

**REVIEW OF AGRICULTURAL
LAND LEGISLATION OF
NOVGOROD *OBLAST***

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REVIEW OF AGRICULTURAL LAND LEGISLATION OF NOVGOROD OBLAST

INTRODUCTION

This review of Novgorod *oblast* (region) land legislation is prepared as part of an United States Agency for International Development (USAID) comprehensive assistance initiative in Novgorod *oblast* called the Partnership For Freedom (PFF). This work was commissioned under Activity III.A of the Statement of Work: "Land Sector Legal Analysis for Novgorod *Oblast* and Novgorod City." The review focuses on agricultural land, but addresses issues regarding land under buildings in rural areas as necessary.

The first section of this review consists of a short profile of agricultural land reform in Novgorod *oblast*, in order to provide some practical context. The second section discusses the Constitution of the Russian Federation and other basic federal legal enactments that give Novgorod *oblast* legal authority to act in the land area. The third section focuses on issues that in RDI's experience are important in the process of land reform and land market development. Each issue is briefly described, followed by a discussion of the relevant federal legislation, *oblast* legislation, and possible courses of action. Federal legislation is included because at present Novgorod *oblast* relies heavily on federal land law. Finally, the last section provides concluding and summary comments.

SUMMARY PROFILE OF AGRICULTURAL LAND IN NOVGOROD OBLAST

Novgorod *oblast* contains 5.45 million hectares of land, of which 66 percent is forest, 15 percent is agricultural, 15 percent is swamp, scrub, or under bodies of water, and 4 percent is land in residential, commercial, or other use. Of the 809,000 hectares of land in agriculture, 486,500 hectares are plowed land, 175,500 hectares are perennial grasses, and 142,700 hectares are pasture.

The Novgorod *oblast* land committee reports that approximately 60 percent of all agricultural land in the *oblast* is privately owned. Most of this privately owned land is owned by the 67,000 owners of land shares.¹ As part of the nationwide agricultural land privatization process, all citizens who worked on collective and state farms, most retired workers, and most affiliated social sphere workers received an undemarcated share of land from the farm with which they were associated. These land shares can be alienated in any way, or withdrawn in kind for use on a private farm or other type of agricultural enterprise. The size of each citizen's land share is ascertained by relevant *raion* (county) norms for land received in ownership free of charge. Land shares in the *oblast* range from 4 hectares near cities to 10 hectares in less populated areas.

In addition to land shares, agricultural land is privately owned by "peasant farm enterprises" (hereinafter referred to as "private farms"). The final category of private owners are the citizens who hold

¹ 71,000 people have the right to receive land shares in ownership, but 67,000 people have actually received their certificates. The residual 4,000 people cannot be located, or have died without identifiable heirs.



various types of small garden-type plots, such as “*dacha* plots” held by inhabitants of cities and towns, “household plots” held by rural dwellers, and “personal auxiliary smallholdings,” also held by rural dwellers.

The users of agricultural land are divided roughly into four categories. First are the former collective and state farms, now reorganized into joint-stock companies, limited-liability companies, partnerships, agricultural cooperatives, and other forms of large agricultural enterprises. Most of the land these enterprises farm is owned by the land share owners, although contracts for lease of such land to the enterprises are only now being concluded. A portion of the land these enterprises farm is owned by the state and held in special *raion* land redistribution funds. Second are the private farms, who farm their own land, land granted in long or short term use or lease from the *raion* land redistribution funds, and land leased from land share owners. These are much smaller than the former collectives and are cultivated largely by single families or small groups of families. Third are the small plot holders, who cultivate land they own or received for long term use. Fourth are the various state experimental farms and other specialized enterprises, which remain state owned and cultivate state-owned land.

Before the agricultural reform process began in earnest in 1991, 207 state and collective farms operated in Novgorod *oblast*. At present, 155 of the former state and collective farms have reorganized into other legal forms, but they remain large agricultural enterprises. Four associations of private farms exist in the *oblast*. On these enterprises each private farm's territory is demarcated, but the farms work together as a whole. In addition to the private farm associations, Novgorod *oblast* contains 2,365 individual private farms working on 34,231 hectares of land, of which 23,721 is plowed. Finally, individual households with small private plots currently hold nine percent of all agricultural land. Before the reform process began, this group held only four percent of the agricultural land in the *oblast*.

