

## MINNESOTA ▪ REVENUE

# BULLETIN

**Date:** June 8, 2010 (updated from April 1, 2010)

**To:** All Assessors

**From:** Information and Education Section, Property Tax Division

**Subject:** **The Rural Preserve Property Tax Program (M.S. 273.114)**

### BACKGROUND

The Rural Preserve Property Tax Program was enacted by the Minnesota Legislature in 2009. The program was a response to concerns raised by property owners and farmers regarding changes that had been made to the Green Acres program in 2008. Many farm properties in Minnesota include land that is not actually farmed. In some instances, the choice to not farm a portion of the land is based on a property owner's decision to use it for other purposes (e.g. hunting or future residential development). However, other farmers choose not to farm portions of their property to maintain natural wildlife or to preserve "green" lands for future generations. These farmers had appealed to the legislature that, due to changes made in 2008 to Green Acres law, they would have to plow down trees or fill in wetlands in order to be able to afford property taxes (if there was no longer a deferral under the Green Acres program).

The Rural Preserve program was enacted to provide similar tax benefits as the Green Acres program to property owners who were sincerely interested in land preservation. Persons choosing to enroll must be willing to commit their land to a conservation management plan and covenant for a minimum of eight years in order to receive the tax benefits of the program.

Reports on the Green Acres program prior to 2008 law changes found that statewide, 38% of enrolled acres were not tilled land\*. Due to the inconsistencies in the implementation of the Green Acres program and the resultant tax shift caused by extending Green Acres to non-agricultural lands, significant legislative changes were made to Green Acres in 2008 and 2009. One of the legislative changes was the creation of the Rural Preserve program. With Rural Preserve, we cannot urge enough that you be consistent with both statutory language and intent in order to ensure statewide uniformity and consistency.

In order to be proactive in our endeavor for statewide consistency, we are pleased to provide you with this bulletin regarding the Rural Preserve program, the benefits of the program, eligibility requirements, and other information that will be important for assessors' offices to know in advance of the first 2011 applications. We have also included examples of documents in the appendix to this bulletin, such as the conservation management plan and covenant which will be used.

---

\* ("Green Acres" and Agricultural Land Preservation Programs, Office of the Legislative Auditor, State of Minnesota, 2008)

## **PROGRAM ELIGIBILITY**

### **Who is eligible for the Rural Preserve Property Tax Program?**

Minnesota Statutes, section 273.114, subdivision 2 provides:

*“Class 2a or 2b property that had been assessed under Minnesota Statutes 2006, section 273.111, or that is part of an agricultural homestead under Minnesota Statutes, section 273.13, subdivision 23, paragraph (a), is entitled to valuation and tax deferral under this section if:*

- (1) the land consists of at least ten acres;*
- (2) a conservation assessment plan for the land must be prepared by an approved plan writer and implemented during the period in which the land is subject to valuation and deferral under this section;*
- (3) the land must be enrolled for a minimum of eight years;*
- (4) there are no delinquent property taxes on the land; and*
- (5) the property is not also enrolled for valuation and deferral under section 273.111 or 273.112, or chapter 290C or 473H.”*

We will focus more on the land requirements in the next section. However, the property owner requirements fall into two groups:

1. Property owners who had been properly enrolled in Green Acres under 2006 statutory requirements; or
2. Owners of agricultural homestead property.

Property owners with land that had been properly enrolled in Green Acres that is not homesteaded will have a one-time option to enroll their class 2b acres in Rural Preserve. If a property had been enrolled in Green Acres due to an error or oversight (e.g. the property only had 7 acres of agricultural land), the property would be ineligible for Rural Preserve under this clause. This enrollment clause was created because legislature wanted a viable option for properties which had been in Green Acres, but that after 2008 law changes had some acres which were no longer eligible for the deferral.

Class 2b rural vacant land acres which are part of an agricultural homestead are eligible for enrollment going forward, whether they were in Green Acres or not (provided that all other program requirements are met).

