about when they will be imposed might prevent some noncompliance.

The Legislature should clarify the consequences to program participants who do not return the annual certification form by its due date, specify penalties for owners of enrolled land who have not received payments during the previous four-year period, and consider creating a substantial per-violation financial penalty for owners who develop enrolled land. Finally, the Legislature should consider penalty options that recoup payments but do not result in removal of land from the program.

The certification form is currently the only mechanism of accountability in SFIA. It would seem that failure to return the form should have a consequence beyond merely not receiving the payment one year. At the same time, participants might not return their form for reasons that have nothing to do with their continued compliance with other program requirements. It seems somewhat heavy-handed to impose penalties for failure to return a form without confirming noncompliance. The act allows for appeal, but this could become a cumbersome process. One option is a graduated penalty: the first year a form is not returned would result in a warning letter and no payment that year, while a second year (whether immediately consecutive or not) would result in a financial penalty, no future payments, and release of the land from the covenant after the prescribed period of time.

To address noncompliance by property owners who have not received payments in the previous four years or not at all, the Legislature could establish a penalty that is not tied to actual payments received. For example, the penalty could be the payments the participant would have received over a four-year period.

The Legislature should consider a per-violation penalty that will impose a financial consequence on owners who violate the no-development restriction of the covenant. The penalty for covenant violations should be higher than the penalty for other violations, such as classification of enrolled land as 2c Managed Forest Land. For example, the penalty could be a multiple of payments the

owner received (or would have received) for the previous four years. Or, it could be a percentage of the estimated market value of the improvement.

Finally, the Legislature should create a penalty option that does not result in removal of land from the program. For example, if a landowner is found to have land enrolled in the sustainable forest incentive program that is classified as 2c Managed Forest Land, the penalty could require repayment of the incentive payment for the period of time the land was so classified, but allow the land to remain in the program.

List of Recommendations

- The Legislature should either tie sustainable forest incentive payments more directly to the goals of SFIA or repeal SFIA and use other programs to encourage sustainable forest management. (p. 39)
- The Legislature should require registration of forest management plans with DNR prior to enrollment in the sustainable forest incentive program. (p. 42)
- The Legislature should clarify the type of land that qualifies for enrollment in the sustainable forest incentive program. (p. 42)
- DNR should require that forest management plans developed in contemplation of enrollment in the program specify the number of acres that meet the definition(s) of forest land. (p. 42)
- The Legislature should amend SFIA to better address issues related to subsequent owners of enrolled land. (p. 43)
- The Legislature should require increased verification of participants' assertions that they are complying with program requirements. (p. 43)
- The Legislature should consider revising covenant restrictions to better prevent parcelization and development. (p. 44)
- The Legislature should expand penalty options for noncompliance with sustainable forest incentive program requirements, including increasing financial penalties for owners who develop enrolled land. (p. 45)

2c Managed Forest Land

APPENDIX

The 2c property tax classification is an attractive alternative for some forest landowners.

Some forest landowners seeking relief from property taxes face the decision of whether to enroll their land in the sustainable forest incentive program or apply to their county assessor to have their land classified as 2c Managed Forest Land.¹ The 2008 Legislature created the 2c Managed Forest Land classification for land between 20 and 1,920 acres that is being managed under a forest management plan.² Land cannot be classified as 2c Managed Forest Land and enrolled in the sustainable forest incentive program. Interested owners of between 20 and 1,920 acres of contiguous forest land choose between these options.³ Exhibit A.1 shows which counties have land classified as 2c Managed Forest Land, enrolled in the sustainable forest incentive program, or both.

The sustainable forest incentive program provides a \$7 per-acre payment that is taxable income. The class rate for 2c Managed Forest Land is 0.65. The class rate for 2b Rural Vacant Land, the classification most common among the property tax statements we reviewed for the sustainable forest incentive program, is 1.00.⁴ Setting aside the fact that the sustainable forest incentive payment is taxable income, an owner of rural vacant land seeking property tax relief might consider whether he or she would be better off financially receiving \$7 per acre or a 35 percent class-rate reduction. Other things being equal, the financial benefit from the 2c Managed Forest Land classification will increase as the market value of land increases. The estimated market value per acre of 2c Managed Forest Land was almost \$2,000 in the 2011 assessment year (for taxes payable in 2012); the estimated market value of 2b Rural Vacant Land was just under \$1,500.

There are other considerations besides financial ones, however. For example, if the land has a non-forest-management-related structure on it, the landowner must exclude three acres from enrollment in the sustainable forest incentive program. The county assessor will omit ten acres from the 2c Managed Forest Land Classification. In addition, the forest management plan required for the classification must be registered with the Department of Natural Resources (DNR). DNR charges a \$50 registration fee. The cost, or the registration requirement alone, might be a disincentive to seeking the classification for some landowners.

