FARMLAND INFORMATION CENTER

FACT SHEET

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

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DESCRIPTION

Purchase of agricultural conservation easement (PACE) programs compensate property owners for restrictions on the future use of their land. One of the biggest challenges in administering PACE programs is figuring out how to pay for them. It is necessary to have reliable sources of revenue to allow farmers and ranchers to incorporate the sale of easements into their long-term financial plans. This fact sheet provides an overview of funding sources and identifies some issues to address when deciding how to pay for easements.

FREQUENTLY USED FUNDING SOURCES

Appropriations

State and local governments can allocate a dollar amount to farmland protection from general or discretionary funds. This approach has been used by state legislatures to provide start-up money and to supplement other revenue sources. For example, the Vermont legislature appropriated $20 million to the Vermont Housing and Conservation Trust Fund in 1988 to get the program off the ground. Since then, the program has received a portion of the state property transfer tax and funds from state bonds. In general, appropriations are not used as a primary funding source for PACE programs.

State agencies develop spending proposals that are incorporated into the state budget. Legislators may also introduce bills to allocate funds to particular programs. Town and county boards make spending recommendations that may be included in the local budget. Sometimes opportunities arise to earmark budget surpluses at the end of the fiscal year.

Bonds

General obligation bonds are the most popular source of funding for PACE. Bonds are essentially IOUs issued by cities, states and other public entities to finance large public projects. The issuer agrees to repay the amount borrowed plus interest over a specified term—typically 20 to 30 years. General obligation bonds are backed by the "full faith and credit" of the issuer. This means that the government entity is obligated to raise taxes or to take whatever action is within its power to repay the debt.

State rules guiding the issuance of bonds vary. General obligation bonds may require approval by the legislature or voters or both. Almost half of the states limit issuance of bonds through constitutional or statutory requirements. For more information, contact state bond authorities and independent underwriting experts.

Conversion/Withdrawal Penalties from Differential Assessment and Circuit Breaker Programs

Every state provides real property tax relief for agricultural land. The most important and widespread type of program is differential assessment, which allows officials to assess farmland at its agricultural use value. A few states offer circuit breaker programs that authorize tax credits against state income taxes or local school taxes to offset local property tax bills. Most of these programs impose a penalty when enrolled land is converted to an ineligible use and/or is withdrawn before the end of a specified term. Penalties may be a percentage of the property's fair market value—typically assessed when the land is conveyed to a new owner who does not intend to keep the land in agricultural use—or a recapture of the tax savings (a.k.a., a rollback tax) for a specified number of years.

State laws generally dictate the entity responsible for collecting conversion/withdrawal penalties and may specify purposes for which these funds can be spent. Maryland and Michigan statutes dedicate revenue from conversion/withdrawal penalties to state-level farmland protection programs. State laws in Maryland and Pennsylvania require counties to earmark penalties, or interest on penalties (Pa.), for farmland protection. Communities in New Hampshire and Virginia elected to assign penalties for agricultural land protection. Check with local tax assessors and/or state legislators for more information about this potential source of revenue.

Recording Fees

Recording fees are charges for filing documents of public record, such as deeds. The fee may be a flat rate per document or be based on the value of real property.

Recording fees typically are established by state law. State legislatures in Connecticut, Massachusetts and South Carolina have enacted laws authorizing recording fee surcharges to fund farmland protection. In Maryland, Calvert and Frederick counties assess recording fees to help pay for farmland protection. For more information on this potential funding source, consult state legislators and local registrars.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

TAXES

Property Taxes

Property taxes are a popular source of funding for local PACE programs. Property taxes are levies on the value of real estate. Municipalities use dedicated increases in the tax rate to pay for easement acquisitions and to cover debt service on bonds.

States create general guidelines and may set limits for computing tax rates and assessing properties. Public referenda usually are required to ratify a dedicated property tax increase. The state of Washington gives local governments the option to increase property taxes for land conservation. For more information on this potential funding source, consult local assessors and local government administrators.

Real Estate Transfer Taxes

A real estate transfer tax is a levy on property sales. It is typically a small percentage of the purchase price and is usually paid by the buyer. Transfer tax revenue may be used to acquire land directly or to cover financing costs on bonds. Transfer taxes ensure that the level of funding is tied to development activity—funding increases when the real estate market is active and drops off when the market slows.