If a property owner meets the qualifications for this program because of previous enrollment in Green Acres under 2006 statute, for any sale/transfer/etc. that results in new ownership, the new owner would need to meet the agricultural homestead requirement to qualify for continued valuation/deferral. The property would not have been assessed under Green Acres 2006 statutes for that owner, so that provision would not apply. For 2b acres currently in Green Acres, this is a “one time landing area” for those acres. Going forward, all new applicants and all new owners of enrolled land would need to meet the agricultural homestead requirement.

As stated above, there must be no delinquent taxes on the land at the time of application.

### **What are the land requirements?**

Class 2a (agricultural) or 2b (rural vacant land) property: Class 2a or 2b property that had been enrolled in Green Acres under 2006 statutory requirements or that is part of an agricultural homestead may qualify. For property enrolled in Green Acres, this means property that had been properly enrolled in Green Acres in either or all of assessment years 2006, 2007, or 2008. Class 2a agricultural acres are eligible for enrollment; however it is likely that due to the requirements of the conservation management plans, these 2a acres will be reclassified as class 2b rural vacant land once enrolled.

The land consists of at least ten acres: The eligible land must be at least ten acres in size. For a typical agricultural homestead, the entire property would need to be at least 21 acres (HGA, ten acres of tilled land to sustain agricultural homestead, and ten acres of 2b which could be enrolled in the Rural Preserve program). Once the ten (contiguous) acres requirement is met, other smaller portions of the property may be enrolled provided they are under the same ownership, conservation management plan, and covenant. For example, if a property owner has 13 qualifying acres on the eastern edge of their farm property, and another 4 acres on the western edge, all 17 acres are eligible for enrollment in the program.

A conservation assessment plan and covenant must be in place: The land must be covered by a conservation assessment plan, and must be placed under a covenant for a minimum of eight years. Although the covenant is discussed further in a later section, please note that it is not an “eight year covenant”. It is a perpetual covenant for which a request to terminate may be made after five years, with final termination taking place three years after that. In other words, eight years is the minimum time that a covenant will be in place for the property, but in no way does it “expire” or become inactive after eight years.

### **What are the limitations?**

Acres may not be enrolled in this program while concurrently enrolled in:

- Green Acres
- Open Space
- Sustainable Forest Incentive Act
- Metropolitan Agricultural Preserves

Because eligible acres are only class 2a and 2b, the property would also be ineligible for concurrent classification as 2c (Managed Forest Land). If a property owner enrolled in 2c with a qualifying Forest Management plan, she/he may be eligible for Rural Preserve if the land is reclassified as 2a or 2b and is either a) part of an agricultural homestead or b) had been properly enrolled in Green Acres prior to enrollment in the Managed Forest Land class.

### **Transition for properties from Green Acres**

For properties enrolled in Green Acres as of the 2008 assessment, the transition into Rural Preserve will likely happen in one of two ways.

For most property owners in Green Acres who choose to enroll their class 2b acres into Rural Preserve, we expect that they would keep those 2b acres enrolled in Green Acres until their management plans and covenants are completed. When they are eligible to apply for the Rural Preserve program beginning in 2011, they can immediately “transition” those acres from Green Acres to Rural Preserve without paying back deferred taxes on their 2b lands under Green Acres statute. Farmers choosing this option must enroll their 2b acres prior to May 1, 2013 to avoid the

payback of deferred taxes. In other words, a farmer with 2b acres in Green Acres would have to pay back deferred taxes if they have not transitioned by May 1, 2013. If they transition in 2014, they do not receive a “refund” of the deferred taxes.

There is a possibility for farmers to withdraw class 2b lands prior to August 16, 2010 to avoid a payback of deferred taxes as well. In this case, they may enroll in Rural Preserve in future years (if the property is an agricultural homestead or had been properly enrolled in Green Acres for the 2008 assessment). Between the time of withdrawal from Green Acres and enrollment in Rural Preserve, however, the lands would be valued and taxed at full value.

As an aside, if a farmer chooses to enroll class 2a acres from Green Acres, there will be a payback of deferred taxes on the 2a acres (there is no “free” withdrawal for qualifying class 2a acres) and those acres will likely be reclassified based on the requirements of the conservation management plan.