LEGAL BASIS FOR AUTHORITY OF NOVGOROD *OBLAST* TO ENACT LAND LEGISLATION

Novgorod *oblast* has jurisdiction to adopt laws governing a broad range of land issues. The Constitution of the Russian Federation provides that “issues of the possession, use, and disposal of the land” fall under the joint jurisdiction of the Russian Federation and its subjects (i.e., *oblasts*, *krais*, and other forms of regional government).² Article 76(2) describes the manner in which such joint jurisdiction is exercised:

On matters within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, federal laws shall be issued and in accordance with them laws and other normative legal acts of the subjects of the Russian Federation shall be adopted.

Based on these provisions, the federation subjects can adopt laws “in accordance” with federal laws on matters falling under joint jurisdiction. The federation subjects thus have significant authority to implement basic policies contained in federal laws.

² Constitution of the Russian Federation (December 12, 1993), article 72(1)(c).

Oblast authority to legislate on most legal issues presented in the following section stems directly from federal law addressing the specific issue. However, for some of the issues discussed, notably the suggested *oblast* land code, the required federal authority is more tenuous. Nevertheless, given the failure of the Federal Assembly to move forward on some critical land market issues, Novgorod *oblast* should use all legal authority available to enact needed policy.

Three independent arguments support the view that the federation subjects currently have wide-ranging authority to act on agricultural land issues. First, Presidential Decree No. 1767, “On Regulation of Land Relations and Development of Agrarian Reform in Russia” (October 27, 1993), establishes that agricultural land plot and land share owners have the right to conduct sale, lease, mortgage, and other transactions in land. While Decree No. 1767 is a presidential decree, not a federal law, the decree holds the status equivalent to a federal law because it was promulgated in 1993 between the dissolution of the old Russian parliament and the coming into force of the new Constitution.³ Thus the federation subjects can adopt legislation in fulfillment of this “federal law” pursuant to their jurisdiction over land issues under the Constitution.

Second, Part I of the Civil Code of the Russian Federation states that presidential decrees can also determine “the grounds for the origin and the procedure for the effectuation of the right of ownership and other rights to a thing.”⁴ A land plot is considered a thing under the Code.⁵ Since the Code gives authority for presidential decrees to act under the Code, arguably the federation subjects can use such decrees as a basis for enacting their own legislation under articles 72 and 76 of the Constitution.

Third, if the Federal Assembly fails to act in an area for which it has responsibility, as a policy matter it is harmful for a legal vacuum to exist. Thus, the President can issue decrees to address important issues until the Federal Assembly takes action,⁶ and federation subjects can act to carry out those decrees. Such a course of action has occurred with regard to land on several occasions. Ample language exists in presidential decrees, notably Decree No. 1767 and Decree No. 337, “On Realization of Citizens' Constitutional

³ Presidential Decree No. 1598, “On Legal Regulation in the Period of the Stage-by-Stage Constitutional Reform in the Russian Federation” (October 7, 1993), governed the period between dissolution of the parliament in late September 1993 and December 25, 1993. Under that decree, President Yeltsin assumed for himself power to regulate on issues that were normally the domain of the federal legislature at that time, and also ordered federation subjects to follow decrees as if they were federal law. Decree No. 1598 specifically gave the President the right to issue decrees on land reform and property. Presidential Decree No. 1767 was issued during the effective term of Decree No. 1598. While it may seem self-serving that President Yeltsin could issue a decree stating that his decrees are in fact federal laws, the unique time frame in which this action was taken seems to give it legitimacy. In support of this position, most of the 1991 Land Code was invalidated by a presidential decree issued pursuant to Decree No. 1598, and this action has been generally recognized as valid.

⁴ Civil Code of the Russian Federation, Part I (January 1, 1995), articles 2(1) and 3(3).

⁵ Articles 128 and 130.

⁶ The Constitution does not clearly state on which issues the President may use his authority to issue decrees. As a practical matter, the President has issued decrees on a wide range of issues.

Rights to Land” (March 7, 1996), for federation subjects to use as a basis for adopting progressive land legislation.

Moreover, the same argument can be used to give federation subjects authority to adopt land legislation on a temporary basis. If the Federal Assembly, the President, and the Government of the Russian Federation fail to act in important areas, federation subjects must act in order to address pressing issues.

While it is not absolutely clear that the federation subjects can adopt legislation based upon the above arguments, at this early point in the Russian Federation's legal development the Constitution is open to interpretation. Given the urgent need to develop land markets, the subjects should use all legal tools available to move forward.

LEGAL ISSUES REGARDING AGRICULTURAL LAND

Privatization of Rural Land

International experience demonstrates conclusively that private owners are much more capable than governments in allocating land through the market and using it efficiently. Agricultural land should therefore be in secure, long term control of private owners in order to maximize the benefits both to Russia's citizens and the to economy as a whole. Privatization of agricultural land is therefore important, though privatization must be done in an equitable manner and with some consideration of state revenues.