Legislatures can enact statewide transfer taxes or laws authorizing local jurisdictions to levy transfer taxes. Farmland protection programs in Delaware, Maryland, New York and Vermont receive funds from state-level transfer taxes. In Washington, all counties are authorized to levy up to 1 percent of real estate sales to fund land acquisition and maintenance of conservation areas contingent upon voter approval. For more information, consult local government administrators, municipal attorneys or state legislators.

Sales Taxes

Sales taxes are levies on retail sales imposed by states, local governments and special districts. Sales taxes may be broad-based or targeted to a particular item.

State constitutions and laws dictate whether local governments have the authority to levy sales taxes. Farmland protection advocates should check with local government administrators or state legislators for more information about this potential source of revenue.

Benefits

- Appropriations reflect the will of the current electorate and eliminate financing costs.
- Bonds allow programs to commit large sums to farmland protection while land is still available and relatively affordable and distribute the cost of acquisition over time.
- Recording fees and taxes provide a regular stream of revenue.
- Taxes on retail sales ensure that tourists help protect the open land they are enjoying.
- Conversion/withdrawal penalties, deed recording fees and transfer taxes tie revenue to development activity—funding increases when the real estate market is active and drops off when the market slows.

Drawbacks

- Appropriations are unpredictable from year to year.
- Interest paid on bonds increases the overall cost of the program.
- Raising existing or levying new taxes requires well-organized campaigns to generate and sustain public support.
- Sales and property taxes are regressive and tend to fall disproportionately on lower-income people.
- Sales taxes are location-based, and future revenues could be undermined by internet commerce.

FEDERAL FUNDING

The Farm and Ranch Lands Protection Program

The Farm and Ranch Lands Protection Program (FRPP), formerly known as the Farmland Protection Program, provides matching funds to eligible entities to buy permanent conservation easements on farm and ranch land. The program was originally enacted in the Federal Agriculture Improvement and Reform Act of 1996. It was reauthorized and expanded in the Farm Security and Rural Investment Act of 2002 to include non-governmental organizations as eligible entities, make farm and ranch land containing historical and archeological sites eligible and allow landowner donations to count as part of the entity's match. Funding for the FRPP comes from the Commodity Credit Corporation, the same federal entity that finances farm income support payments and conservation payments. The USDA Natural Resources Conservation Service (NRCS) manages the program.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

Eligible entities submit proposals to NRCS state offices in response to requests for proposals published in the *Federal Register*. For more information contact an NRCS state office or visit the NRCS Web site at http://www.nrcs.usda.gov/.

Hazard Mitigation Grant Program

The Hazard Mitigation Grant Program (HMGP) was created in November 1988 by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to assist states and localities in implementing mitigation measures following a presidential disaster declaration. Funds have been used to purchase conservation easements on farmland located in the 100-year floodplain.

State, local and tribal governments and private nonprofit organizations that serve a public function are eligible for funding. Projects must fall within the state and local governments' overall mitigation strategy for the disaster area, and comply with program guidelines to qualify. HMGP will cover up to 75 percent of project costs. In-kind services can be used to meet the state or local cost-share match. Each state sets its own priorities for funding and administering this program. To apply, contact the state emergency management agency, state hazard mitigation officer or a Federal Emergency Management Agency regional office. Information is also available online at http://www.fema.gov/mit/hmgp.htm.

Transportation Funding

The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA) and its predecessors—the Transportation Equity Act for the 21st Century of 1998 (TEA-21) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)—provide funding for a broad range of highway and transit programs, including "transportation enhancements." Enhancements are projects, including easement acquisitions, that improve the cultural, aesthetic and environmental quality of transportation routes.

Private conservation organizations and public entities are eligible to apply for enhancements money. The program reimburses up to 80 percent of project costs. Contact state departments of transportation for more information about the application process.

Benefits

· Federal grant programs that fund agricultural easement acquisitions make farmland protection a goal for the federal agencies that administer these programs.

· Federal grants provide much-needed assistance to farmland protection programs.

· HMGP transportation funding demonstrates the multiple benefits provided by agricultural land, which helps make the case for farmland protection.

Drawbacks

· Funding is not predictable from year to year.

· HMGP and transportation funds are rarely used for agricultural easement acquisitions.

· Easement values in floodplains may be too low to encourage participation in the HMGP.