### **When can property owners apply?**

The program will be first available for the 2011 assessment year. The Department of Revenue will develop applications and educate assessors as to their responsibilities by that time. The first application due date will be May 1, 2011 for taxes payable 2012. The application does not need to be filed annually after initial acceptance, but assessors may request additional information to verify that a property owner continues to meet program requirements.

## **PROGRAM BENEFITS**

### **What are the benefits of the program?**

Similar to Green Acres, a tax amount is deferred for the duration of enrollment in the program. The assessor is to determine two values for the land: One without regard to non-agricultural influences which must not exceed the 2a tilled value for that county as determined by the Commissioner of Revenue, and another value based on the highest and best use of the property which takes into account any non-agricultural influences such as development pressure or seasonal or commercial use. The actual taxes will be based on the Rural Preserve value (without regard to non-agricultural influences) and the difference between the taxes based on the Rural Preserve value and the taxes based on a highest and best use value are deferred for the duration of the program.

Special assessments may also be deferred as long as property is enrolled in the program. When a property no longer qualifies, all deferred special assessments plus interest must be paid.

As with Green Acres, the deferred taxes are a lien on the property, and when due are assessed to the same extent and for the same duration as other taxes imposed on the property in this state. The tax shall be annually extended by the county auditor and when payable shall be collected and distributed in the manner provided by law for the collection and distribution of other property taxes.

### **How is the Rural Preserve value determined?**

Minnesota Statutes, section 273.114, subdivision 3 provides:

*“Notwithstanding sections 272.03, subdivision 8, and 273.11 [both sections refer to market value], the value of any real estate that qualifies under subdivision 2 must,*

*upon timely application by the owner in the manner provided in subdivision 5, not exceed the value prescribed by the commissioner of revenue for class 2a tillable property in that county. The house and garage, if any, and the immediately surrounding one acre of land and a minor, ancillary nonresidential structure, if any, shall be valued according to their appropriate value. In determining the value for ad valorem tax purposes, the assessor shall not consider the presence of commercial, industrial, residential, or seasonal recreational land use influences that may affect the value of real estate subject to this section.”*

For purposes of valuation for the Rural Preserve program, the Department of Revenue strongly recommends using one of the following values:

1. 50% of the 2a tilled value as prescribed by the Commissioner of Revenue for your county for Green Acres purposes; or
2. 50% of the average estimated market value for tilled lands based on your local market if the value of tilled lands does not exceed the associated Green Acres value.

↪ For example, if the county does have Green Acres on its tilled land, and has valued woods at \$2500 per acre because of recreational value influences, and the indicated 50% value for Rural Preserve (from above) is \$2200 (based on a Green Acres tilled value of \$4400 for the county), the deferral is based on the \$300 difference.

For enrolled class 2b property which is wild land (e.g. swampland, waste land, etc.), it may be acceptable to use 25% of the 2a tilled value as prescribed by the commissioner for your county (mentioned above) or 25% of the average estimated market value for tilled lands in your county if Green Acres is not applied to the tilled lands.

↪ For example, the county does have Green Acres on its tilled land and has valued a swamp at \$1800 per acre because of recreational value influences, and the indicated 25% value for Rural Preserve (from above) is \$1100 (based on a Green Acres tilled value of \$4400 for the county), the deferral is based on the \$700 difference in value.

If the estimated market value of the land the property owner wishes to enroll in Rural Preserve is less than the indicated value for the Rural Preserve Program, there are no deferred taxes. Rural Preserve deferral is only applicable in cases where the EMV exceeds the indicated Rural Preserve value for any given property.

↪ For example, a county does not have Green Acres on its tilled land, and has valued a swamp at \$900 per acre due to lack of recreational value influences or other market influences, and the indicated 50% value for Rural Preserve is \$2000 (based on a 50% of the county’s average EMV for tilled, which is \$4000 per acre) and the 25% value is \$1000, there is no deferral because the swamp EMV is lower than the Rural Preserve value.