As noted above, about 60 percent of the *oblast's* agricultural land is privately owned, either by private farmers, by citizens in small plots, or by common owners of shares of large tracts of land still farmed by large enterprises. The agricultural land in Novgorod *oblast* that has not been privatized is either (1) contained in the *raion* land redistribution funds, or (2) being used by agricultural enterprises that were deemed exempt from privatization. Since such a significant portion (up to 40 percent) of agricultural land is owned by the government, and thus controlled by the government, the government has a large measure of control over the budding land market, and can heavily influence who gets access to land, and at what cost.

The land in the *raion* land redistribution funds which is currently held by private farms in short and long term use should be sold at a nominal price to those farms. This will result in the new owners making improvements to the land, and will allow for transactions between private owners when private farms elect to increase or decrease the size of their operations. The remaining land in the *raion* funds could be privatized in a variety of ways, through increasing the size of land shares, or perhaps through a schedule of public auctions over a multi-year period. These options, however, require further study in Novgorod *oblast* itself.

Much of the land being used by exempt enterprises should also be privatized. In many instances there is little justification for making certain enterprises exempt, as their activities would likely benefit from privatization. For example, seed-growing enterprises are generally considered exempt, apparently out of fear that privatization would lead to their demise. But high-quality seeds are desperately needed in Russia, and a ready market exists for such commodities.

Novgorod *oblast*-level entities were largely responsible for determining which collective and state farms would be exempt from privatization, based upon criteria set forth in a 1992 federal government resolution.⁷ The list of exempt enterprises should be revisited by the *oblast* with a view to making additional enterprises subject to privatization.

Regarding state revenues, the privatization options described above should result in some additional revenue. Under the current legal scheme, most of the above-mentioned users of state-owned land pay rent in the amount of the land tax.⁸ If privatized, not only will the state receive revenue from privatization sales, but the state will continue to collect land taxes in lieu of land rent from the new owners.

Finally, land under buildings in rural areas has generally not been privatized. Privatization of such land would serve as an incentive for the owners of the buildings to make investments in the buildings, and should facilitate mortgage transactions by tying the land to the overlying structure. Presidential Decree No. 198, "On Right of Ownership of Individuals and Legal Entities to Land Plots Under Objects of Immovable Property in Rural Areas" (February 14, 1996), allows owners of buildings, structures, and other immovable property objects in rural areas to acquire ownership of the land located underneath such objects. This decree gives local government bodies significant powers of implementation; Novgorod *oblast* should use this authority to carry out privatization.

Foreign Ownership of Rural Land

Article 62 of the Constitution states that foreign citizens shall have the same rights as Russian citizens, with the exception of cases stipulated by federal law or international treaty. This would include the right to own land, unless federal law or treaty provides otherwise. No active federal law was found specifically prohibiting foreign ownership of land, though such a tone is evident in several enactments. Novgorod *oblast* law "On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*" provides that "[f]oreigners and persons without citizenship may obtain land plots on terms of lease."⁹ Although lease rights appear to be legal, RDI discussions with Novgorod *oblast* officials and officials in other regions indicate that those officials do not think foreign ownership of agricultural land is allowed.

While it would be useful to research whether the prohibition on foreign ownership of agricultural land will impact the potential for foreign investment, it is likely that foreign investors are primarily interested in agricultural processing and related post-production investments, not in production itself. Even in cases of interest in investment in production, the investor may deem lease rights sufficient. Pushing for foreign land

⁷ Government Resolution No. 708 "On the Procedure for Privatization and Reorganization of Enterprises and Organizations of the Agro-Industrial Complex" (September 4, 1992).

⁸ Article 4 of the federal law "On Payment for Land" (adopted on October 11, 1991, amended on February 14, 1992, July 16, 1992, May 14, 1993, August 9, 1994, August 22, 1995, December 27, 1995). Article 12 of the law exempts some state enterprises, as well as private farms for the first five years of operation, from paying the land tax.

⁹ Article 1 of the Novgorod *oblast* law "On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*" (adopted on July 28, 1995, amended on July 1, 1996 and July 29, 1996).

ownership rights will almost certainly kindle opposition from conservative forces, and may jeopardize the privatization and other recommended proposals that are essential to the Russian private farmers and other small domestic businessmen. Therefore, legislative action on this issue is not recommended at this time.