OTHER SOURCES OF FUNDING

Check-Off Box

In 1997, county commissioners in Kent County, Maryland, approved a voluntary check-off box program to help fund easement acquisitions. The county distributes a brochure with local tax mailings that describes the county's farmland protection efforts and asks for a small contribution.

Local governments may need to seek state authority to collect contributions for land conservation. Kent County did not need state approval, but sponsors sought support from the county commissioners.

Credit Cards

In 1996, the Land for Maine's Future Program (LFMF) issued the first state-sponsored credit card to raise money for land protection. LFMF acquires land to provide recreational opportunities and to protect important natural resources (including farmland) and scenic views. The program received 1/2 percent of all charges but did not generate significant revenue before being discontinued by the card issuer in 2005.

State programs may be required to seek statutory authority to issue a credit card. LFMF sought statutory authority in 1995. There was overwhelming support among legislators for this funding option.

Gaming Revenue

Kane County, Illinois, uses gaming revenue to pay for farmland protection. The Grand Victoria Casino in Elgin, Illinois, commits 7.5 percent of its annual adjusted net operating income to Kane County. To disburse the money, the county established a grant program that supports projects to strengthen local communities. The county agricultural easement acquisition program, created in

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

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2001, is given priority consideration and has received an average of $2.5 million per year.

State laws governing casinos may require that a portion of revenue be dedicated to specific purposes. For more information about gaming revenues, contact state gaming commissions.

License Plates

In 2004, Delaware's Division of Motor Vehicles began offering motorists the opportunity to protect farmland through Agricultural Farmland Preservation License Plates. The plates are available for a one-time fee of $50. Seventy percent of the revenue is directed to the state's farmland protection program. To date, the program has generated about $26,500.

Rules governing the availability of vanity plates differ from state to state. Contact state departments of motor vehicles for applicable guidelines.

Lottery Proceeds

In 1992, 58 percent of Colorado voters approved a state constitutional amendment to direct a portion of state lottery revenues to projects that preserve, protect and enhance Colorado's wildlife, parks, rivers, trails, and open spaces. The amendment also created the Great Outdoors Colorado (GOCO) Trust Fund to oversee the distribution of the funds. GOCO receives 50 percent of the lottery proceeds, capped at $35 million a year adjusted for inflation. In 2005, the distribution to GOCO was $55.1 million.

State laws governing lotteries dedicate revenue to specified purposes. Contact state legislators or state lottery commissions for additional information.

Mitigation Ordinances

The City Council of Davis, California, adopted an ordinance requiring farmland mitigation in 1995. For every acre of agricultural land converted to other uses, an acre of agricultural land must be protected by a conservation easement. Developers can grant a conservation easement or pay a fee that would cover the cost of protecting a comparable amount of land.

Mitigation ordinances are difficult to craft. The U.S. Supreme Court ruled in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), that there must be a direct connection or "nexus" between exactions from landowners and the proposed development's impact. In 1994 the U.S. Supreme Court determined in *Dolan v. City of Tigard*, 512 U.S. 374, that exactions must be "roughly proportional" to the impact of the development.

Special Districts

In California, the Solano County Farmland and Open Space Foundation is funded by a Mello-Roos district. A Mello-Roos district is a special district created under the state's Mello-Roos Community Facilities Act of 1982 to finance open space acquisition and the development of parks. In Solano County, properties within the district pay an annual tax of $16-$33 per acre prior to development and $80 per unit after construction.

The rules governing the creation of special districts vary from state to state. For more information, farmland protection advocates should contact their town or county administrators.

Benefits

· These funding options are often viewed as "new" sources of revenue and receive enthusiastic public support.

· Check-off boxes, credit cards and license plate programs allow residents to choose to contribute to farmland protection.

· Mitigation ordinances makes developers pay for farmland protection, establishing a clear link between the cause and a potential solution.

Drawbacks

· Localities may not be able to secure the authority to implement some of these options.

· Some of these strategies produce modest revenues or may require years to generate significant sums.

QUESTIONS TO CONSIDER IN PURSUING A FUNDING SOURCE

· What does state or local law allow?

· How difficult will it be to get approval?

· How much money can be raised?

· How predictable is the funding source?

· How secure is the funding source? Could funds be "raided" by state or local governments during fiscal crises?

· Who benefits and who pays?