## **CONSERVATION ASSESSMENT PLAN AND COVENANT**

### **What are the details of the conservation assessment plan?**

The Board of Soil and Water Resources will distribute guidelines for plan writers. The plans themselves must be approved by the Soil and Water Conservation District in each county. The assessor must be provided a copy of this assessment plan as part of the application process.

The assessor's duty is very minimal in terms of the conservation assessment plan. Your duty will be to determine that it has been signed by an "approved plan writer". The Soil and Water Conservation District (SWCD) for your county will keep a list of approved plan writers that you may request. Keep in mind that the persons on the list are likely to change regularly at first as new plan writers are added. Initially, the DNR expects most plan writers to be from SWCDs or to be Forest Stewardship plan writers. The actual plans may contain very detailed soil type information, etc. that may be unnecessary for your purposes. As long as the plan is completed, is signed by an approved plan writer, has been approved by the SWCD, and you have a copy on file with the application, it is sufficient to continue with the approval process.

The conservation goals will commonly be to maintain or enhance existing land cover. In other words: land preservation. Most agricultural land will be excluded from qualifying Forest Stewardship and Forest Management plans, and the agricultural use on conservation assessment plans will be very limited. However, there may be some "flash" grazing of cattle for example, but only to the extent that it does not damage existing grass cover or vegetation. In most cases, there will not be enough agricultural use on these lands to sustain the 2a classification. The amount of agricultural use (or any use of the land) is determined by the plan writer based on the guidance of the SWCD.

Other requirements for the assessment plan may include controlling noxious and invasive weeds, periodically inspecting for erosion, periodic burning, periodic mowing, or periodic tree thinning when necessary to maintain the health of the natural and existing plant and tree community. The covenant requires that the land not be modified in any way that adversely impacts the overall quality and type of the vegetative cover prescribed within the conservation assessment plan.

While the "actual" conservation assessment plan may be very long and detailed, for the purpose of this program, the plan that you are given may be as simple as a one-page document. An example of this one-page document is included in the appendix of the report. The plan form will include the landowner's name and address, as well as the property ID number, legal description, a map, and number of acres covered. These areas of the plan are highlighted in the example for your reference.

Remember, property owners do not need to enroll all eligible acres. If, for example, a property owner has 100 acres which are eligible for enrollment, the plan may only cover 70 of those acres. Only the 70 acres covered by the plan and the associated covenant will be enrolled. The remaining 30 acres would be valued and taxed at their highest and best use value. It is also possible that on the same parcel, only some of the 70 acres under the management plan be enrolled into Rural Preserve. For example, if the owner only puts 50 of the 70 acres under a covenant, only those 50 acres would meet all requirements for the valuation and deferral provided by the program. This is one reason that it is imperative for the assessors to review final documentation (including the plan and the covenant) as part of the application approval process.

Other information included on the plan will be specific to the property and is information used by BWSR and the SWCDs for this program: dominant soil type, crop productivity index (CPI), forest productivity index (FPI), dominant land use/cover type, management goal, prescriptions to meet proposed future conditions, and recommended date of completion. These criteria meet the statutory requirements for the conservation assessment plan under M.S. 273.114.

If a DNR-approved Forest Stewardship Plan or other conservation plan is in place on the property that meets the minimum requirements as set forth in M.S. 273.114, the plan may be signed by an approved plan writer and approved by the SWCD and be acceptable for the requirements of Rural Preserve. The onus is on the landowner to maintain the original plan and produce it when necessary. The covenant will be based upon this pre-approved plan. Qualifying Forest Stewardship Plans will show an expiration date on the front page of the plan, and this page should be provided to the assessor with the conservation assessment plan as part of the application process. It is the taxpayer's duty to have this plan renewed while enrolled in the Rural Preserve program in order to continue to receive the benefits.

If property owners have questions regarding fees for conservation assessment plans, the SWCD and local foresters are their resources. The Board of Soil and Water Resources expects that fees will start around \$250 per plan, but may increase in cost depending on the size of the property or the complexity of the plan. Hopefully, most property owners will see tax savings in excess of the cost of the plan within the first years of enrollment in the program.

We recommend establishing a working relationship with your county's Soil and Water Conservation District (SWCD) to work together on implementation of this program.