Procedures and Model Forms for Sale and Lease of Agricultural Land

The ability of private owners to freely sell, lease and conduct other transactions with their land constitutes one of the most important private ownership rights. Transaction rights enable owners to recover investments they have made in the land, and allows use of the market mechanism to allocate land to the most efficient user.

Presidential Decree No. 1767 of October 1993 clearly established the right to conduct transactions in agricultural land and land shares. Presidential Decree No. 337 of March 1996 confirmed the right to conduct transactions in land shares. Federal regulations provide procedures and model documents for purchase and sale of small plots, and for lease of agricultural land shares. These procedures and documents are being used throughout Russia. However, officially-sanctioned procedures and model documents for other agricultural land transactions have not been issued. While from a purely legal point of view such procedures and model forms are probably not necessary, their absence is often cited by agricultural producers and local officials as an obstacle to conducting purchase-sale and other transactions.

The Novgorod *oblast* law "On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*" provides that transactions in land between citizens and legal entities shall be carried out using the federal procedure and model document for small plot sales.¹⁰ This provision clearly extends the land sale procedure for small plots to all plots, and represents a major advance.

Between the federal and *oblast* law, procedures and model forms already exist for sale of all land plots and lease of land shares. Novgorod *oblast* should address other fundamental transactions by issuing procedures and model forms for sale of agricultural land shares, and for lease of agricultural land. Issuance of these procedures and forms by the *oblast* would give producers increased confidence that land transactions will be recognized as valid and protected by the government.

Of equal importance to adoption of additional procedures and forms is bringing already existing procedures into effective use. This may require administrative action by the *oblast* government, both directing relevant agencies to use the already existing law, as well as informing the public about land rights and the intent of the government to protect these rights.

Finally, rights and procedures regarding land transactions are contained in a myriad of federal and *oblast* legislation, thus suffer from a certain lack of clarity. To resolve this potential problem, development of an *oblast* "land code" or "basic law" on land might be considered. Such a code could provide an enforceable definition of: (1) the types of tenure in which land can be held; (2) the ways in which land can be alienated; and (3) clear rules which allow private parties to hold, use, and alienate land. The *oblast*'s

¹⁰ Article 1.



authority to adopt such a law is described in the section entitled “Legal Basis for Authority of Novgorod *Oblast* to Enact Land Legislation.” Voronezh and Sverdlovsk *oblasts* have already adopted such laws.

Requirements Regarding Rational Use of Land

A significant issue related to security of tenure is the seeming inability of the government to trust private land users to use land “rationally” and effectively, and to maintain land fertility. The greatest danger in Russia with regard to efficient land use and protection is not the actions of private parties, but actions of the state that undermine confidence in private rights to land. Such actions lead to reduced investment in land. Secure private land rights will result in far greater economic development than will be encouraged by administrative threats of confiscation for non-development or misuse.

Nevertheless, government bodies in Russia seek to force rational use of land and to protect land by a system of penalties that rapidly escalates to outright confiscation of private land rights. Apart from the massive infringement on private rights that such a scheme entails, it is not at all clear that the state is able to find users for land and care for land once it is confiscated. For example, of the 139,000 hectares of agricultural land in the *raion* land redistribution funds of Novgorod *oblast*, 48,500 hectares of plowed land are unused, while another 33,500 hectares that require significant improvement lie unused. Yet state authorities in Novgorod *oblast* continue to confiscate land for non-use.

RDI research in other regions indicates that rational use regulations impede development of land markets and investment in land. Private farmers feel compelled to lease land rather than purchase it when they have any doubts as to their ability to “effectively” use the land. If they cannot use all of their land in a manner that satisfies the land inspector, they run a serious risk of having their land taken by the state without compensation. Lessors of land may also be reluctant to lease their land to private farmers who are just getting started. If the private farmer cannot effectively use the leased land, the lessor runs the risk that he will lose his land or be forced to farm it himself. For pensioners in particular, whose main asset is often their land shares, these are significant risks.

On the federal level, the 1991 Land Code,¹¹ the law “On Peasant (Farm) Enterprises,”¹² Presidential Decree No. 2162,¹³ and Government Resolution No. 1362¹⁴ all have provisions requiring land owners to use land effectively or rationally, and to increase land fertility. The decree and resolution also give federal authorities power to impose fines for land law violations, but vest the authority to confiscate land with *oblast* and local governments.

¹¹ Article 53 of the Land Code of the RSFSR (April 25, 1991). Much of the Land Code was invalidated by Presidential Decree No. 2287 “On Bringing the Land Legislation of the Russian Federation Into Conformity With the Constitution of the Russian Federation” (December 24, 1993).