¹ Minnesota's property tax system uses class rates to establish properties' "net tax capacity," which is the approximate amount of taxes a property owner would pay if the local tax rate were 100 percent.

² *Laws of Minnesota* 2008, chapter 154, art. 2, sec. 12; and chapter 366, art. 6, sec. 26.

³ Forest land does not need to be contiguous for classification as 2c Managed Forest Land, but it does need to be contiguous for the sustainable forest incentive program.

⁴ Class 2b Rural Vacant Land includes nonagricultural rural land. It includes "land that is used for growing trees for timber, lumber, and wood and wood products."

Participants in the sustainable forest incentive program must record a covenant on their land. The covenant restricts development for at least eight years and costs a minimum of \$46 to record. Property classified as 2c Managed Forest Land is not encumbered with a covenant. The covenant may be seen as a disincentive to participation in the sustainable forest incentive program. Exhibit A.2 compares the 2c Managed Forest Land classification with the sustainable forest incentive program.

In addition to the different financial benefits they offer to owners of forest land, the sustainable forest incentive program and the 2c Managed Forest Land classification have other differences.

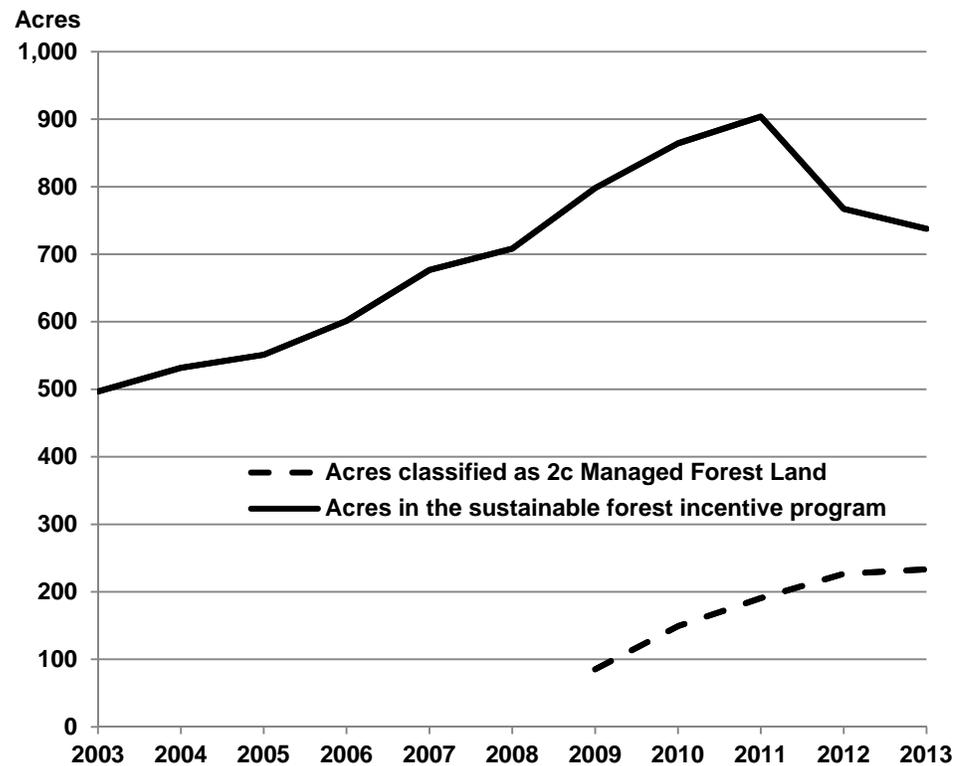
Exhibit A.2: Comparison of 2c Managed Forest Land Classification and Sustainable Forest Incentive Program

	2c Managed Forest Land Classification	Sustainable Forest Incentive Program
Benefit	0.65 class rate	\$7 per acre
Land		
Minimum	20 acres on contiguous parcels	20 contiguous acres
Maximum	1,920 acres	None
Other land		
Public access	None	Required if more than 1,920 acres enrolled
Structure exclusion	At least ten acres	At least three acres
Enrollment term	One year	Eight year minimum
Forest management plan	Yes, and must be registered with the Department of Natural Resources	Yes
Covenant	No	Yes

SOURCE: Department of Revenue, abridged by the Office of the Legislative Auditor.

Acreage classified as 2c Managed Forest Land has increased each year that this classification has been available, as Exhibit A.3 shows. For property taxes payable in 2013, acreage classified as 2c Managed Forest Land reached 226,745 acres. Participants in the sustainable forest incentive program received payment for approximately 738,000 acres in 2013.