### **What do we need to know about the covenant?**

The covenant is recorded with the County Recorder in the county where the property is located. The assessor is to be provided a copy of this recorded covenant as part of the application process.

The property owner is responsible for filling out and filing the covenant agreement. It has been the department's experience with covenants for the Sustainable Forest Incentive Act (SFIA) that the covenants are very easy for most property owners to fill out and sign. The property owner may seek assistance with filling out the agreement if necessary. For example, the owner may receive assistance from the conservation assessment plan writer in order to provide the appropriate exhibits that must accompany the covenant. Or, the owner may request legal advice through an attorney. County Recorders are not allowed to help fill out covenants.

Property owners should make at least two copies of the recorded covenant. A property owner keeps the original document, while one copy is to be provided to the County Recorder and another copy will go with the application to the County Assessor (the application process is outlined further in a later section). A covenant recording number will be assigned and must be noted by the property owner on the application to the assessor.

The covenant runs with the land, so it continues even if there is a change in ownership. This includes changes of ownership by transfer or sale.

The covenant binds the property to the terms of the aforementioned conservation assessment plan. The exhibits that must be included with the covenant include a legal description for real property, and a map or survey of the affected property. The Board of Soil and Water Resources (BWSR) is responsible for determining the restrictions of the conservation assessment plans. Again, it is recommended that you develop working relationships with your county's SWCD in order to understand some of these plan restrictions, and recommend that office to property owners with questions related to this program.

After five years, the property owner may request to cancel the covenant. The covenant will then terminate three years after the request to cancel. It does not automatically cancel after eight

years. The property owners must notify the assessor five years before they desire the covenant to be terminated. There are three full assessment years in between the year of request to terminate and the actual assessment year (January 2) when it is terminated. For example, if someone requests termination on February 6, 2020, the covenant is terminated on January 2, 2024 (after January 2 of 2021, 2022, and 2023 have passed; three full assessment years).

When the covenant is terminated, the property owner will have to pay back any deferred taxes. The deferred taxes will be levied with respect to the year of termination of the covenant plus two prior years. The additional taxes are a lien against the property. After a covenant has been terminated, the land may not be re-enrolled in the Rural Preserve property tax program for a period of three years.

Covenant violation information is covered later in this document (“What do we need to know about compliance issues?”).

An example of a blank covenant agreement can be found in the appendix of this bulletin.

## **APPLICATION**

### **What is the application process?**

The process for applying for the Rural Preserve Property Tax program is a four-step process. It begins and ends with the assessor’s office. The “four steps” include:

1. The Assessor’s Office
2. The Soil and Water Conservation District
3. The County Recorder’s Office
4. The Assessor’s Office

The Assessor’s Office: Property owners seeking to enroll lands into the Rural Preserve program should first contact their assessor’s office for an explanation of the program. You have been provided with fact sheets which may be of help in this part of the process. Assessors should work with property owners to determine program eligibility (Green Acres or agricultural homestead requirements are met, no delinquent taxes, at least ten contiguous acres, etc.). If parcels contain 10 or more contiguous eligible acres, the assessor should provide a list of parcel numbers, provide aerial photos of the parcels, and provide the application to the property owner. If your office is unable to produce maps or aerial photos, we recommend working with the SWCD in your county, or request that the property owner get maps from the Farm Service Agency.

Minnesota Statutes, section 13.03 allows assessors to charge a minimal fee for some of these aerial photos and copies. However, assessors may not charge for delineating eligible acres on a map, as this is a part of the assessor’s duty.

The Soil and Water Conservation District (SWCD): Property owners should contact the SWCD to review requirements of the conservation assessment plans. Property owners should provide parcel numbers and aerial photos to the SWCD for purposes of creating the plan. A plan will be prepared for any applicable acres (it does not need to be all eligible acres, so long as at least ten are enrolled). Only the acres covered by the plan are eligible for enrollment in Rural Preserve, which may mean that upon the assessor’s second review, the total acreage to be considered may decrease. Assessors should therefore review the plan when it is returned to the office to ensure



that only appropriate acreage receives the benefit. The SWCD will approve the plan. In some cases, the property owners may already have a plan which meets the SWCD's requirements, such as a forest management plan. In this case, the SWCD approver will acknowledge that the prepared plan meets the requirements of this program. Again, the assessor does not need to read and understand the minutiae of the plan, but needs to know that it has been signed by an approved plan writer.