¹² Article 11 of the RSFSR law “On Peasant (Farm) Enterprises” (adopted with amendments on January 5, 1991, amended on December 24, 1993 by Presidential Decree No. 2287).

¹³ Presidential Decree No. 2162 “On Strengthening State Control Over the Use and Protection of Land During the Land Reform” (December 16, 1993).

¹⁴ Government Resolution No. 1362 “On Approval of the Regulations on the Procedure for the Implementation of State Control Over the Use and Protection of Lands in the Russian Federation” (adopted on December 23, 1993, amended on March 12, 1996).

Novgorod *oblast* legislation unfortunately follows the federal trend. The law “On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*” calls for partial or complete termination of land rights in cases such as:

- Failure to achieve agricultural productivity at the norm established by the state (article 3(1)(f));
- Irrational use which lowers the quality of the agricultural land (also in article 3(1)(f));
- Use of land which results in soil degradation (article 3(1)(g)); and
- Failure to use a land plot or its part for a period of one year, if the plot was provided in permanent use, temporary use, or lease (article 3(1)(l)).

This law also outlines the procedure for termination of land rights.¹⁵ The procedure calls for a fine to be levied in accordance with Presidential Decree No. 2162 mentioned above, as well as a requirement that the violation be eliminated within three months. If the fine is not paid and the violation is not eliminated, then the appropriate state agency shall make a request to the appropriate local self-government body to terminate the rights.

There is no requirement that Novgorod *oblast* have legislation providing fines for non use or irrational use. Also, since final decisions on land confiscation are at the *oblast* and local level, the *oblast* government can categorically prohibit confiscation for certain classes of perceived harm to land. Thus, the above-mentioned *oblast* law should be amended to reflect changes such as:

- Elimination of penalties for non-use of land and penalties for failure to achieve production norms.
- Provision for a graduated system of fines for actively causing soil degradation. If a forced sale is necessary in severely egregious cases, a public sale should be required with the proceeds going to the owner of the land.

As the land market develops, land owners will have increasing economic incentives to ensure that their land is used in a rational manner, to protect their land, and to alienate unneeded land through sale or lease.

¹⁵ Article 3(3).



Increasing the Size of Personal Auxiliary Smallholdings

Small plots in Russia account for significant percentages of total agricultural output of potatoes (89 percent), vegetables (76 percent), meat (48 percent), milk (42 percent), and eggs (30 percent).¹⁶ Novgorod *oblast* land committee personnel report roughly similar statistics regarding small plots in the *oblast*, and also report that the production on such plots has been steadily increasing since the start of the reform process. Despite this productivity, the maximum permitted sizes of the various types of small plots have traditionally been strictly regulated.

Presidential Decree No. 1767 of October 1993 provided that land share owners could use their land shares to increase the size of their personal auxiliary smallholdings. Presidential Decree No. 337 of March 1996 strengthened this provision by requiring the *raion* governments to increase the maximum allowable sizes of personal auxiliary smallholdings, so that land share owners could receive their land shares in kind for use as personal auxiliary smallholdings. Following up on Decree No. 1767, in 1994 the Novgorod *oblast* legislature recommended that the *raion* administrations increase the maximum permitted sizes of personal auxiliary smallholdings to equal the *raion* norm used for the calculation of land shares at the start of the reform process.¹⁷ This would allow land share owners to claim their share in kind for use as personal auxiliary smallholdings.

Inquiry is needed to determine whether *raion* governments have actually increased the maximum permitted sizes for personal auxiliary smallholdings. If the sizes have not been increased, the *oblast* government should order the increase.

Procedure for Allocation of Land Shares in Kind

As described in the section of this report entitled "Summary Profile of Agricultural Land in Novgorod *Oblast*," the vast majority of land on large agricultural enterprises is not owned by those enterprises, but by the farm workers, social sphere workers and pensioners in common share ownership. One of the fundamental principles of Russian agricultural land reform is the right of the owners of land shares to take their individual shares in kind to farm privately, to use as a personal auxiliary smallholding, or to lease to a more efficient agricultural producer. The major issue involved in exercising this right is determining which land plot in particular the withdrawing land share owner will receive. Managers of large enterprises, who exercise considerable local influence, often oppose allocation of land that is of good quality or location.