Exhibit A.3: Acreage Classified as 2c Managed Forest Land or Enrolled in the Sustainable Forest Incentive Program, 2003-13



NOTES: 2c Managed Forest Land acres are acres assessed in the year, with taxes payable the following year. Sustainable forest incentive program acres reflect acres for which the state made incentive payments in the year indicated.

SOURCE: Office of the Legislative Auditor, analysis of data from the Department of Revenue and the University of Minnesota Land Economics Web site.

MINNESOTA · REVENUE

November 8, 2013

James Nobles, Legislative Auditor
Office of the Legislative Auditor
Room 140 Centennial Office Building
685 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to review and respond to the Sustainable Forest Incentive Program evaluation report. The Department generally agrees with the key findings and recommendations of the report.

Specifically, the Department agrees with the direction of the first recommendation that:
“The Legislature should either tie sustainable forest incentive payments more directly to the goals of SFIA or repeal SFIA and use other programs to encourage sustainable forest management.”

As noted in the report, the Department of Revenue, as administrator for the Sustainable Forest Incentive Act (SFIA), can confirm aspects of the program related to property tax administration, while the Department of Natural Resources (DNR) has the expertise to administer or evaluate forest management guidelines, criteria, and goals. This recommendation, along with the options presented in the report, encourages consideration of separate programs to achieve the goals of SFIA. One advantage of this approach is that it aligns the expertise of professional staff in the Departments of Revenue and Natural Resources with property tax incentive and forest management goals of the SFIA. We must acknowledge that changing the nature of the existing program, potentially creating two different programs, would increase administrative complexity and require increased staffing. If the Legislature decides to pursue this option and explore different ways of providing property tax relief for forest land, the Department will support the efforts of the Legislature, DNR, and other interested stakeholders in analyzing those alternatives.

We agree with the report’s recommendation of asking the Legislature to address issues related to subsequent owners of enrolled land, increase penalty options, clarify circumstances in which the Department can and should impose penalties, and require registration of forest management plans with DNR prior to enrollment in the program. If the existing SFIA program is maintained, these types of changes will provide the Department with more clarity and direction for management of the program.

We agree with the recommendation that:
“The Legislature should require increased verification of participants’ assertions that they are complying with program requirements.”

The Department could review property tax records, verify that there are no new structures on enrolled property, and guarantee that participants continue to meet property tax-related program requirements. The level of expanded oversight could vary from increased review of possible violations to a full annual review of all enrolled properties. Depending on the direction taken, expanded oversight would require increased staffing and resources. We agree with the evaluation report's suggestion that another way to provide this type of increased oversight would be to involve county assessors in the review of SFIA enrolled property records for new construction activity. Expanded oversight by the Department would require participation of county assessors to verify and report property information that is not maintained at the Department.

The Department appreciates the time and effort of the Legislative Auditor in reviewing the Sustainable Forest Incentive Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Myron Frans". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Myron Frans
Commissioner

Minnesota Department of Natural Resources

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

Office of the Commissioner

651-259-5555



November 7, 2013

Mr. James Nobles, Legislative Auditor
Office of the Legislative Auditor
Room 140 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

My staff and I appreciate the thorough audit conducted on the Sustainable Forest Incentive Program, and we are pleased to be able to comment on the final version of the audit report. We found the report provides an accurate depiction of the program, and we generally concur with the report's findings.

Regarding the first recommendation that "the legislature should either tie sustainable forest incentive payments more directly to the goals of SFIA or repeal SFIA and use other programs to encourage sustainable forest management," we agree that it is necessary to clarify goals for the program and to more clearly tie payments to those goals. As the report suggests, many stakeholders would be concerned over repealing the Sustainable Forest Incentive Act (SFIA) and eliminating the support it provides for sustainable management of the state's privately owned forest lands and the incentive for private landowners to keep their forest lands intact. The department is prepared to work with the Legislature, stakeholders, and the Department of Revenue to recommend how the SFIA can be improved and strengthened and to explore options that would also be effective in achieving the SFIA's various goals. We also support the report's suggestion of options to help tie incentive payments to the goals of SFIA based on the two kinds of landowners enrolled in the program: 1) the traditional family forest landowner (individual citizens), and 2) the industrial forest owner (large landowners managing their forests for profit).

We support the recommendation that "the Legislature should require registration of forest management plans with DNR prior to enrollment in the Sustainable Forest Incentive Program." The department already does this for the 2c Managed Forest Tax law and it is needed for the SFIA program. Registration would allow the department to periodically follow-up with enrollees to help them implement their forest management plans. This would strengthen the effectiveness of the SFIA program by increasing the number of landowners actually attaining the goal of sustainable forest management.

The department supports all the other report recommendations, particularly those that would strengthen verification of participants' compliance to program requirements and expand penalty options for noncompliance.

Thank you, again, for your office's thorough review of the Sustainable Forest Incentive Program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Landwehr".

Tom Landwehr
Commissioner



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