The County Recorder's Office: The property owner will fill out and sign the Covenant form. The covenant will bind the property to the terms of the conservation assessment plan. This covenant must include the required exhibits (legal description and a map or survey of the affected area). Property owners will file the covenant at the County Recorder's office. The property owner will make a copy of the recorded covenant to submit with the final and complete application to the assessor's office.

The County Assessor's Office: At this part of the application process, the assessor will review the required items. Applications for deferral under Rural Preserve are due by May 1 of the year prior to the year in which taxes are payable. A completed and signed application must be returned to the assessor along with a copy of the conservation assessment plan signed by an approved plan writer and a copy of the recorded covenant agreement. As the assessor has already determined qualifications for the program at the initial meeting, the assessor needs only to review the additional documentation for approval or denial of deferral, and to review the exact acreage affected (by reviewing the conservation management plan, the covenant, and the map). The assessor should contact the property owner of the approval or denial.

As with similar special programs, if the assessor denies the application, the property owner may appeal to Minnesota Tax Court. Local and county boards of appeal and equalization are not able to grant special programs to property owners.

A flow chart of this application process is included in the appendix of this bulletin.

## **PROGRAM COMPLIANCE**

### **What do we need to know about compliance issues?**

The requirements for Rural Preserve valuation and deferral are listed in Minnesota Statutes, section 273.114, subdivision 2:

*“Class 2a or 2b property that had been assessed under Minnesota Statutes 2006, section 273.111, or that is part of an agricultural homestead under Minnesota Statutes, section 273.13, subdivision 23, paragraph (a), is entitled to valuation and tax deferral under this section if:*

- (1) the land consists of at least ten acres;*
- (2) a conservation assessment plan for the land must be prepared by an approved plan writer and implemented during the period in which the land is subject to valuation and deferral under this section;*
- (3) the land must be enrolled for a minimum of eight years;*
- (4) there are no delinquent property taxes on the land; and*
- (5) the property is not also enrolled for valuation and deferral under section 273.111 or 273.112, or chapter 290C or 473H.”*

Also, a property is subject to a covenant, which is described in subdivision 5, paragraph (b):

*“The owner of the property must sign a covenant agreement that is filed with the county recorder and recorded in the county where the property is located. The covenant agreement must include all of the following:*

*(1) legal description of the area to which the covenant applies;*

*(2) name and address of the owner;*

*(3) a statement that the land described in the covenant must be kept as rural preserve land, which meets the requirements of subdivision 2, for the duration of the covenant;*

*(4) a statement that the landowner may terminate the covenant agreement by notifying the county assessor in writing three years in advance of the date of proposed termination, provided that the notice of intent to terminate may not be given at any time before the land has been subject to the covenant for a period of five years;*

*(5) a statement that the covenant is binding on the owner or the owner's successor or assigns and runs with the land; and*

*(6) a witnessed signature of the owner, agreeing by covenant, to maintain the land as described in subdivision 2.”*

To understand potential effects of changes to properties enrolled in Rural Preserve, one must keep these two issues separate:

1. **The covenant:** The covenant is binding on all successors. The new owners are bound by the terms of the covenant, whether or not the property continues to qualify for value deferral. *The covenant is not automatically terminated.* Violation of the covenant does not terminate the covenant. Deferred taxes are due when the covenant is terminated.
2. **The benefits:** An owner and any future “new” owners would need to meet the requirements under subdivision 2 to qualify for the valuation and deferral benefits. If a new owner does not meet the requirements of subdivision 2, then the new owner does not get the valuation and deferral benefits; however, it is possible that after the covenant is terminated the owner would not have deferred taxes due, because of the possibility that taxes would not be deferred for the final years (due to loss of program benefits).

Deferred taxes are due only upon termination of the covenant; however special assessments are due as soon as the property no longer qualifies under the requirements of subdivision 2.