¹⁶ USDA Economic Research Service: Report on the Newly Independent States and the Baltics (May 1997), Statistical Annex: Table 10 — Share of private sector in agricultural output, by commodity, Russia (citing as sources: Statkom SNG, 1996, 1997; Goskomstat Rossii, 1996, 1997; Rossia — 1995 ekonomicheskaja konjunktura; Sotsial'no-ekonomicheskoe polozhenie Rossii, 1996). Percentages for potatoes and vegetables are for the year 1996, while percentages for meat, milk, and eggs are for 1995.

¹⁷ Novgorod *Oblast Duma* Resolution "On Introduction of Changes to the Decision of the *Mali* Soviet of the *Oblast* Soviet of Peoples' Deputies of October 28, 1992, No. 354 'On Approval of Land Tax Rates, Normative Price for Land, and the Maximum Size of Land Which May be Transferred Into Ownership.'"

All current legislation on this issue is at the federal level. Presidential Decree No. 337 contains a procedure for allocation of a land plot in kind against a land share.¹⁸ First, the land plot location is determined upon agreement of the owners of the land shares. If the land share owners cannot agree among themselves, then the local administration and the *raion* land committee decide which land plot will be allocated. In making their decision, these authorities shall “provide for the rational organization of the territory (compact location) and ensure that the land quality of the plot assigned is not lower than the enterprise’s average.” While this procedure has more or less worked, it does leave the withdrawing land share owner dependent on the local administration for a favorable disposition. If a more impartial procedure were available, and land share owners knew of the procedure and could more accurately judge their chances for getting the land they wanted, they may be more inclined to withdraw or alienate their land shares.

One possible procedure is “negotiated selection.” In this procedure, the individual wishing to withdraw land and the remaining co-owners of the land take alternating turns proposing a field on which the withdrawing owner’s land share will be demarcated in kind. If one side rejects the other side’s proposal of a particular field, that field is removed from the negotiation. The process continues until one side accepts the other side’s proposal, or until only one field is left. At that point, the land plot or plots are demarcated in a contiguous area on the edge of that field.

Novgorod *oblast* should consider experimenting with the negotiated selection procedure to determine its practical effectiveness, and should adopt the procedure *oblast*-wide if the experiment proves successful. While the state cannot mandate use of the procedure for owners of land shares negotiating among themselves, the local administration and the *raion* land committee can use the procedure to resolve disputes and determine the land plot location pursuant to their authority under Presidential Decree No. 337.

Change in Use Purpose of Agricultural Land

A fundamental aspect of a functioning land market is the ability of individuals to determine the highest and best use of land they possess. This principle must of course be balanced against legitimate public interests, which are represented by the state. Following from federal legislation, the Novgorod *oblast* law “On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*” provides that:

*Sale of land plots used for agricultural production with changing their designation shall be carried out subject to a resolution of the oblast administration, which shall be the grounds for signing a contract on purchase and sale of the land.*¹⁹

Little flexibility therefore exists for private owners to use agricultural land in ways which do not fit strictly within the definition of agricultural use purpose. Valid reasons may exist, however, for retaining this special authorization on changing the designation of agricultural land. For example, the *oblast* administration may deem it necessary to protect the highest quality agricultural land. Also, land use planning in urban areas

¹⁸ Section 10.

¹⁹ Article 1, section 2.

may highlight the desirability of retaining some agricultural land in peri-urban areas. Analysis of the real estate market in peri-urban and rural areas would provide further direction for any needed development of *oblast* legislation in this area. Such analysis should determine both the extent to which agricultural land in Novgorod *oblast* merits protection through stringent use restrictions, and the level of demand for conversion of agricultural land to other uses.

Mortgage

The ability to mortgage agricultural land as security for loans is crucial to developing the land market and to bringing its benefits to the largest group of people. Since an agricultural producer's most valuable asset is often his land, the land can act as the collateral needed to obtain loans for machinery and inputs. This benefit of mortgage is especially important in Russia, where lack of access to machinery is a major impediment to the growth of private farming. Furthermore, in developed market economies almost all land purchases are financed through loans secured by the land being purchased. Such "purchase money" mortgages make it possible for a wide range of efficient producers to buy land.

Novgorod *oblast* has not enacted legislation on mortgage. The federal Civil Code generally applies the Code's pledge provisions to mortgage of land and buildings.²⁰ Presidential Decree No. 293, "On Additional Measures to Promote Mortgage Lending" (February 28, 1996), contains further provisions. Despite this legislation, however, mortgage of agricultural land is almost unheard of in Russia. The factors most often cited are:

- Lack of a significant market for purchase and sale of land. Banks and other lenders will not accept undeveloped land as collateral if they cannot sell it to recover a debt owed. A cycle exists, however, since the lack of a land market is in part due to the absence of mortgage.
- Lenders' lack of confidence in agricultural producers being able to repay loans.
- Real and perceived difficulties of a lender foreclosing upon land if loan default occurs.