**If property enrolled in Rural Preserve is sold or transferred, what are the consequences (if any)?**

The new owner would need to meet the requirements of 273.114, subdivision 2 to qualify for valuation and deferral under this program.

If the new owner does not qualify, there is no valuation/deferral benefit, but the new owner is still subject to the restrictions of the covenant, because the covenant is “binding on the owner or the owner’s successor or assigns and runs with the land...” If the property has been enrolled in Rural Preserve for at least an additional five years, the new owner would need to request termination of the covenant, which takes three years. Likely, there would be no deferred taxes to pay, but there may be no deferral during those final three years. Special assessments would need to be paid as soon as the property no longer qualifies under the requirements of subdivision 2.

If a new owner is able to establish (anytime after purchasing or acquiring the property) that he/she meets the requirements of subdivision 2, the benefits may be reinstated provided that the covenant is still in place.

**What if property enrolled in Rural Preserve becomes non-homestead?**

Property which was homesteaded but becomes non-homestead under the same ownership would not be eligible for the valuation and deferral because the requirements of subdivision 2 would no longer be met. The covenant is still binding. The property owner would need to pay back special assessments, but there would likely be no payback of deferred taxes after the three-year termination process (no taxes would be deferred for those years).

If property becomes homestead again, benefits may be reinstated. The assessor may request proof that the property meets the qualifications for the valuation and deferral benefits of the program.

**Covenant violation**

If a covenant is violated, appropriate action must be taken to return the property to the state in which the covenant requires it to be. The covenant is a legally binding document. If the covenant restricts adding improvements to the property for example, but a property owner built on the land, those improvements would need to be torn down. If the improvements are torn down and the property becomes compliant with program requirements again, it may be eligible for reinstatement of the program benefits.

In other words, if the covenant is violated, the property would not be eligible for the valuation/deferral benefits. If the property is returned to a state that is compliant with the covenant and conservation management plan, then benefits may be reinstated.

Special assessments are due upon violation of the requirements of subdivision 2.

**A Note about Forest Management Plan expiration**

Forest Management Plans (FMP) expire after ten years. If a farmer enrolls in 2011 with a three-year-old FMP, which expires in seven years (but the property owners is ineligible or has not started the process for terminating the covenant), the property owners would have to provide a new plan to continue the benefits of the program (as per subdivision 2). If the property did not have a valid FMP, it would not meet the requirements for valuation/deferral. Special assessments would be due. The covenant would still be binding, and after termination of the covenant, three years' deferred taxes would be due, if there had been any.

Because the assessor has a copy of the cover page of the FMP, they will know the expiration date.

**Scenarios:**

*Assume for each of the following scenarios that the farmer qualified under the requirements of subdivision 2 upon original application.*

*Scenario A: Farmer A moves away from his property and no longer qualifies for homestead.*

The covenant does not terminate. Farmer A must request that the covenant be terminated after five years of enrollment, and this process takes three assessment years. Farmer A does not receive any valuation/deferral for those three years, because he no longer meets the requirements

of the program. Farmer A will have to pay back special assessments, because the property no longer qualifies under subdivision 2.

*Scenario B: Farmer B violates the terms of the conservation assessment plan.*

The covenant has been violated because the conservation assessment plan has been violated, but the covenant is not terminated. The land must be returned to the status that the covenant required it to be in. For example, if Farmer B built an improvement in violation of covenant restrictions, the improvement would need to be torn down. Farmer B, having violated the conservation assessment plan, would no longer qualify for valuation/deferral. The covenant is still binding. Farmer B will have to pay back special assessments, because the property no longer qualifies under subdivision 2. If the property is brought back into a state which is compliant with the conservation assessment plan, then the property may re-qualify for benefits. The assessor may request proof, by affidavit or otherwise, that the property meets the requirements for program benefits. This may require the property owner to consult with the local Soil and Water Conservation District.

*Scenario C: Farmer C is retired, so she decides to give her property which is currently enrolled in Rural Preserve to her two kids.*

The covenant is still binding. If neither child homesteads the property, or if any of the other requirements of subdivision 2 are not met, there is no valuation/deferral. If this is the case, special assessments will have to be paid back, because the property no longer meets statutory requirements.