Novgorod *oblast* should undertake action in the mortgage area as part of the program to develop land markets. Such action might be adoption of an *oblast* mortgage law to spur implementation of existing federal legislation, or provisions addressing problems of foreclosure.²¹ Such efforts by the *oblast* government may give lenders needed confidence to start making mortgage loans.

Registration

²⁰ Article 334.

²¹ An issue exists as to whether land mortgage can be the topic of legislation by a federation subject. Article 71(n) of the Constitution of the Russian Federation provides that civil legislation is the jurisdiction of the Russian Federation. However, as noted above, article 72(1)(e) of the Constitution provides that "issues of possession, use and disposal of land" are in the joint jurisdiction of the Russian Federation and the subjects of the federation. Land mortgage is intimately linked with possession, use and disposal of land, thus should be an area in which the federation subjects can take action.

Land registration is the overall process of publicly recording information about land parcels and land rights. The *oblast* and *raion* land committees, which are part of the federal structure under the State Committee for Land Resources and Land Tenure, carry out agricultural land registration. These committees register rights in a “state land book,” whose form was adopted by the Novgorod *oblast* administration.²² The Bureaus of Technical Inventory, which derive their authority from *oblast* and local legislation, register rural buildings and other structures.

On July 21, 1997 President Yeltsin signed the federal law “On State Registration of Rights to Immovable Property and Transactions With It.” This law gives the federation subjects a major role and significant flexibility in designing and implementing the new system. Thus, under the law the Novgorod *oblast* government will establish and develop “justice institutions” which will carry out registration of all land and buildings. The *oblast* government will also determine the timing of establishment of the new registration bodies, determine whether to adapt existing registration bodies to carry out new tasks, and decide other important details. Novgorod *oblast* will thus have to take action to convert from the present system in which different agencies, none of them justice institutions, register different types of immovable property.

Taxation of Agricultural Land

In developed market economies, taxes on agricultural land provide significant funding for needed local services. In the Russian context such support may be seen as an ultimate goal, but probably not a goal that will be achievable in the near term.

The federal law “On Payment for Land” sets out basic rules for agricultural land tax. The law provides that the land tax will be imposed on owners, holders and users of land. Land taxes constitute fixed payments per unit of land area, assessed on an annual basis. Most notably, the law provides that all agricultural land taxes collected in Novgorod *oblast* will stay in the *oblast*, rather than be transferred to the federal level. The law also sets the basic land tax rate per hectare for the *oblast*. According to land committee officials, the annual tax on one hectare of average quality agricultural land in Novgorod *oblast* is currently about one dollar.

Novgorod *oblast* also has a law “On Payment for Land,”²³ which roughly mirrors the federal law. At this point, addressing tax issues regarding agricultural land will probably not bring any significant benefits to land market development. One possible exception is with regard to taxes paid on land shares of pensioners. Agricultural enterprises are often having difficulty cultivating the land they have traditionally farmed, and thus are reluctant to enter into lease contracts for land shares they cannot use. This refusal to lease land shares is often targeted at pensioners' shares, since enterprises will first lease the land shares of their active workers. Since other lessors are often unavailable, pensioners may be left with no income from the land, but the obligation to pay the land tax. The possibility exists that the pensioners, who often are not well educated about their land rights, may improvidently dispose of their rights because they see no income

²² Order of the Administration of Novgorod *Oblast* “On Approval of the Form of the State Land Book,” October 31, 1995.

²³ Adopted on September 28, 1994, amended on December 28, 1994 and January 30, 1996.

from the land share, yet have to pay the land tax. The land tax may be small, but is still significant to those living on meager pensions.

The *oblast* law “On Payment for Land” allows local authorities to establish tax exemptions for land tax revenue which is to remain at the local level.²⁴ Relief is therefore possible for pensioners under this provision. This issue should be studied locally, however, in order to determine the need and effectiveness of such relief.

²⁴ Article 12.

Reducing Transaction Costs

Transaction costs associated with acquiring and registering land can be overly burdensome, inhibiting access to land rights and retarding land market development. These costs include notarization, as well as surveying and mapping of land to be transferred. The Novgorod *oblast* land committee reports that notary fees for a land sale transaction approach 850,000 rubles, or about \$150. Additional fees approach \$85. Such high costs could very well impede transactions and retard land market development.