If either or both child meets the requirements of subdivision 2, there is valuation/deferral eligibility under that new ownership. If Farmer C (mother) receives an agricultural relative homestead, the property may also qualify for continued benefits.

### **In summary...**

Violators or persons who no longer qualify for the program benefits would not get any deferral of taxes as soon as the requirements under subdivision 2 are no longer met. Because they do not receive deferral, there are no deferred taxes to pay back. The property is still subject to the covenant agreement. If these property owners return to compliance with all program requirements for the program benefits, the valuation/deferral may be reinstated.

All enrolled property owners must pay back special assessments if and when the requirements of subdivision 2 are no longer met.

For all new owners, etc., “The assessor may require proof by affidavit or otherwise that the property qualifies under subdivision 2” (M.S. 273.114, subd. 5).

The statutes governing deferred taxes and special assessments read as follows under M.S. 273.114:

*“Subd. 6. **Additional taxes.***

*Upon termination of a covenant agreement in subdivision 5, paragraph (b), the land to which the covenant applied shall be subject to additional taxes in the amount equal to the difference between the taxes determined in accordance with subdivision 3 and the amount determined under subdivision 4, provided that the amount determined under subdivision 4 shall not be greater than it would have been had the*

*actual bona fide sale price of the real property at an arm's-length transaction been used in lieu of the market value determined under subdivision 4. The additional taxes shall be extended against the property on the tax list for the current year, provided that no interest or penalties shall be levied on the additional taxes if timely paid and that the additional taxes shall only be levied with respect to the current year plus two prior years that the property has been valued and assessed under this section.”*

***“Subd. 8. Special local assessments.***

*The payment of special local assessments levied after June 1, 2011, for improvements made to any real property described in subdivision 1 together with the interest thereon shall, on timely application as provided in subdivision 6, be deferred as long as the property meets the conditions contained in this section. If special assessments against the property have been deferred pursuant to this subdivision, the governmental unit shall file with the county recorder in the county in which the property is located a certificate containing the legal description of the affected property and of the amount deferred. When the property no longer qualifies under subdivision 1, all deferred special assessments plus interest shall be payable in equal installments spread over the time remaining until the last maturity date of the bonds issued to finance the improvement for which the assessments were levied. If the bonds have matured, the deferred special assessments plus interest shall be payable within 90 days. The provisions of section 429.061, subdivision 2, apply to the collection of these installments. A penalty shall not be levied on these special assessments if timely paid. This subdivision does not apply to special assessments levied at any time by a county or district court under chapter 116A or by a watershed district under chapter 103D.”*

Remember, if a property owner meets the qualifications for this program because of previous enrollment in Green Acres under 2006 statute, for any sale/transfer/etc. that puts the property into new ownership, the new owner would need to meet the agricultural homestead requirement to qualify for continued valuation/deferral. The property would not have been assessed under Green Acres 2006 statute to that owner, so that provision would not apply. For 2b acres currently in Green Acres, this is a “one time landing area” for those acres. Going forward, all new applicants and all new owners of enrolled land would need to meet the agricultural homestead requirement.

**Looking forward**

The department expects to issue information regarding the covenant termination process and an example of a covenant release form. However, property owners should be made aware that the earliest year they are eligible to request that the covenant be released is 2016 (if enrollment was originally in 2011), and the earliest assessment year of withdrawal from the program is 2019 (three full assessment years after original request for termination of covenant, assuming property was first enrolled in 2011).

For assessment-related questions, please contact our division at [proptax.questions@state.mn.us](mailto:proptax.questions@state.mn.us).

For taxpayers, you may share the attached fact sheet regarding the program. You may also direct your taxpayers to the Department of Natural Resources website at [www.dnr.state.mn.us](http://www.dnr.state.mn.us) or the Board of Water and Soil Resources website at [www.bwsr.state.mn.us](http://www.bwsr.state.mn.us). Your local Soil and Water Conservation District is also a valuable resource.