Notarization fees are established in conformity with the federal law "On State Duty."²⁵ Article 4 of this law allows *oblast* legislatures to reduce fees for certain classes of payers. Consideration should be given to granting benefits regarding certification of contracts on land alienation to relatives, to private farms, and to operators of personal auxiliary smallholdings. In addition, methods for reducing the costs of surveying, demarcation, and mapping services should be explored. These services are generally provided through the *raion* administration and the land committees, and should be subject to reform.

CONCLUSION

Existing federal and Novgorod *oblast* legislation provides a solid base for agricultural land market development. Legislation and implementing procedures already exist for a variety of land transactions, notably land sales and land share lease. In addition, the majority of agricultural land has been privatized, albeit in the form of land shares which are still largely controlled by large enterprises.

Continued Novgorod *oblast* land market development will be encouraged through the legislative refinements suggested in the previous section, such as relaxation of rational use rules, exercise of *oblast* authority under the new registration law, and reducing transaction costs. Just as important, however, is the effective implementation of already existing federal and *oblast* legislation, so that Novgorod's citizens not only know of their rights to land, but know that the *oblast* government is committed to protecting their rights. While land market development ultimately turns on economic considerations, improving and implementing the legal framework will make it more possible for citizens to take opportunities to better their lives.

²⁵ Federal law "On State Duty" (as amended on December 31, 1995 and August 20, 1996).

APPENDIX

LEGISLATION CITED IN REPORT

FEDERAL LEGISLATION

RSFSR Law “On Peasant (Farm) Enterprises” (adopted with amendments on January 5, 1991, amended December 24, 1993).

Land Code of the RSFSR (April 25, 1991, amended December 24, 1993).

RSFSR Law “On Payment for Land” (October 11, 1991, amended February 14, 1992; July 16, 1992; May 14, 1993; August 9, 1994; August 22, 1995; and December 27, 1995).

Resolution of the Government of the Russian Federation No. 708, “On the Procedure for Privatization and Reorganization of Enterprise and Organizations of the Agro-Industrial Complex” (September 4, 1992).

Decree of the President of the Russian Federation No. 1598, “On Legal Regulation in the Period of the Stage by Stage Constitutional Reform in the Russian Federation” (October 7, 1993).

Decree of the President of the Russian Federation No. 1767, “On Regulation of Land Relations and Development of Agrarian Reform in Russia” (October 27, 1993).

Constitution of the Russian Federation (December 12, 1993).

Decree of the President of the Russian Federation No. 2162, “On Strengthening State Control Over the Use and Protection of Land During the Land Reform” (December 16, 1993).

Resolution of the Government of the Russian Federation No. 1362, “On Approval of the Regulations on the Procedure for the Implementation of State Control Over the Use and Protection of Lands in the Russian Federation,” (December 23, 1993, amended March 12, 1996).

Decree of the President of the Russian Federation No. 2287, “On Bringing the Land Legislation of the Russian Federation Into Conformity With the Constitution of the Russian Federation” (December 24, 1993).

Civil Code of the Russian Federation, Part I (January 1, 1995).

Federal Law “On State Duty” (as amended December 31, 1995 and August 20, 1996).

Decree of the President of the Russian Federation No. 198, “On the Right of Ownership of Individuals and Legal Entities to Land Plots Under Objects of Immovable Property in Rural Areas” (February 14, 1996).

Decree of the President of the Russian Federation No. 293, "On Additional Measures to Promote Mortgage Lending" (February 28, 1996).

Decree of the President of the Russian Federation No. 337, "On Realization of Citizens' Constitutional Rights to Land" (March 7, 1996).

Federal Law "On State Registration of Rights to Immovable Property and Transactions With It" (July 21, 1997).

NOVGOROD OBLAST LEGISLATION

Novgorod *Oblast* Law "On Payment for Land" (September 28, 1994, amended December 28, 1994 and January 30, 1996).

Novgorod *Oblast* Law "On the Procedure for Allocation and Withdrawal of Land Plots in Novgorod *Oblast*" (July 28, 1995, amended July 1, 1996 and July 29, 1996).

Order of the Novgorod *Oblast* Administration "On Approval of the Form of the State Land Book" (October 31, 1995).

Novgorod *Oblast* Duma Resolution "On Introduction of Changes to the Decision of the *Mali* Soviet of the *Oblast* Soviet of Peoples' Deputies of October 28, 1992, No. 354 'On Approval of Land Tax Rates, Normative Price for Land, and the Maximum Size of Land Which May be Transferred Into Ownership.'"